TITLE NEWS

December, 1935 *Vol. 15 No. 1*

PROCEEDINGS

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Twenty-ninth Annual Convention

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MEMPHIS, TENNESSEE

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October 14, 15 and 16, 1935

The American Title Association

Officers and Committees—1936

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Together with the Presidents and Secretaries of all State and Regional Associations.

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ROY S. JOHNSON, *President, Albright Title and Trust Co.*, Newkirk, Oklahoma.
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R. H. LEE, *Vice-President, Lawyers Title Insurance Corporation*, Richmond, Virginia.
F. L. TAYLOR, *President, Northwestern Title Insurance Co.*, Spokane, Washington.
H. Q. BENNETT, *Secretary, West Virginia Title & Trust Co.*, New Martinsville, West Virginia.
JOHN T. KENNEY, *President, Walworth Security Title & Abstract Co.*, Elkhorn, Wisconsin.
T. C. BARRATT, *Secretary, Albany County Pioneer Abstract Co.*, Laramie, Wyoming.

Proceedings of the Twenty-Ninth Annual Convention *of the* AMERICAN TITLE ASSOCIATION

October 14, 15 and 16

Memphis, Tenn.

The Twenty-ninth Annual Convention of the American Title Association was called to order by Benj. J. Henley, President of the Association.

The invocation was offered by Dr. Robert Gerard Lowe, of the First Presbyterian Church, Memphis.

The President called upon Mr. W. S. Beck, President of the Tennessee Title Association who, in a delightful address, welcomed the delegates to Tennessee.

Response to this address was delivered by Mr. Don Peabody, of Miami, Florida.

Report of President

BENJ. J. HENLEY

Executive Vice-President, California Pacific Title and Trust Company San Francisco, California

On October 22, 1929, the twenty-third annual convention of this Association assembled in a Southern city of great historical importance—San Antonio, Texas. Five years later we find ourselves again meeting in a Southern city which has been the scene of significant events in the discovery and development of the Western hemisphere.

That phase of our business life which relates to the ownership and transfer of real estate, after passing through a period of unparalleled activitity which reached its height during the year 1925 to 1927, was then experiencing what we were pleased to term a rather dull period. We were laboring under the misapprehension that our business, which is a part of the real estate picture, was emerging from something of a depression.

While the trend of general business had been downward for several months prior to October of 1929, until late in that month nothing had occurred to focus attention upon this condition. Few of us who were present at that convention will forget that while we were together in San Antonio the curtain was raised upon what has since proven to be the most severe economic depression that the world, ourselves included, has experienced in modern times. The excitement which we witnessed in the brokerage offices in San Antonio was a repetition of that which prevailed in business centers throughout the country.

In the months immediately following the October break in the securities markets, men of importance in political and financial matters and numerous investment services predicted that the recession in general business and the decline in security prices were of a temporary character and that by late Spring of 1930 there would be a reversal of the trend, and American business would proceed upon its merry, hilarious, upward way. That temporary set-back in our economic progress has now been with us for five years. Its social and economic consequences have been and are of greater import than anything which has occurred, with the exception of the Civil War, since this Government was established.

As we meet today in this glorious Southern city, rich in tradition and in historical events of significance, we feel that we can look forward to the future with somewhat more confidence than at any time during that five year period. That many of our political, social and economic institutions have undergone and are now undergoing profound change cannot be denied. Some of the reforms which have been made were most essential, and have been so made as to ultimately accomplish the purposes for which they were designed. Others have not been so wisely conceived, and are not being so successfully executed.

At the depth of the depression in 1932 there was a unanimity of thought in the country to the point that the rapidly rising cost of Government—national, state and local—should be checked. The platforms of both of our great political parties and their respective candidates for the high office of President advocated a balanced budget for the National Government. There was at that time a disposition on the part of local government to trim their budgets and reduce expenses. As the percentage of tax delinquencies decreases and revenues show signs of increasing with the rising trend of business, we find the costs of our local governments again rising.

As we go into the 1936 presidential campaign we hear much discussion of the desirability of fundamental changes in our basic charter of government. If such issues are to be presented to the American people for consideration, they are not yet clearly defined.

Regardless of what the issues may be, may I say to you that at no time since this government was established has clear thinking been more necessary, nor intelligent interest in government affairs more important. It is not for me to say whether the National income of this country can support a per capita debt, Federal, State and Local, of $300.00 or $400.00. I cannot assure you that some of the constitutional restrictions upon the powers of our National Legislature should or should not be removed. I can, however, insist that as action is being taken upon these vital subjects, as these great events transpire, it is the duty and obligation of each of you to give such of your time as may be requisite to the consideration of the problems which confront us. Because many of the expedients to which resort must be had in a situation such as that through which we are now passing are untried, no one can definitely predict their consequences. It is essential, therefore, that we familiarize ourselves with the major issues which are presented; that so far as possible we form our own independent conclusions upon these issues, and that we then make those conclusions known to our public servants. No factor can contribute more to the preservation of the liberty and security which we have so long enjoyed than a well informed, articulate public opinion.

It has been often said that any organization is the lengthened shadow of one man. If two men could make one shadow, and a shadow could reflect light, I would say to you that the accomplishments of this Association during the past year are reflected in the composite shadow of Jim Sheridan and Bill Gill. In spite of the speed of present day communication and transportation, there has as yet been developed no satisfactory substitute for personal consultation. When your President resides on the Pacific Coast, even though it be in a city of the over-

shadowing importance of San Francisco, from which as you know the town of Los Angeles is situated some three or four hundred miles southerly in California, and your Secretary occupies an office some two thousand miles easterly on the shores of Lake St. Clair, if anything is to be accomplished, the responsibility and direction of the Association's affairs must be assumed by one of them without much interference from the other. You are most fortunate, and that good fortune has made for me a pleasant, easy task what would otherwise have been an impossible one, in having Jim Sheridan for your Executive Secretary. With my full approval and with little assistance from me, Jim has most satisfactorily guided the Association through what seems to me to be one of the years of its greatest value to its members. His bulletin service has told you much of his activities. He will amplify those bulletins in his report, and I will touch only briefly upon some of the things which have been done.

In no year since I have been in touch with the affairs of this Association have so many practical problems arisen which have been National or at least Regional in their scope. The more or less uniform relation of most of these problems to the business of all of us, regardless of locality, has given to the Association a greater opportunity for service to its members. I have no hesitation in saying that Jim has met the new responsibilities which his organization has been required to assume with credit to himself and with complete satisfaction and advantage to us. In my opinion the work of this year has more conclusively than ever before established the necessity of a virile active National organization for our business.

At this year's Mid-winter conference, Bill Gill, as Chairman of the Abstracters Section, announced his Fourteen Point, Three Year Program for the members of his section. The acceptance of the plan was instantaneous and unanimous. Bill, however, was not satisfied that the plan would spontaneously germinate, so he set to work to make it effective. Even prior to the Chicago conference he had held a regional meeting at which most of the abstract states were represented, and secured endorsement of his plan. Following that conference he attended meetings of numerous state conventions and succeeded in securing widespread adoption of almost every plank in his platform.

In addition to the work he has done in connection with his Fourteen Point plan, he has participated actively in the steps which have been taken to standardize abstract forms and certificates for HOLC, and the discussions which have been carried on in connection with charges for title work furnished to the Federal Emergency Relief Administration.

At its Miami meetings the Board of Governors recognized that it was desirable that the Executive Secretary spend more time than heretofore in Washington for the purpose of conferring with representatives of the Federal Government who handle projects involving real estate acquisitions and real estate financing, and in New York and other insurance centers for discusion of business relations with the life insurance companies whose real estate loan activities are nationwide. Consistently with this policy, Jim has made four trips to Washington and New York this year.

To my mind no work of the Association is more important, nor has been productive of better results than this activity. These trips have been made by automobile, and have provided opportunity to visit with members of the Association between Detroit and the Atlantic Seaboard. They have promoted for us a friendly, cordial relationship with almost every department of the Government to which we render services that to my mind will prove invaluable to us as well as to them. The program of this convention is living proof of what I say. As a result of Jim's work, and the co-operative attitude of the Government departments he has visited, we are privileged to meet many of those Government representatives here, and to have them explain to us their needs in order that we may better serve them.

The Farm Credit Administration was created on May 27, 1933, by executive order of President Roosevelt. In the two years following there were received by the Federal Land Bank about 950,000 applications for mortgage loans, aggregating over $4,000,000,000. During that period the banks closed approximately 640,000 loans for $1,700,000,000.

The Home Owners Loan Act of 1933 became law on June 13, 1933. However, few loans were made until late that year. From the time operations commenced to the end of 1934, HOLC received approximately 1,750,000 loan applications and closed approximately 725,000 loans for a total of approximately $2,700,000,000.

Even in those sections of the country where available title service was of the highest order, this enormous volume of business placed a severe strain upon it. As a result, criticism was received by the Association from both the Farm Credit Administration and HOLC, concerning various localities, directed to the adequacy of the service and to delays in obtaining it. The question of charges also became a matter of issue in some localities. It was obvious to all that this volume of business was temporary and that permanent organizations to handle it could not be built up. This further complicated our problem.

During the year 1934 our officers held several conferences with representatives of the Farm Credit Administration. At the Miami convention a committee of Land Bank Presidents met with a committee of your Association for the discussion of various questions involving title service for the Federal Land Bank and charges therefor.

As a result of these conferences, and acting upon the instructions of the Miami convention, I there appointed a committee consisting of one member of the Association from each Federal Land Bank District to investigate these questions. The members of this committee discussed with the officers of the Land Banks in each of their Districts the questions which had arisen, and reported their findings to their Chairman, Mr. Arthur C. Marriott, who exchanged various communications with the Chairman of the Land Bank committee with a view to some solution of the problem.

The investigations made by our committee disclosed that in only three or four of the districts was there any active desire on the part of local bank officials to radically change their procedure in handling title matters. The members of our committee in some of those districts in which the service was not satisfactory offered an alternative service which, according to our understanding, conformed to that desired by the banks. However, none of the suggestions made by the committee have proved acceptable to the Farm Credit Administration, and no substantial change has been made in procedure in any of the districts.

It was the thought of the committee, as well as the Board of Governors when the matter was discussed at Miami, that the problems involved could be more satisfactorily solved by working directly with the local banks. In April of this year Mr. Jackson, President of the Baltimore Bank, advised us that he had come to the conclusion that the matter had become more or less a district problem. As a result of the agreement between the two committees on this point, and I assume also because of the very substantial decline in the volume of business of the Federal Land Banks, the work of our committee has to all intents and purposes terminated.

The various questions which arose in the handling of the business of HOLC were handled directly by Jim Sheridan and Bill Gill, where they were of general application. I believe that most of them have now been satisfactorily solved.

We are much indebted to Mr. Russell for his action in delegating Mr. Barclay to attend most of the conventions of the state associations located in the abstract states. I know that I can safely say that these visits by Mr. Barclay with our people have proved helpful in smoothing out the rough spots. We sincerely appreciate the fine cooperation of these two gentlemen and we want them to know that we are grateful for it.

In connection with the acquisition of land by the Federal Emergency Relief Administration for erosion control projects, marginal land projects, scattered settler projects, shelter belt and

low cost housing projects, we encountered what was, from our standpoint, one of the most difficult situations with which we were confronted in the handling of Government business. The administrators formerly in charge of this work were wholly unfamiliar with the costs involved in efficiently and expeditiously dispatching title work. They were of the opinion that the projects for which these lands were being acquired were of a character which called for special consideration in pricing. Arbitrary prices were established by the administration for abstracts of title and certificates, which were below the reasonable cost of production. In some instances when title companies declined to do the work at the prices specified, members of the staff of the administration were sent into the territory to perform the title work required.

Our Association as well as several of our state associations aggressively represented to the administration our view that abstracts or reports prepared by members of the administration's staff, who were unfamiliar with the records, could not be as reliable as those prepared by ourselves, and in our opinion would be more expensive. Furthermore, we urged that the program which had been adopted by the administration in this regard was contrary to and destructive of the broader policy of the administration to eliminate the "chiseler" in all lines of business.

I am happy to be able to report to you that all of this work is now concentrated under the direction of the Resettlement Administration. We have good cause to believe that there will be no repetition of the difficulties we have encountered in the past. We knew that our problems will receive sympathetic consideration from those now in charge of the administration of this work, and we feel satisfied that we can convince them of the reasonableness of the position which we have taken.

For several years there has been little lending on real estate by life insurance companies. For this reason it was concluded that no good purpose would be served by a meeting with counsel for the life insurance companies at the time of the Mid-winter conference in February of this year. The Board of Governors at that meeting discussed various suggestions which had been received by members of the Board from various life insurance companies as to our procedure in the handling of their business. This discussion resulted in the adoption of a resolution authorizing the Chairman of the Board to appoint a committee to discuss these questions with the life insurance companies.

The life insurance companies are again seeking real estate loans. It is reasonable to expect that business from that source will gradually increase to something of its former substantial proportions. As the lending activity of these institutions increases, we must lose no opportunity to accommodate our service and coverage, so far as possible, to their requirements. It seems to me that it is extremely desirable that the work of the committee to which I have referred continue, and that there be a resumption of our former practice of annual conferences with counsel for these companies.

I am not going to usurp the prerogatives of your Treasurer and give you a financial report. I would, however, call your attention to the fact that on January 1, 1935, we had in our general fund $1,659.56. Since that time we have collected $16,136.35 , and as of September 30, have expended $15,222.87, leaving cash on hand in our general funds of $2,573.04. Our budget for the year is $2,341.98. In most instances we are well within it. There was provision in the budget for certain emergency expenditures which may not be made. If the full expenditure is made, the receipts of the Association at this time are some $5,500 short of the amount necessary to meet requirements. While most of you have willingly met our call for funds, there are many members of the Association from whom we have as yet received no contribution to the Sustaining Fund. Although the treasury of the Association is presently in satisfactory shape, I would like to feel in retiring as your President that my successor will not be embarrassed by insufficient funds to meet the budget for the balance of this year. I am therefore urging all of you who have not already done so, that you evidence your appreciation of the wonderful work which is being done by your Executive Secretary, by contributing liberally to the Sustaining Fund and thus simplify the financial problems of your Association.

Because I have received such perfect co-operation from all upon whom I have called for help, I am reluctant to single out anyone for individual thanks. I cannot refrain, however, from again expressing to Bill Gill, my appreciation for his very substantial contribution to the accomplishments of the year. As a credit department, Lee Werner has no peer. The satisfactory condition of our treasury is again due principally to his untiring efforts. I take this opportunity of thanking him on your behalf.

To those representatives of our Federal Government and Government institutions who are with us, I say welcome. So far as it is within our power, it is our desire in every particular to meet your requirements for service, and to render that service at charges which are reasonable when considered in relation to the expenses we are compelled to meet in its rendition. We are mighty grateful to you for the considerate point of view with which you approach our problems. We trust that we can so serve you that your dealings with us will be both pleasant and effective.

In closing I wish to express to each of our members the deep enjoyment I have experienced in acting as your President. I am grateful for the confidence you placed in me, and I once more thank you for the opportunity you gave me to serve you.

Report of the Chairman of the Board of Governors

HENRY R. ROBINS
President, Commonwealth Title Company of Philadelphia Philadelphia, Pennsylvania

The Report of a Chairman of a Board of Governors of an organization such as the American Title Association seems to me to be one of the most unimportant matters on the Program, as well as one which needlessly takes up valuable time.

All persons who have sat on Boards of Governors and Boards of Directors can readily comprehend what is meant. When the Board meets, there is usually an hour or two of conversation, during which time all the necessary actions to be carried out are referred to the several committees and officers. Therefore, the Report that I make is that which is included in the reports of the other officers and the chairmen of the various committees.

Report of Treasurer

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

Statement of Receipts and Disbursements for period January 1, 1935 to September 30, 1935.

RECEIPTS

Cash forwarded from 1934	$ 1,659.56
Direct Members' Dues	470.00
Miscellaneous	130.85
State Dues	7,877.50
Sustaining Fund	7,658.00
Total	$17,795.91

DISBURSEMENTS

Ass't Treasurer's Salary	$ 100.00
Executive Secretary's Salary	5,458.22
Miscellaneous Supplies	712.98
Office Equipment	45.04
Office Rent	740.00
Postage	933.88
Stenographers	1,284.00
Telephone and Telegraph	425.92
Travel Expense	2,009.77
News Bulletins	1,757.16
Convention Expense (Memphis)	633.92
Directory, 1934	892.20
Title News, 1934	229.78
	$15,222.87
Cash in Bank	2,573.04
Total	$17,795.91

Cash Reserve and Interest... $2,020.00

CONDITION OF BUDGET

September 30, 1935

	Budget	Am't Expended	Balance
Assistant Treasurer's Salary	$ 200.00	$ 100.00	$ 100.00
Executive Secretary's Salary	7,000.00	5,458.22	1,541.78
Office Equipment	200.00	45.04	154.96
Office Rent	1,020.00	740.00	280.00
Postage	900.00	933.88	33.88*
Stationery and Printing	200.00	.....	200.00
Stenographers	1,750.00	1,284.00	466.00
Miscellaneous and Supplies	1,200.00	712.98	487.02
Telephone and Telegraph	750.00	425.92	324.08
Title News, 1934	229.78	229.78	.....
Title News, 1935	1,000.00	.....	1,000.00
Travel Expense	2,000.00	2,009.77	9.77*
News Bulletins	1,500.00	1,757.16	257.16*
Regional Meetings	250.00	.....	250.00
Annual and Midwinter Meetings—			
Extraordinary Expense	2,000.00	633.92	1,366.08
Directory, 1934	892.20	892.20	.....
Directory, 1935	250.00	.....	250.00
Reserve—Unanticipated and Emergency			
Activities of Association	1,000.00	.....	1,000.00
	$22,341.98	$15,222.87	$8,053.84
Less Overdrafts as noted by asterisks			300.81
Net Balance Unexpended			$7,753.03

I fully appreciate that to stand before you and read a lot of figures is perhaps boring to you, for in order to properly study our financial position it will be necessary for you to study these figures in the printed proceedings of this convention, and I heartily recommend that you do so.

From my own careful study of our financial situation I would draw conclusions something like this, which I believe you will more readily understand than the conglomoration of figures I have just read to you.

Our budget is being faithfully adhered to, having heavy demands only as to those items which involve additional service to the members. However, as of September 30, we had $2,000 less working cash than we had on the same date last year.

Our collections from State dues exceed last year's figures as of September 30, but should, as practically every State Association has made a material increase in its membership. It will be necessary for every State Treasurer to work faithfully on the collection of dues between now and December 31, for as a matter of fact if $600.00 dues are remitted to us between now and January 1, we will only equal dues collections of last year, whereas because of the material increase in our membership, with proper effort on the part of all State Officers, we should show at least further receipts from this source of $1,500.00. May I therefore please urge every state officer, upon his return home, to actively pursue the collection of all delinquent dues and promptly remit to our Executive Secretary's office.

Collections from sustaining fund sources have slumped over $500.00, compared with last year's figures at this time, and if we are to equal receipts of last year from this source it will be necessary to collect over $2,500.00 from those who either have not yet contributed or have reduced last year's contribution. As my ideal for loyal sustaining fund support, I respectfully point to the model states of California, Oklahoma and Washington, where every mother's son either contributes, and quite generously, or he is talked about and even ostracized. I therefore hope that every member who has either neglected to contribute, or has reduced last year's contribution, will, as soon as he arrives home, mail a check to our Executive Secretary at Detroit.

I do not wish to infer that our Association is in desperate circumstances for it is not. All our bills are paid and we have about $2,500.00 working cash on hand. However, our budget is slightly higher than last year, and this being my second and last term of office as your Treasurer, I trust you will do me the good favor of a generous response by way of further dues and new or increased sustaining fund contributions between now and the end of the year, so that all expenses incurred between now and then can be met, and my term of office which expires on December 31, show a cash balance at least equal to that of last year.

Finally and in conclusion permit me to thank all the officers of our Association, particularly our beloved President, Mr. Benjamin J. Henley, of whom I have the highest regard, and my good friend, our efficient Executive Secretary, Mr. James E. Sheridan, for their constant cooperation in all my efforts. I also feel grateful to those members of our Board of Governors who have so generously assisted me in carrying out the duties of my office, and likewise to Mr. Arthur C. Marriott, the able Chairman of our Finance Committee. And to all the officers of State Associations and the members thereof who have so loyally extended to me and to our Association their cooperation during my two terms of office, I also express my abiding gratitude.

Report of Executive Secretary

JAMES E. SHERIDAN

Detroit, Michigan

Since we last met, we have issued bulletins to the members on about the basis of one every ten days. Immediately before the convention, we stepped up production a little on this figure. We have also issued numerous bulletins to officers of state and regional associations, to members of sections and to the Board of Governors.

We have certified to the Treasurer all bills payable and have cleared to him all remittances received except those that have come in since October 4. We have no unpaid bills except current. We are operating within our budget, as to total figures. We will exceed the budget set up for 1935 in four items, postage, stenographic help in the office, travel and bulletin expense. Extraordinary situations which arose during the year, and the possibility of giving greater information to our members, may largely be blamed for these increased expenditures.

We have attended the conventions of the Mortgage Bankers Association and the United States Chamber of Commerce; also state title association conventions in Michigan, Iowa, Missouri, Oklahoma, Texas, New Mexico, Colorado, Nebraska, South Dakota, Montana, North Dakota, Minnesota and Wisconsin; we have made five eastern trips, spending most of the time in Washington, but were able to make calls on numerous of the life insurance companies in eastern cities.

Washington: Our relations in Washington with the various agencies, if put on a percentage basis, would doubtless disclose that they are of a more friendly, a much more friendly attitude than antagonistic or unfriendly. We have established, we hope, relations of extremely fine character and benefit with the Department of Justice, Attorney General; with Home Owners Loan Corporation; with Reconstruction Finance Corporation; with Federal Housing Administration; with Farm Credit Administration and its various agencies; with various others.

We have been able, we believe and hope, to clear up some unhappy experiences and situations—unhappy to present administrative officers and unhappy to us. The sun was a little late getting on us, and we had a lot of storms that might have been avoided,

but let us hope that that's water over the dam.

We have NOT been able to effect the type of relation we would desire to exist with some few others. We are, or some of us in part, at least, to blame. We—or some of us—might furnish a better product, or quote a different price, or use a different method. We saw quotations in Washington that we yet cannot understand; we saw products of our industry in Washington of which we are not proud.

During the year, there have arisen several matters of particular interest to us. These have been directed to and have been handled, or are now being handled by others. They will be treated by you during this convention after a presentation of the subject in a more able way than we could present them to you. I feel however that I am warranted in calling to your attention now certain of these so that you will look over the program and make it your business to participate in the discussions on these:

(1) The Social Security Act and its effect upon employers of labor.

(2) The Federal Housing Act and its effect upon our business, with particular reference to the smaller communities.

(3) The Revenue Act of 1928 and 1932 and its effect upon title insurance companies with mortgage paper in their portfolios.

(4) Abstracters Bonds. And the annual premium charge for same. I consider this an important subject for discussion.

(5) The writing of title insurance in localities where it is not now obtainable.

And numerous other matters already appearing in the convention program.

Beginning in late May and winding it up in mid-July, through arrangements made with Honorable Horace Russell, General Counsel and others of HOLC, Mr. R. P. Barclay, Abstract Adviser of Home Oowners Loan Corporation, and we (and this time it is plural rather than editorial "we") began a trip. The purpose of that trip is discussed in Mr. Gill's report. The results of that trip are known to many at this meeting. I should like to add one word, however, to that which has been or which will be said—that, in our opinion it was one of the best we have ever made. We were delighted with the treatment accorded Mr. Barclay and other representatives of the Government that sat around the table with us; we were all delighted to find in him a representative who knew his business, who was of long experience in it, who discussed the situation amicably and with a high degree of intelligence, of good humor, of judgment.

I fancy the Home Owners Loan Corporation chose better for the entire trip than did the American Title Association. The latter compensated, however, by arranging to have thrown into the breach such men as Bill Gill and R. G. "Stub" Williams, who made up, I am sure, the talents lacked by the chauffeur and master of ceremonies—myself. Anyway it was a fine trip, full of accomplishments. We owe a sincere vote of thanks to Mr. Russell and Judge Taylor for having Proc Barclay with us. Over and above that, at each of these meetings, we had a veritable host of officials from HOLC, the Land Banks, FERA, Shelter Belt Project, and others.

In the past year, we saw legislative proposals of one character or another which would have adversely affected our business. All these attacks were successfully repeled.

We also saw court action of one character or another. Two of these bear mention. The case concerning the South Dakota Abstracters' law no longer bothers us. The Supreme Court of Montana, in a decision of vital concern to every abstracter in the United States, upheld our Abstracters License law.

We have a great objective—a huge objective before us. As your speaker views it, we have not only (1) those orders which we may secure and should secure from the many agencies of the Government whose activities touch and concern land, but we have also (2) the return of the life insurance companies to the mortgage field, and (3) an ever-increasing real estate market. From all sections, we hear of life companies re-entering the field. From many sections we have reports of improvement of marked character in the sale of real estate and in the building of new construction, principally homes; from many localities we have report of a distinct and noticeable increase in the movement of farm properties.

We still need to publicize our business. While I would venture the statement that our relations with Governmental agencies are greatly improved, especially in the last six months or so, it really is surprising how vast is the ignorance of many of our buyers as to who and what we are—when we tell them what American Title Association is and what it stands for.

We should publicize ourselves in Washington (and elsewhere) in every conceivable fashion and as often as we possibly can.

Isn't ours a one hundred million dollar group, and more, of reputable title and abstract companies and those specializing in real property law? Isn't ours a group of over two thousand such companies, paying taxes, employing labor, skilled with the skill that can only come from years of work in our chosen field; a group with organizations that know the abstract and title business well? Then let us acquaint our neighbors with these facts. Let us furnish those who go to Washington—and other points—to advance our interests with material in the form of facts and figures that will be support of our arguments and in our discussions.

Most trade associations are founded in roots of defense, so it is said. I fancy that may have been the primary thought in the minds of those who wrote our Charter, our Declaration, our Constitution. But it is also a well established military fact that frequently the best defense is a vigorous offense. Some few months back, it seemed wise to some of us that that particular type of defense be invoked. It was not without results.

It may become necessary to invoke the same type of defense once again or twice again/or ten times again. If it becomes necessary, as in some instances seems likely, let us support those who are in the front trenches. Let us not tear down our second line of defense by suicidal and ruinous price-cutting; let us not get our ammunition wet by issuing a product that does not or cannot stand the most painstaking scrutiny. Let us not have our barrage fall upon our own associated troops by our failures to meet reasonable requests for standardization.

In the not distant past, we had a demonstration of unity of action in our own ranks. We had a definte concrete proof of the accomplishments of such aggressive, well-timed united action. Let us keep before us that this can again be done. Let us keep before us the fact that there is, today, now, at this very moment, greater need for cooperative action, along well thought and carefully planned lines than since our coming into existence.

The story is told of the two Irishmen, one of whom fell overboard. "Save me, save me," he yelled. The other reached for him and caught him by the hair. The hair came off—a toupe. He reached again and caught Pat's arm. Off it came—a wooden arm. "Save me, save me," shrieked Pat. To which Mike responded, "How the divil can I save ye unless ye stick together."

Report of National Councilor, Chamber of Commerce of the United States

ARTHUR C. MARRIOTT

Vice-President, Chicago Title and Trust Company, Chicago, Illinois

It has been my privilege, through appointment by our President, to represent the American Title Association as its National Councillor in the Chamber of Commerce of the United States.

The Chamber of Commerce of the United States is composed of representatives of some eleven hundred local Chambers of Commerce and from about four hundred trade associations. In apportioning the voting power in the Chamber, greater voting strength proportionately is given deliberately to the smaller Chambers of Commerce, so that the national Chamber shall be in fact truly representative of the smaller units.

The Chamber, representative as it is of the business life of America, is non-

political and nonpartisan. Attention is given to economic problems as distinguished from purely political problems. Through committees and its Board of Directors, continuous study during the year is made of such problems and of proposed national legislation, securing from the membership expression of its ideas and opinions thereon by referendum votes. These activities culminate in an annual meeting of the Chamber at Washington, where full discussion is had on these business problems.

As your representative I attended the sessions of the Twenty-third Annual Meeting of the Chamber held at Washington, April 29 to May 2, 1935. Over eleven hundred delegates were in attendance at this meeting. The dominant note of the discussion of current business problems was the pressing need of a clarification of the national economic policy; how far reform measures are to go, whether they are to strengthen the existing system or to substitute a new system, how far private enterprise is to be relied upon to revive industry, were some of the questions upon which attention was centered in the consideration of specific problems.

The position was taken by the Chamber that there should be a definitive explanation of governmental aims and administrative policies with the assurance that private business be not dispossessed of its traditional place in the economic field; and that public regulation be limited to the correction of definite abuses.

No problems peculiar to our business alone were discussed, nor was any action taken by the Chamber detrimental to our own interests.

The work of the Chamber being of so much benefit to the business men of our country entitles it to our fullest support. I appreciate having had the opportunity to serve as your representative to the United States Chamber of Commerce.

Government Land Acquisitions and Title Evidence Requirements

HARRY W. BLAIR

Assistant Attorney General, Department of Justice
Washington, D. C.

Uncle Sam is the greatest landowner on the North American continent and one of the greatest in the world. The Government of the United States owns more than 400,000,000 acres. During the last fiscal year the Government acquired 2,850,122 acres and 1,778 parcels or sites representing a consideration of $21,360,633, the Attorney General having rendered 8,869 opinions on title.

Land acquisitions are for many purposes: the building of dams on rivers, power sites, flood control, deepening of river channels, acquisitions of submarginal lands, subsistence homesteads, resettlement erosion projects and housing and slum clearance tracts; National Parks, forest reservations, irrigation, reclamation, airports, radio stations, naval and coast guard stations, canals, public buildings, post offices, custom houses, hospitals and army reservations, as well as wild life, fish and game refuges.

The examination of titles to lands acquired by the United States is the function of one of the sections of the Public Lands Division of the Department of Justice. One hundred forty-six lawyers and 106 law clerks and stenographers are engaged exclusively in this work.

From my contact with the officers of your Association, it occurs to me that the phases of our relationship in which you may be particularly interested are —first, the mechanics by which title papers are procured and purchases and condemnation of lands consummated; and, second—the requirements of the Department of Justice in the preparation of abstracts of title and certificates of title upon which the Attorney General bases an opinion.

In the beginning it should be pointed out that there are some 37 agencies of the Government interested in the acquisition, either occasionally or regularly, of land. Many of these agencies have their own particular methods of handling land acquisitions. In Treasury acquisitions the United States Attorney by law is required to perform all legal services in connection with the purchase. After the contract to purchase a certain site has been consummated by the Treasury Department, the United States Attorney is requested to call upon the vendors for title papers and surveys which, under the same law, must be furnished by the vendors. After examination and approval of the title papers by the United States Attorney they are transmitted to Washington, reviewed, and a preliminary opinion is signed by the Assistant Attorney General in charge of the Public Lands Division, pointing out that when certain requirements have been met the Attorney General will finally approve the title.

This preliminary opinion is transmitted to the Treasury Department where a site account is prepared. This site acount, together with the original contract and all papers relating thereto, together with the opinion of the Assistant Attorney General is then transmitted by the Treasury Department to the Comptroller General of the United States for settlement. Upon approval of the account the papers are returned to the Department of Justice by the Comptroller General and a check transmitted to the Department of Justice by the Treasurer of the United States. Thereupon all title papers, together with the check, are referred to the United States Attorney in the field for closing the transaction.

In Forestry acquisitions, the abstracts of title are prepared, in localities not having local abstractors, by a field force in the office of the Solicitor of the Department of Agriculture. These abstracts are transmitted to the local representatives of the Department of Justice for examination and when all curative matter which our local representative deems necessary has been secured by the local field office of the Forest Service, the local Departmental representative approves the title and it is then submitted directly to the Department of Justice in Washington where opinions on title are prepared, signed by the Attorney General and returned to the office of the Solicitor for the Department of Agriculture. In these cases checks in payment are issued by the Department of Agriculture without first sending papers to the Comptroller General but are not drawn until the Attorney General has finally approved the title. Disbursement of these moneys is made by the Department of Agriculture.

Some acquiring agencies submit abstracts to the Department of Justice with a request for an opinion on title, whereupon the Assistant Attorney General in charge of the Public Lands Division prepares a preliminary opinion and returns the same to the acquiring agency. These agencies having disbursing officers and attorneys of their own consummate the transaction in accordance with the requirements of the preliminary opinion, and return the title papers to the Department of Justice for the final opinion of the Attorney General.

While, of course, there are variations from the above procedure in many acquisitions, what I have said will give you an idea of the mechanics of handling land acquisitions for the Government.

With reference to the title requirements of the Department, Certificate Insurance, it sometimes seems to me that there is a wholly unnecessary lack of understanding between the representatives of the Government, the abstractors, and the attorneys for proponents.

The present Attorney General, on April 16, 1933, after a very thorough canvass of the title situation, promulgated rules and regulations governing the furnishing of title papers relating to lands being acquired by the United States. Naturally a brief set of rules covering the forty-eight (48) States and Territories and Insular Possessions in which land is being acquired must be elastic, but my observation is that all too frequently in certain localities, abstractors and vendors and many of the governmental acquiring agencies approach the subject of titles with the impression that those rules must be liter-

ally complied with, regardless of local State practice, and if they cannot be literally complied with, then that it is impossible to present a title satisfactory to the Department of Justice.

Nothing can be further from the intent of the Attorney General in formulating and promulgating those rules. Upon a careful reading and study of the regulations referred to, a competent abstractor or title attorney will find it easily possible to furnish sufficient title papers to satisfy the requirements of the Department of Justice.

It is not now and never has been the intention of the Department of Justice to make unusual or unreasonable requirements or to insist upon anything other than what is required by a competent, conservative conveyancer in the locality where the land is situated.

The apparent difference between the requirements of the local conveyancers of the Department of Justice perhaps arises because of the character of the title that must, under the law, be vested in the Federal Government, and also a lack of understanding by the local abstractors and title attorneys that knowledge within their possession as to the history of a title is usually not before the examiners for the Department of Justice or the accounting officers who must disburse public money upon evidences submitted to those officers.

As an illustration of this point: the law requires vesting of a fee simple title where a tract of land is to be acquired for the construction of a Federal building. The local abstractor or attorney who has lived in the community for years, through sources of local information understands that title to that particular property has been conveyed from time to time without any question as to title, and he will therefore accept an abstract running back for forty (40) or fifty (50) years, and does not require and does not need any evidence of possession. For local purposes this title may be acceptable in the community where the land is situated, but if the Federal Government purchases this property, it must have a definite showing for its permanent records in the form of an abstract, affidavits or other papers that the title is free and clear of all encumbrances. A reservation of water rights, rights of way, mineral rights, may not interfere with the use of the property from the standpoint of a local owner but may very materially affect the title and use of the property by the United States when jurisdiction of the particular site is to be ceded to the Federal Government.

As another illustration, lands may be acquired in connection with a Subsistence Homestead project. These lands may have been occupied for many years. The title to the surface may be perfectly good and, ordinarily, an abstract running back forty (40) or fifty (50) years would be acceptable. But if in the development of that Subsistence Homestead project it becomes necessary to sink artesian wells and there is an outstanding mineral estate which would appear in the chain of title prior to the fifty (50) or sixty (60) year period, you can readily see the situation that would be certain to arise.

In those cases where local usage requires an abstract running back only a reasonable period of time, the Department of Justice requires a statement showing that the lands are patented lands, that in the conveyances of record there are no long-time leases, reservations or exceptions of mineral rights, rights of way, interests of minors or defeasible estates which would prevent the running of the statute of limitations. Even in these cases there must be some positive evidence that the land is and has been in the possession of the vendor and his predecessors in title for a sufficient length of time to cut off the rights of all persons, not only as to the surface but as to the entire estate.

There seems to be some misapprehension as to the functions of the Department of Justice in this matter of land acquisitions. The Department has nothing to do with the determination of what lands shall be acquired or with the price to be paid therefor. Those matters are determined by the Department or agency desiring the lands. The method of acquisition, briefly, is that representatives of the acquiring agency negotiate and secure an option, the Department or agency interested in the project or purpose for which the land is proposed to be used (usually several different agencies are interested in a single tract) investigate and consider the availability of the particular land: its location, soil, accessibility, timber, price, etc. The option is then accepted or rejected by the interested agencies. If accepted, an abstract of title is ordered and eventually secured by the acquiring agency. Meanwhile, despite the most strenuous efforts of the acquiring agency, weeks and perhaps months may have elapsed. But it is only AFTER the abstract has been so secured by the acquiring agency and then transmitted to the Department of Justice with a request for an opinion on the title, that the Department has any connection with the transaction. The receipt and return of abstracts with opinions is most carefully checked in the Department each day. While some examinations of titles require only a few hours, titles which require additional data or corrective instruments may be held for from three to seventeen days depending, of course, upon their intricacies, the number of conveyances and the promptness with which we are furnished additional information. How expeditious the examination is will be seen when it is realized that many abstracts, particularly from the original colonies, run back to the beginning of our Government, are contained in many volumes, and the lands are located in counties which have been divided and subdivided many times.

With the completion of examination and the rendition of the title opinion, the functions of the Department and its connection with the acquisition, in regard to most titles, ends. When, as in some acquisitions I have mentioned, the check for the landowner is sent to the Department of Justice for delivery, it is, without exception, forwarded on the day of its receipt to the local United States Attorney or Special Attorney, for delivery to the vendor. However, it may be found that one of the vendors has died since executing the option; again, the holder of a mortgage or other lien which must be paid off before the vendor receives the balance of the purchase price, may live in a far distant city or state, or may be sojourning in Alaska, Hawaii or Europe and the transaction cannot be closed until he is communicated with and a release secured. But in more than 85% of all acquisitions where the check is sent to the Department of Justice for delivery, the time consumed from the date the Department receives the abstract to the date of delivery of the check in payemnt to the vendor, is 30 to 40 days. Of this time, examination of title and delivery of opinion has taken but three or, at most, 17 days.

I am informed by various land acquiring agencies that the acquisition of more than 10,000,000 acres is planned for the present fiscal year. In the past few months acquisitions have speeded up tremendously. The Attorney General has recently established a large staff of experienced attorneys located in the States where lands are being acquired. By reason of their acquaintance with State laws and local conditions, this will result in greatly expediting title examinations and land acquisitions. Acquiring agencies likewise are placing local men in the Field to secure data and title corrections required by these local attorneys in order to perfect titles. Cooperation between the acquiring agencies, all of you, the Department of Justice, and the Auditing and Accounting Departments of the Government is essential—and I am happy to say, it exists today to the fullest extent, in order that the tremendous program of land acquisition now before us may be successfully carried out.

The Department of Justice for months has been rendering an average of more than 500 title opinions per week. Eight hundred opinions per week is not unusual. In recent weeks the number has been as high as 1,100 per week. This record can only be maintained and examinations speeded up, by the acquiring agencies securing and furnishing the Department for examination, reliable and complete abstracts of title. These can be secured and the Governmental purposes carried out only through the help of the abstractors and title organizations of the country, whose purposes, standards and ideals are so splendidly furthered by your Association.

Muniments of Title

FRANK EWING

Assistant General Counsel, Metropolitan Life Insurance Company
New York City

Muniments of title are defined by Bouvier as "The instruments of writing and written evidences which the owner of lands, possessions, or inheritances, has, by which he is enabled to defend the title of his estate." Strictly speaking muniments of title do not refer to the title itself but only to the evidences of title. However, generally speaking the term is used rather loosely and refers not only to the evidences of title but also to all documents relating to the title to real estate. The term is defined by Corpus Juris as "A general expression for all means of evidence by which an owner, corporate or individual, may defend title to real property. As generally defined, the term refers to title deeds and other documents relating to the title to the land."

In the present discussion it will be assumed that it refers to any written evidence whereby an owner may be assured that he has legal title to his property.

In ancient days, before regular recording offices were established for deeds and other instruments pertaining to real estate, the various instruments evidencing title were inscribed on stone or bronze tablets or deposited in temples or churches and in many cases these institutions had a separate building known as a "muniment house" or a room known as the "muniment room" in which these various documents were kept.

Scientists tell us that some hundreds of thousands of years ago the ancestors of primitive man lived in the trees in a warm climate but on account of the scarcity of food or for some other reason, he was forced to come down out of the trees. In so doing, he learned to walk upright, but for many many thousands of years he lived much as other gregarious animals. He had the social instinct of the herd or tribe, much in the same way as it is shown in the beaver or the bison.

After another long period of years came what in archaeology is known as the Ice Age, in which the glaciers slowly moved down the surface of the earth. This brought about a change in the warm climate in which primitive man resided. He was forced on account of the cold to seek shelter from the winter blasts. The most available places were the caves. These he appropriated as his home; not the home of any particular individual but the home of his tribe or group. His title to the cave was based on discovery and possession. His muniments of title consisted of his prowess in a fight and the size of the club he could use.

Being forced by dire need to seek food and shelter he began a mental evolution which during the long ages following eventually taught him the ways of civilized man as he is known today. This was no short and sudden change but came about only after thousands of years of hardship and toil; one little advancement at a time, and long periods of suffering and delay. Eventually he acquired the use of language and later of writing. For many thousands of years he lived as a hunter or a nomad, wandering about the face of the earth where he could find food and shelter.

Eventually he established certain rules and regulations for the tribe which went far beyond the ordinary instincts of the animals who live in herds. For a long time even after he became more or less settled in one locality the real property was held only by the tribe. Individual ownership was unknown. It was a long time before he began to recognize individual property and the family life as we now know it.

However, some eight thousand years ago apparently mankind began to own individual property. At first, no doubt, evidence of ownership was very crude. In English law we read of the English system of going upon the property and the grantor giving something to the grantee such as a pebble or a small clod of dirt or something of the property, as a token in the presence of witnesses to indicate a transfer of ownership. This was the grantee's muniment of title.

The oldest known written deeds are probably those of Babylonia. In comparatively recent years an enormous quantity of records of Babylonia have been uncovered in such quantities that today only a small portion of them have been transcribed. One authority says: "The records of law, commerce, and literature, in vast quantities of thousands, have been found well preserved in libraries or archives, and in such bulk that modern philologists have yet not even had time to study and translate more than a small portion of them." These records are practically all in words known as cuneiform script. This script is chiefly a sign language; that is, each character represents a whole word or idea; thus, there were several thousands to learn, as in Chinese. This cuneiform script was itself a development from the pictograph, or hieroglyph, by abbreviation; and dictionaries were in use, showing the pictograph at the left and the cuneiform at the right of each column.

The records of conveyances of real estate were chiefly made on small tablets, or biscuits of hard clay, usually some three inches long, two inches wide, and one inch thick, inscribed by a wooden stylograph with wedge-shaped, or cuneiform, characters. Both the front and the back of the tablet were used for writing and half-moon shaped lines on the two narrow margins of the table were made by the parties' thumb-nails, impressed perhaps for identification. These tablets have been re-transcribed by the modern archaeologists in standard script capable of being set up in printed type.

It is remarkable how a deed for real property at that time as is shown by an example of a deed dated about 600 years B. C., is so like the deeds of today. The following example, it will be seen, gives a description of the premises, the total area, the parties' names, the price, the recital of the price received and the kind of title conveyed:

"(Deed of a Storehouse) 'A 12-reed storehouse, a finished house having a built-in threshold, a covered house with a door having a firm bolt, of the bright storehouse of Ezida; on the upper north side adjoining the storehouse of Bel-epush, son of Apla, son of Mubanni; on the lower south side adjoining the storehouse of Etillu, son of Marduk-abishu; on the upper west side along the Tarrabshu road; on the lower eastern side adjoining the storehouse of Nabu-iddina, son of Arkat-Damqu. Total 12 reeds is the measurement of that storehouse.

" 'With Bel-uballit, son of Amelai, the riqqu of Marduk, Marduk-kudurri-usur, son of Irani-Marduk, the Tu officer of the house of Marduk, according to 3 minas, 10 shekels of silver for the half of the field, 15¾ shekels, and 2 gerahs of silver and 5 kors of dates which were thrown in, he fixed as his full price. Total 3 minas, 10 shekels of silver and 5 kors of dates, the full price of his storehouse, Bel-uballit, son of Apla, the riqqu officer of Marduk, received from Marduk-kudurri-usur, son of Irani-Marduk, the Tu officer of the house of Marduk. The buyer has a fee simple, there shall be no recourse. They shall not return and complain to one another.' "

Some of these deeds were elaborate in their terms and required tablets larger than the ordinary ones. For example, in a deed dated about B. C. 300, the distinction is shown between a quit-claim deed and a warranty deed; this document ends with a clause which not only warrants the title and engages to pay a multiple penalty for a breach of the warranty, but brings in a third person as surety for the grantor's performance:

"(Warranty Deed.) 'The money, namely, 6 shekels, the full price of said estate, Anu-belzer, received from Ia; he has been paid. If a claim is established against said estate, Anu-belzer, the seller of the estate, and Anu-apalid-dannu, his brother, sons of Anu-ab-usur, shall make good twelve fold, and shall pay to Ia for future time. They bear responsibility for one another for the guaranty of said estate to Ia for future time. That estate belongs to Ia the daughter of Nana-iddin, the wife

of Ribat-Anu, the son of Labashi, the builder, for future time.' "

In addition to the deed itself, a stone landmark or record is frequently found. The stone was set up on the plot of land, and on the stone was inscribed the description of the plot, the names of grantor and grantee, and a warning against adverse claims. This record stone was not itself the source of title; but its precise relation to the original deed has not yet been clearly ascertained. An example of the writing on such a stone landmark from about B. C. 1100, reads in translation as follows:

"(Boundary-Stone.) 'This stone is named Perpetual Fixer of Landmark, One acre of corn-land, rated at 5 bins of seed, lying along the Baddar Canal and Khanbi estate, bounded by Khanbi estate on the north, by Imbiati estate on the south, by Kahnbi estate on the west, and by the canal bank on the east, bought from Amel Enlil by Marduk-nasir and surveyed by Shapiku, for the price of 1 chariot value 100 shekels silver, 1 western ass value 30 shekels silver, 2 saddles value 50 shekels silver, 1 ox value 30 shekels silver (etc., etc.). . . . . If any agent or official of the said Khanbi estate shall lay claim to or take this land or shall wrongfully reclaim it or transfer it to any other party, or shall dispute this grant from the king, or shall send any fool or blind man or ignorant person to remove or destroy or hide this landmark, may the great gods curse him with incurable evil. May Shamash judge of heaven smite his countenance. May his posterity perish among the people. This stone is named Perpetual Fixer of Landmark.' '

These Mesopotamian documents range over a large variety of legal transaction—deed, lease, loan, sale, deposit, bill of lading, adoption, partition agency, partnership, marriage contract and other familiar types.

In ancient India under the Hindu Legal System the old books and records were commonly made of strips of birch bark or palm leaf, inscribed with a sharp stylus, and bound in wooden or silk covers. Throughout India and the East Indian islands the palm leaf, the birch bark, and the bamboo filled the place taken by the papyrus in Egypt. The writing instrument was an iron or stone stylus, and the script impression was then sprinkled with black powder, or otherwise treated to make it clear. The strips, measuring a few inches by a foot or more, were then strung together through holes at each end, in accordian style. Some of the surviving remnants of this literary material date back towards the beginning of the Christian era. After the arrival of paper, large sheets were used, and then folded in imitation of ancient leaf strips.

But many of the early edicts and formal records were inscribed on stone slabs or on copper or gold tablets. The earliest legal documents extant in pure Sanskrit is a royal land grant of B. C. 23, inscribed on copper. Its phrases reveal the Indian variants of forms of conveyancing which will be appreciated by the modern lawers, as follows:

"(Oldest Sanskrit Deed, B. C. 23.) '(After a preamble reciting the virtues and conquests of the grantor prince), To all the inhabitants of the town of Mesika . . . . (naming other districts); to the keeper of the elephants, horses and camels, to the keeper of the mares, colts, cows, buffaloes, sheep, and goats; . . . . to the different tribes (naming them), to all our other subjects not here mentioned: and to the inhabitants of the neighboring villages . . . .

" 'Be it known that I have given the above mentioned town of Mesika, whose limits include the fields where the cattle graze, above and below the surface, with all the lands belonging to it, together with the mango and modhoo trees, all its waters, and all their banks and verdure, all its rents and tolls, with all fines for crimes and rewards for catching thieves. In it there shall be no molestation, no passage for troops, nor shall any one take from it the smallest part. I give likewise everything that has been possessed by the servants of the Rajah. I give the Earth and Sky, as long as the Sun and Moon shall last. Except, however, such lands as have been given to God, and to the Brahmans, which they have long possessed and now enjoy. And that the glory of my father and mother, and my own fame, may be increased, I have caused this edict to be engraved, and granted unto the great Botho Bekorato Misro, who has acquired all the wisdom of books, and has studied the Vedas under Oslayono, who is descended from Opomonyobo, who is the son of the learned and immaculate Botho Borahorato, and whose grandfather was Botho Besworato, learned in the Vedas and expert in performing the sacrifice.

" 'Know all the aforesaid, that as bestowing is meritorious, so taking away deserves punishment; wherefore, leave it as I have granted it. Let all his neighbors, and those who till the land, be obedient to my commands. What you have formerly been accustomed to perform and pay, do it unto him in all things. Dated in the 33d year of the era and 21st day of the month of Margo.

" 'Thus speak the following stanzas from the book of Justice:

1. "Ram hath required, from time to time, of all the Rajahs that may reign, that the bridge of their beneficence be the same, and that they do continually repair it.

2. "Lands have been granted by Sogor, and many other Rajahs, and the fame of their deeds devolves to their successors.

3. "He who dispossesses anyone of his property, which I myself, or others, have given, may be, becoming a worm, grow rotten in ordure with his forefathers!"

It will be noted that the form of this deed illustrates the rule recorded centuries later by Yajnavalkya, one of the famous law commentators, as follows:

" 'Let a king, having given land, or assigned revenue, cause his gift to be written, for the information of good princes, who will succeed him, either on prepared cloth, or on a plate of copper, sealed above with his own signet; having described his ancestors and himself, the dimensions or quantity of the gift, with its metes and bounds, if it be land, and set his own hand to it, and specified the time, let him render his donation firm.' "

The form of deeds in use for ordinary grantors has been described in one of the commentaries of the late 1700's, based on a text of a thousand years earlier:

"(Jagannatha's Rules for Conveyancing.) 'Land is conveyed by six formalities—by the assent of townsmen, of kindred, of neighbours, and of heirs, and by the delivery of gold, and of water.'

"The form of the writing should be this: in place of the creditor's name, let the donee's be written, and the names of his father and so forth, to prevent a mistake of the person; next should be written, 'this deed of gift, as follows: for the sake of heaven I give unto thee, with gold and water, this land, measuring so much, and exceeding the necessary subsistence of my family, to be held for such a period.' If the townsmen and the rest be not witnesses to the deed, or if they be not present, the instrument should express, 'with the approbation of the king, and with the assent of sons,' and so forth. Though the consent of sons be not required in a gift for religious purposes, it should nevertheless be noticed (on account of the difficult publicity of a gift of immoveable property, which has been remarked by Sages) that himself and his descendants may not claim ownership. The year, month, fortnight, and day should be noted; and the donor should subscribe his name with his own hand, first writing the designation of his father and so forth. The names of witnesses, informed of the whole contents, may be subscribed by another hand, after asking their permission; but the writer's name must be added. If any party be unable to write, the instrument should be subscribed by a substitute; but the donor, if unable to write, makes some mark, as a double line, or the like. Such is the practice."

The dates of the earliest Chinese Codes or laws are doubtful. The legendary history of China goes back to B. C. 2500 or earlier; but the oldest textually transmitted historical records date from about B. C. 1200. Some beginnings of codes, now lost, are attributed to the prior interval. But the earliest code whose text is now extant is that of Chow, about B. C. 1100, said to have been composed by Tan, duke of Chow, brother of the founder of the Chow dynasty.

It was sought to destroy this Code by what is known as the great "Burning

of the Books," in B. C. 212. This was decreed by an erratic ruler, who forbade all invocation of the constituted customs of the past and thus aimed to free his own notions of government from all conservative criticism; "the only books which should be spared are those on medicine, divination, and husbandry; whoever wants to know the laws may go to the magistrates and learn of them." This expedient, however, was futile, for this code, with many other classics, was secretly preserved; its text was rescued and officially restored in the very next generation; and some of its principles have doubtless continued as the basis of all intervening legislation.

The Chinese earliest laws were recorded in a primitive form of script; one of the earliest styles dates from perhaps B. C. 2300. The material originally used was bamboo wood; but stone was often used for giving permanent publicity to single decrees, even into modern times. Block printing did not come till about A. D. 900. About A. D. 1400, the minister, Young Lo, framed a new general code; and on this code was founded that of the next Manchu dynasty, some two centuries later, known as the Code of Tsing. This Code became the law about A. D. 1650, and endured until the revolution of 1912.

A Chinese deed can be executed with the same expedient as our own "indenture." The grantor signs an original and the grantee a counterpart, and then the word "contract," or the like, is written in large characters so that one half appears on one document, the other half on the other. A mortgage consisted first of a deed of sale with condition subsequent for repurchase.

It would be a mistake to suppose that the great age and apparent conservatism of the Chinese system are inconsistent with change and timely progress. They have a decennial reedition of the code which would seem to be a good suggestion even to some of the more enlightened nations. And another example is seen in the fact that the Torrens method of registering title to land, instead of merely recording deeds, has been in force in China for at least 150 years. In China, every land owner has his official certificate of title, which is indisputable.

At the records office an entry of the land is made at the time of first issuing the certificate. When a piece of land is sold, the certificate of title is delivered to the new proprietor, and at the foot of the contract is noted the delivery of the certificate; thus the same certificate passes from hand to hand, with the transfers of the plot of land. A party selling only a small part of the land covered by this certificate, does not deliver the certificate to the buyer, but executes a deed termed "supplementary deed" or "partition deed"; on the certificate is noted, with an attestation clause, the vendee's name, the date, and the description of the portion sold; and on the deed of sale is noted why the vendor, who keeps the certificate, has executed only a bill of sale. But if the sale covers more than half of the original plot, the vendor must deliver over his certificate, and then it is the buyer who executes a "supplementary deed," and at the foot of the certificate is added a clause describing what portion of the land is retained by the vendor. The deed itself in such cases is merely an extra precaution; the partition must be duly noted on the certificate, or else the title of the holder remains absolute and complete. In case of loss or destruction of the original certificate, a new original is not issued, but after certain proceedings had, a "substitute deed" is used, which passes from hand to hand like the original certificate.

The following form of official certificate of title was issued for Shanghai land in the 1850's:

(Certificate of Title.) "We the secretary of the treasury of the province of Kinag-su, deliver these presents as a certificate of title required by law. . . (Then follows a brief recital of the history and purport of the law.) We have received from the owner named below a petition that the plot below described be recorded with the lands subject to tax; the local magistrates have investigated the petition and the land described; they have recorded it, and have sent us a final report thereon; we have reported this to the governor of the province, who has answered consenting to classify the land in question, and to begin to receive taxes thereon. Wherefore, we are authorized to deliver to the farmer this certificate. This document is given in proof thereof.

"Entries to be made:

"The farmer....., in the district ..... has filed a petition declaring that he desires to validate..... acres and ..... parts of an acre of land. The plot will pay tax at the rate of.....bushels of rice per acre, and will begin to pay from year..... The boundaries of the plot are: on the east to ....., on the west to ....., on the south to ....., on the north to ..... Done in the year ..... of the Emperor Hien-fong, ... month, ... day."

Compared with the thousands of instruments found in Mesopotamia illustrating their mode of conveyancing, only a few have come down to us illustrating the practice in Greece. These few, however, show that the commercial experience and Greek intellectual keenness had already developed a standardized conveyancing which marked a decided advance over any of the earlier systems.

Many or most of the Greek cities had established record offices where the transfers of land must be entered in abstract. The following is an entry from a record found at Tenos, dating about B. C. 200 and containing some fifty entries:

"Artymachos, son of Aristarchos, a Heraclidean, has bought of Telesicles, son of Eucles, a Heraclidean, the house and lands located at ..... being the share of property inherited by Telesicles from his father and the further property bought by him from his brother Calliteles, to which the abutters are Pleistarchos and Artymachos, together with all the appurtenances belonging to Telesicles and Calliteles, the water channels existing in the said lands, and a fourth part of the watch-tower, the cistern in the tower and the tiled roof belonging to Telesicles, as well as the house and the orchard bought by Telesicles from Euthgenes, also the pottery in the houses and the millstone and the mortar, for thirty-seven hundred silver drachmas. Warrantors of the sale (naming nine persons) all bound jointly and each for the whole."

The records of legal transactions between individuals, in classic times, have virtually all perished. But it is certain that the Romans (profiting no doubt from their contract with Greek commerce and literature) used well developed forms of conveyancing. There is extant a city ordinance of B. C. 105, giving specifications for a contract to build a gateway in a wall abutting on a highway in the town of Puteolis, and in this contract are revealed all the expedients of long experience and careful draftsmanship which we moderns are accustomed to expect in such transactions. It would seem from the exact specifications used in such a contract, there can be no doubt that their deeds of conveyancing were equally exact and while these transactional instruments on Italian soil, in classic times, remain in the realm of conjecture only, modern archaeology has discovered some invaluable examples of later practice—chiefly from the papyri of Egypt, where Roman law for several centuries after Caesar's conquest was administered by Roman judges in the Greek language, and also from discoveries in the Carpathian hills, the region conquered by Trajan.

The following is an example of a simple deed of realty, in Dacia, from A. D. 150:

"(Deed of Sale of Realty, A. D. 150.) 'Andueia Batonis has bought and taken title of the half part of a house, being the right half on the front, situated in Greater Alburnus ward of the town Pirustae, bounded by the houses of Plator Acceptianus and Ingenuous Callistus, for three hundred denarii from Veturius Valens. The aforesaid half part of the house, together with its fences, enclosures, approaches, walls, and windows, being sound and in prime condition, the grantee is to hold lawfully and freely. And if any one shall evict the grantee from the said house or any part thereof so that the said Andueia Batonis or any of his assigns shall suffer in the free and lawful possession and enjoyment thereof, then for so much of such full and free possession shall be diminished, Veturius Valens has promised to pay on sworn demand of Andueia Batonis a ratable compensation. And the price three

hundred denarii for the said half part of the house, Veturius Valens acknowledges that he has received and holds from Andueia Batonis. And it is further agreed between the parties that Veturius Valens shall pay the taxes due on the said house up to the next assessment. Done at Greater Alburnus, May 6th, in the consulship of Quintillus and Priscus. Attest: L. Vasidius Victor, T. Fl. Felis, M. Lucanus Melior, Plator Carpus, T. Aurelius Priscus, Batonis Anneus; Veturius Valens, grantor."

In Japan the first strictly legal code is a group of short enactments about A. D. 645-6, in the 2nd year of the Emperor Kotoku, instituting the Chinese administrative organization, fixing the land titles, and reforming the taxation system. This legislation was known as the Decree of Great Reform, and placed for the first time the emperor in a status comparable to William of Normandy after his conquest of England. Among later enactments (for which, in general, Chinese models were used), the most notable was the Code of the Taiho period about A. D. 701, covering the same scope, but much more elaborate than the preceding. Some of its provisions on land tenure were deemed to be still in force a thousand years later.

Documents of private legal transactions indicating the development of settled institutions and the beginning of systems of conveyancing, are abundant. They have been well preserved, which is considered remarkable, for a land of timber buildings, and not stone, in the archives of the ancient temple of Shoso-in, at Nara. Since the oldest private instruments in Europe north of Italy, at the monastery of St. Gall in Switzerland, date no further back than the 700's, the Japanese records are equal in antiquity. And example is a deed of sale of land, dated August, year 28, period Tempyo (A. D. 748). This deed reads as follows:

"Title deed of the temple, delivered by the lady Minami to the custodian-priest of the temple (Todaiji)"—

"Respectfully represents the undersigned that he files (in the office of record) the following instrument for the sale of residential land, being one 'tan' in area with two houses, situated at Manda village, Kami county, Uji province. Purchase price ten 'hiki' of raw silk and ten 'tan' of cloth (of quality) payable in taxes. Owner of the land, Uji-no-sukune Okuni, head of household in Kami county. I have duly sold the aforesaid land to the family of the lady Minami Fujiwara, former senior third rank (at court). I hereby respectfully file the present instrument executed in due form.

"26th day, 8th month, 20th year of Tempyo.

"Uji-no-sukume Okuni, Seller."

It is noted on this instrument that it is approved by the office of the County, three officials certifying to this fact. It is also approved by the office of the province, three officials certifying also to this fact.

Paper was used by the Arabs after A. D. 800, and the pages of a transactional instrument were often pasted together in a continuous roll.

John H. Wigmore, in his work entitled, "A Panorama of the World's Legal Systems," says:

"And so, not only may the statement of an eminent scholar be credited that some trust deeds in the Khedivial (now Royal) Library at Cairo are 75 feet long, but in fact a deed has recently there been discovered that is 135 feet long—perhaps the longest deed in the world; it dates from the 1500's, and establishes a trust in favor of the grantor's heirs and freedmen.

"The execution and authentication of legal instruments were well provided for. The kadi, or judge, performed the functions relegated to the notary in the Romanesque system, and to the recorder of deeds, in the modern Anglican system."

The daily scene before a kadi of Persia in the late 1600's is thus pictured by an eye witness, an English doctor in the East India Company's service:

(The Kadi as Notary.) "To the cadi's cognizance belongs all manner of contracts, conveyances, and settlements; to which purpose near his door are such as make instruments ready written for sale, in the style of their law, to be presented for the cadi's perusal. Into which inserting the names of John-a-Nokes and John-a-Stiles, Zeid and Ambre, the cadi calls aloud, 'Zeid, where are thou?' who answers 'Here,' upon appearance; when the cadi proceeds: 'This house, garden, or land, or anything of that kind, Dost thou sell willingly, and of thy own accord to Ambre?' He affirming, 'Aree, yes.' 'Is the price agreed between you?' 'Yes!' 'Where are your witnesses?' says the cadi; then he replies, 'I have brought them,' who answer for themselves; the cadi asks them, 'Do you know this to belong to Zeid?' Who affirm, it is known to all the town, even to the children. The cadi after these interrogatories, lifts up his voice, and says, 'Does no one forbid this contract?' At which, they jointly cry aloud, 'No one forbids.' Whereupon the cadi calls for his seal, which are words engraven on silver; and dipping it in ink, stamps it three or four times in three or four places, especially at the junctures of the indenture, that no room may be left for fraudulent dealing, they not putting their own hands, nor delivering it as their act and deed; but the cadi makes the obligation firm on this wise."

Under the Germanic Legal System, written deeds were used which had spread northwards from Italy, but the deeds were in Latin, and were prepared by a scribe, and usually neither grantor nor grantee could read the document. What education there was lay entirely with the clergy and the monks. Even the great Charlemagne could never learn to use the pen freely. It is said that as late as the 1200's, few of the nobles and large land owners could write more than their names; much less could they write Latin. In a deed dated A. D. 757, one of the oldest extant deeds north of Italy, the grantor does not even sign his name; the earliest signatures by grantors do not appear till the 1300's.

The deeds, however, had well developed forms, adapted from the notarial system of Italy. The deed above cited reads thus:

(Deed from Podal to the Monastery of St. Gall, A. D. 757.) "I, Podal, for the love of our Lord Jesus Christ and for the remission of my sins, so as to merit pardon in future for my wrongdoings, do give and deliver out of my right and into the right and dominion of the holy church of St. Gall, to remain there perpetually, my estates in . . . (naming three towns), that is to say, with lands, dwellings, buildings, fixtures, vines, forests, fields, meadows, lands, waters still and running, greater or less, movables and immovables, such as my father on his death left to me. . . . . If I or my heirs or any adverse person should attempt to annul this gift made by me, then let him pay to you or your successors double the claim and take nothing by his claim, and let this present deed remain valid. Done at the estate of Chambiz in public. I, Podal, have requested the writing of this deed made by me."

(Six witnesses sign by a cross.)

"I, Arnulf (a scribe), on request, have written and subscribed this on Wednesday 6th January, 6th year of King Pippin's reign."

Thus the scribe wrote the deed at the grantor's request. The conveyancing was chiefly in the hands of the monks. They had come to own possibly one-half of all the lands in Christian Europe, through numberless pious bequests, and they were naturally expert conveyancers. The deed just quoted was a gift of three large estates to the Monastery of St. Gall, in Switzerland. Its archives today are still the greatest repository of old deeds in Europe north of Italy.

Until a comparatively recent date in England, there was no record of land titles. The deeds or other papers indicating ownership of land were kept by the owner as his muniments of title and when a sale occurred he presented to the purchaser either the papers themselves with an abstract of title which more or less was a simple index to the papers presented, or furnished a more or less complete abstract of title which was examined by the attorneys. The vendee or his attorney thereupon proceeded to compare the abstract with such original documents to ascertain if it contained a correct statement of all the circumstances disclosed by them relative to the title. Mention is made by English writers of their having used abstracts of title during the first half of the nineteenth century, but no attempt is made to fix a definite date when their use began. When titles were yet young and transfers comparatively few, there was little need for an

abstract. When the value of landed property was comparatively insignificant, an abstract of title was evidently regarded of little moment. But in the course of time transfers multiplied and values increased to such an extent that purchasers became more concerned about their titles and were loath to part with their money without assurance that the title proffered was free from defects. Before the adoption of a system of registration, the examination of a title had to be made from the instruments themselves or from an abstract of such instruments. Since these instruments or muniments of title were handed down from one owner to another, there was great danger of some of them being lost or destroyed.

Systems of registration of land titles, more or less complete, however, have for a long time prevailed in Germany and France, and perhaps in other European countries; but prior to the adoption of the Torrens system of registration of titles in England in 1875, no general system of registration was employed in that country.

The Torrens system of registration of land titles derives its name from Sir Robert Torrens, an Irish emigrant to Australia, where the system was first adopted in 1857. It is frequently said that the system was originated by Torrens, but records, showing systems of registration of title to lands in portions of Europe, are in existence, dating back as far as 1836, and there is nothing new about the fundamental principles involved. It is clear, however, that the registration system, as applied in England and generally throughout British dependencies, is the work of Torrens. His idea was to apply the principles of registration of ownership in ships to reigstration in titles to land —that is, to have land ownership conclusively evidenced by certificates and thereby made determinable and transferable quickly, cheaply, and safely.

In the United States the original title to land as between the different European countries, is founded on the international right of discovery and conquest; a principle of title acquiesced in by all civilized Powers. The title thus acquired is the exclusive right of acquiring the soil from the natives, and of establishing settlements on it. Such a title, to be perfect, has to be consummated by possession, and the discovery has to be made by persons under the authority of or recognizing the government claiming.

The discovery of North America was claimed to have been made under commission from the English Crown; and the first settlement was made by the English, with a public declaration that they claimed, by virtue of that discovery and settlement, possession from the thirty-ninth to the forty-fifth degree of latitude.

Under the English common law, the King was the paramount proprietor and source of title to all land within his dominion, and it was considered to be held mediately or immediately of him. After the independence of the United States, the title to land formerly possessed by the English Crown, in this country, passed to the people of the different states where the land lay, by virtue of the change in nationality as provided by treaty. The allegiance formerly due, also, from the people of this country to Great Britain, was transferred, by the Revolution, to the government of the States. All lands at that time not appropriated, belonged to the several States in which the lands lay.

Following the adoption of the Constitution and the organization of the United States Government, all lands not belonging to the States and unappropriated belonged to the Federal Government. This applied particularly to the western lands which were acquired after the adoption of the Constitution.

The sources of title in the United States are based on grants of land by companies chartered by the English Crown, upon patents from the States after the Revolution and on patents from the United States Government on lands acquired by the Government after the adoption of the Constitution. Practically all of the States, even prior to the Revolution, had recording offices where the deeds to real estate could be filed for record. In this way the muniments of title were protected in case the original instruments should be lost. While the titles were yet young and transfers comparatively few, it was a comparatively easy task to search the record and determine the condition of the title, but as the titles became older and the population increased, the transfers became more numerous and abstracts of the record were prepared by attorneys, who furnished a certificate to the purchaser. Later abstract companies were formed for the purpose of searching the record and preparing an abstract of title, and the attorney simply examined the abstract and based his certificate on this examination.

The value of this certificate depended upon the ability and integrity of the attorney and the accuracy and responsibility of the abstract company. The abstract company simply certified to what was on the record and if the attorney was not financially responsible and certified a bad title, the purchaser had no recourse. This system is still in use in a large part of the country.

In most of the large cities and the more densely populated communities there was a demand for more security as to ownership. To meet this demand for security, Title Companies were organized and today in most of the large cities and populous communities, title policies are issued with each transfer of real estate. These policies purport to guarantee the purchaser that his muniments of title are safely housed in the recorder's office and that there are no liens or encumbrances.

It will be noted that I said these title policies PURPORT to guarantee title. This word purport was used advisedly, for there still remains an element of uncertainty due to certain exceptions and things against which there is no guarantee. For example, rights of parties in possession, unrecorded easements and rights of way, mechanic's liens not of record and restrictions under zoning ordinances. If the purchaser is buying a home, some of these may not be so important for he may have knowledge of the condition of the property, but for large investors where the property is possibly a thousand or two miles away, it becomes rather important. This is one reason the investors and purchasers of real estate have become dissatisfied with title insurance. A second reason is their recent experience in which so many title companies have gone into liquidation. They simply have no protection. The liquidating authorities say they do not even have a claim unless a loss has already occurred.

A third reason for dissatisfaction with present conditions is the expense. The cost of placing a mortgage has become so great that borrowers will make loans on most any other security rather than real estate, in order to avoid the expense.

A fourth reason for dissatisfaction is the length of time involved in making the transfer. Until the depression struck, it was often not a question of weeks, but sometimes of months.

The problem the title companies are facing today as seen from the vantage point of one representing one of the largest users of title policies in the country, is that of giving the public a quicker, less expensive service and a standard policy issued by companies known to be financially sound.

It is a jocular remark often heard that title companies will assume no known risk. This is the reason for so many exceptions under Schedule B, but why argue with some large customer miles away about some small exception which the title company on the ground can easily eliminate by simply investigating the facts? Recently a title company wanted to charge $220 for eliminating an exception as to rights of parties in possession and any irregularities an accurate survey might show. This in the face of the fact that it had issued a mortgagee policy insuring against rights of parties in possession, which policy was being surrendered. In another case, it was proposed to inspect the property for five dollars as to rights of parties in possession, but to leave the exception in. In yet another case where construction loans were involved, it was proposed to protect the mortgagee from mechanic's liens for one-half of one per cent of the total amount of the loan. Rather than have the borrower pay this, the mortgagee decided to trust to its Mortgagee Loan Correspondent to see that it was completed free of liens. Title Companies should insure titles and should assume whatever risk there may be after they have ascertained the facts as accurately as may be obtained by the usual

method of investigation. They should not stop simply with the recorded title, but should include such outside investigations as may be necessary.

For a long time I have thought something should be done to improve our title service. Certain things can be done which would reduce the expense, shorten the time element, guarantee the financial backing of the policies, and give the purchaser a feeling that he knew what was in his policy.

In the first place we should have a standard form of policy, both mortgagee's policy and owner's policy, and provide that it be recorded. Second, the standard policy should include the heirs, executors, successors and assigns, and not simply the present mortgagee or owner. Third, a certain definite reserve should be deposited with some State authority to protect the policy. Fourth, Title Companies should be supervised by the Insurance Department and required to file annual reports.

If such changes were made, a title policy when once recorded would insure the property down to its date. When the property was again sold a new policy could be issued insuring it from the date of the last policy. A form of title insurance could even be printed on the deed and recorded with it.

Such a system would materially reduce the labor in title searching, for a title would be searched once, and thereafter searches would be continued only from the date of the last title policy. This would reduce the cost very materially. Real estate owners would soon learn that they were actually insured under a standard form of policy. They would feel secure for they would know a reserve had been deposited to protect their policy. The work having been reduced, the time necessary for completing the transfer would be shortened.

The Title Companies may at first think such a system would injure their business, but I think if they will study it they will conclude that it will be a great benefit to them, for in reducing the work a burden of fixed charges has been removed, while their profits have remained almost as great as before. With the reduced expense and lower cost to the purchaser, more policies will be sold. Mortgage investments will become more popular. In this respect I am reminded of Henry Ford and his small car and every time he reduced the price he seemed to make more money. If you can reduce your fixed charges and in this way lower your cost, certainly it will be a gain for the business.

We often think of America as such a wonderfully advanced nation, with our efficiency methods, mass production and progressive civilization, yet even China, one hundred and fifty years ago, adopted a system of land registration, which permitted the transfer of real estate quickly, cheaply and safely. It is a problem for the Abstracters and Title Insurance Companies to provide for America a more satisfactory system.

The Public Attitude Toward Title People

HORACE RUSSELL

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Home Owners Loan Corporation, Washington, D. C.

An experience with more than one million individual titles involving more than three billion dollars in the operation of Home Owners' Loan Corporation has presented a splendid opportunity to observe and judge the public attitude toward title people. The subject and all it imports are interesting to me because the other agencies of the Federal Home Loan Bank Board which I serve are concerned with more than three billion dollars in other mortgages of a similar type, and are engaged in making this year about one hundred thousand mortgages involving some three hundred million dollars, and will from year to year in normal times make about three hundred thousand mortgages involving about a billion dollars each year. It, therefore, behooves us to find out what the public attitude toward title people is and why. It is a matter of major importance for us to make the most thorough study of the whole question of land titles, land transfers, and land security. We must endeavor to serve the people of the United States as we go forward by improving the land title, land transfer, and land security situation.

When I approach the question of the public attitude toward title people, I am immediately confronted with the question of which title people we have in mind. All of us know very well that in a great part of the area of the United States the only title people are lawyers. In still other great areas, the only title people are lawyers and absract companies, and in still other areas, the title people are title insurance companies and their employees. It would be hard to distinguish the public attitude toward title lawyers from the public attitude toward lawyers generally and, for that reason, title lawyers are interested in the improvement of the bar. Some believe the public attitude toward lawyers is well expressed in the current jokes on lawyers. Others prefer to believe that the public attitude toward lawyers is better represented in the great number of lawyers who are chosen to high position both in the business life of today and in the political life of our country. It seems to me that the public attitude toward lawyers is kind, generous, and lofty, although there is sharp criticism and unfortunately room for too much sharp criticism. Certainly it is possible for lawyers to so conduct themselves as to improve the public attitude toward them, and such would improve the public attitude toward title lawyers. Some progress is being made in this direction. It seems to me that if the bar is to maintain the highest respect in title matters, it must bring about a better public record system of titles, or bring about a better and more universal system and more cooperation in the case of private title companies.

The abstract people have served for a long time and have maintained a high degree of public respect, and have rendered a great service. The system is being criticised for being expensive and cumbersome. The public attitude is still one of respect toward the abstract people, but there is developing a considerable criticism of the cumbersomeness of it and the expense of it. It seems to me that it behooves the abstract people to join with the bar and the title insurance people in the most careful and constructive study for the purpose of arriving at a more simple, reasonable, and practical solution of our title problems.

The title insurance people, by the selection and development of the highest grade of personnel and by good business management, have attained a very high degree of public respect, and generally speaking, a most favorable public attitude. But in this case again, there are criticisms, some of which are serious. Some of these criticisms, as we all know, have arisen in recent years on account of title insurance people making the same mistake that many banks made and getting into somebody else's business where many of them got pretty badly burned, resulting in a shaking in some quarters of public confidence. Sharp criticism has been pointed at the apparent monopoly which the development of the highly efficient plants of the title insurance companies somewhat naturally brings about. It seems to me that this question must be studied and that either monopoly must be avoided or public regulation must come. The title companies must be most circumspect and avoid even the appearance of the imposition of the arbitrary methods of monopoly. It may be that monopoly can be avoided and the public satisfactorily served by the maintenance of a single plant which will provide the record title and by the development of a multiplicity of insurance companies which will insure such titles. It may be also that a proper public attitude may be preserved by the development of our great number of abstract companies into title companies, and a wholesome cooperation with the bar for the legitimate legal work involved in land titles, land transfers, and land security.

I believe that there is a bright prospect that, with an enlightened study and genuine cooperation, the business may be preserved and conducted for a long period on a private basis in a

manner satisfactory to the public. On the other hand, unless we have intelligent study of the title problem and cooperation of all classes of title people on a reasonable basis, resulting in substantial improvement, we will eventually be confronted with some very strong forces for complete public regulation of the business at least, and possibly public conduct of the business under some kind of a land registration system.

The experiences of the past two years have not only been interesting, but they have been satisfying. The title business was at a pretty low ebb in the summer of 1933. The income of title people had almost stopped and their expense continued, and serious alarm was felt. It would be interesting and I would enjoy relating many of the experiences of these two years, but time does not permit. Nothing has given me personally greater pleasure than the wholesome cooperation which has been accorded by title people of all classes in the program of Home Owners' Loan Corporation. We have had difficulties of organization, procedure, and operation, and we have had difficulties with title people. But on the whole we have secured a service which has been highly satisfactory to the Corporation and which, I believe, has been highly satisfactory to the home owners in distress which it sought to serve. On the whole, title service has been rendered in that program probably more cheaply than title service was ever rendered before. Although nearly three billion dollars have been handled, every bit of which has been disbursed in miscellaneous disbursements over the loan settlement table in nearly a million different cases, I have yet to find a case of a lawyer, title company, or abstract company appropriating any of such funds to his own uses, or misapplying the same in any manner whatsoever. I do not believe there is a better record anywhere in any business at any time. There has been some negligence and oversight, but it is astounding, all things considered, how careful and accurate this work has been, and where mistakes have been made, we have found in nearly all cases a most wholesome willingness to make prompt adjustments. In these things title people may take the greatest pride. As a result of such operations, the public attitude toward title people improves.

Finally, may I express my keen appreciation and the appreciation of the legal staff of Home Owners' Loan Corporation for the great cooperation we have received from the American Title Association and its membership. I have a great interest and a great confidence in trade and professional associations and in their ability to improve conditions. There are great possibilities for cooperation in the title field and may all of us strive constantly for such cooperation and such improvement. And may we always strive with a consciousness of the fact that "the public welfare is the highest law."

The National Housing Act - Its Purposes and Objectives

ABNER H. FERGUSON

General Counsel, Federal Housing Administration, Washington, D. C.

I want to express to you my profound appreciation of the honor you have conferred upon me in inviting me to address your Association on the subject of the National Housing Act. It is a great pleasure to me to avail myself of this opportunity to acquaint you, as best I may, with what the National Housing Act is and what it does, for I sincerely believe this Act, in addition to its already proven value as a recovery measure, is one of the greatest reform measures which the American Congress has ever enacted into law.

I think nothing could be of more benefit to the insured mortgage program than to have the title men of this country thoroughly familiar with its objectives and purposes. This is so because of your constant contacts at a vital point with the mortgage lenders and investors of this country, many of whom unfortunately do not understand the Act at all. This is not due to their lack of interest, but to the fact that sufficient time has not transpired to complete a campaign of education which is nation-wide. It is also a great pleasure to me here and now to acknowledge publicly the invaluable help that your Association and its members and officers have given us in attempting to work out some solution to the bothersome question of titles. I trust we may continue to receive your help and cooperation in this connection.

I shall undertake to explain to you, as briefly as possible, the provisions of Title II of the National Housing Act and to point out wherein I believe it will put mortgage lending in this country, insofar as home mortgages are concerned, on a permanently sound and equitable basis.

This was the state of affairs in 1932 and 1933 and the government was forced, for the general welfare of the country, to come to the rescue of home owners, who were losing their property through foreclosure, by the creation of the Home Owners' Loan Corporation. This agency was a purely emergency organization to relieve an intolerable and unavoidable situation which had reached the proportions of a general panic in the real estate and mortgage fields. It was never intended that this agency should continue permanently to participate in this important field of our financial affairs with government money. The Home Owners' Loan Corporation was given one of the most difficult and gigantic tasks that has ever been delegated to a government body, and I am sure none of you would hesitate to join me in paying tribute to the way in which it has done its work. Within a comparatively short time the situation was enormously relieved and hundreds of thousands of properties had been taken off the market. It then became apparent that a large part of the difficulty had arisen from our unsound system of mortgage lending on individual homes and that it was of paramount importance that something be done to reform this unsound system for the purpose of putting the $21,000,000,000 home mortgage debt structure of the country on a basis where it would not be subject to the same hazards that formerly existed, of encouraging lending institutions to reenter the mortgage field, and, finally, for the purpose of bringing sound and secure home ownership within the reach of the great majority of our citizens by establishing long term mortgage credit at reasonably low cost for home financing in all cases where the borrower can put up a fair equity.

It was to meet this need and serve these purposes that the mutual mortgage insurance program embodied in Title II of the National Housing Act was formulated. The Act was adopted by Congress on June 27, 1934, and the carrying out of the program was entrusted to the Federal Housing Administration, created by the President pursuant to the authority conferred upon him by the Act. In two very fundamental respects the Federal Housing Administration stands out in sharp distinction from the Home Owners' Loan Corporation. In the first place, insofar as the mutual mortgage insurance program is concerned, it is a permanent and not a temporary emergency agency. In the second place, it is predicated entirely upon a theory of private capital operations and neither lends nor spends government money. It is not an attempt by the government to infringe upon private business. To private business it offers not a threat but an opportunity, coupled with an invitation to cooperate in the best interests of that business itself.

These primary principles have apparently been so little appreciated, that, with your indulgence, I wish at this point to emphasize and illustrate them as forcibly and clearly as I can.

The fundamental premise of the insured mortgage program rests upon three basic assumptions:

1. That private capital operations in the housing field are both necessary and desirable.
2. That private capital in that field can and must be made effective upon a far wider scale than has ever been possible heretofore.
3. That the collapse of our real estate and mortgage market under the impact of the depression was not caused by any defect in the theory of private capital operation, as such, but by the unsound, unrealistic and disastrously short-sighted system of appraisal and finance upon which those operations were conducted.

These assumptions, I take it, are

common ground, and I am, accordingly, somewhat puzzled by talk, eminating from certain quarters, to the effect that the program of the Federal Housing Administration is an unwarranted and competitive intrusion by the Federal Government into their legitimate business sphere. Such talk can be attributed only to complete misunderstanding. In no sense do Titles II and III of the National Housing Act represent a usurpation of business prerogatives by the government. On the contrary, as I have said, they simply provide an opportunity, which no wise business man will neglect, for the mortgage and real estate business of this country, to recover from its collapse and reestablish itself upon foundations so secure and permanent that it will never aagin find itself helpless in the face of a sudden and unpredictable depression in our financial and industrial markets. They establish the framework of a system for private capital operations in the mortgage field which is free from all the defects of the old system. The Federal Housing Administration does not wish to take over any one's business. We simply say to bankers, mortgage lenders and other related businesses alike: "If you will conduct your business with all the initiative, enterprise, and resourcefulness you have heretofore shown, but upon the system laid down in the mortgage insurance program of the Federal Housing Administration, instead of upon the old system, it will bring you returns in terms of security, stability, and continuing profits greater than any that are available to you in any other way. It will protect your enterprises from the devastating attacks of economic forces beyond your control, and at the same time you will be making a contribution to the general housing problem so substantial that you will reduce to a minimum the possibility that it may some day become necessary for the government to deal with it directly."

So much for the general background. Let us now turn to a more detailed and specific consideration of the insured mortgage program in action. To clarify by way of contrast, the outlines of the new system of mortgage finance established by that program, let us begin by reviewing briefly the major faults and deficiencies of the old system, indicating in each case the precise manner in which the new system has eliminated them.

First—Appraisal Methods

The appraisal methods formerly used were not sound or reliable. You gentlemen, I am quite sure, realize the haphazard way in which properties were appraised for the purpose of mortgage loans. This was not done deliberately but was due to the fact that all the factors necessary to be taken into consideration in determining the soundness of the loan were not considered, and to the fact that the data necessary for careful and scientific appraisal were not available. There was a tremendous inadequacy of statistics to show neighborhood trends, to show construction trends, to show all the multitudinous factors which have a bearing, not upon the present value of a piece of property, but upon the value of that property at the end of five or ten or twenty years—the only value which justifies a borrower in contracting mortgage obligations and a lender in advancing money upon mortgage security.

The appraisal system that has been set up by the Federal Housing Administration is, we think, the soundest and most accurate system that has ever been devised. Under the Act we must take into consideration not only the physical appraisal of the property, but also other risks entering into the hazard of the mortgage. In our appraisals we appraise the property by a specific routine outlined for the appraiser. We then consider the mortgage risk in connection with this physical appraisal. This mortgage risk is determined by a study of the property itself as to its design and construction, a study of the neighborhood in which the property is located, a study of the relation of the property to the neighborhood in which it is located, and last, but by no means least, the financial responsibility and moral standing of the borrower. Each of these factors is taken into consideration and is given a specific rating in the final determination of the appraisement value for the purpose of the mortgage. In a word, this appraisal represents a price arrived at by the impartial exercise of the best available scientific judgment, and there are no commissions and excessive costs concealed in it.

Second—The Short Term Unamortized Mortgage

Under the old system, mortgages were generally made for a definite term of from three to five years with no curtailment requirements. We call them short-term mortgages, but they are in fact expected to run indefinitely, and as a rule they do continue to run until a catastrophe such as we have recently experienced comes along, and then the so-called owner ceases to be owner at all. Under the old system the mortgagor who signed the note had no intention of paying it at maturity and the mortgagee that received the note had no intention of requiring it to be paid at maturity.

There has recently been brought to light a case where the heirs of an estate in Pittsburgh finally paid off a mortgage of $2,500 which had been made in 1868. In the time intervening there had been paid in interest alone four times the face of the mortgage, and the mortgage itself still remained to be paid. This figure did not include renewal fees and commissions which, on a three to five years mortgage, must have added largely to the cost. I do not believe, therefore, that it can be denied that a large part of our difficulties in connection with mortgage loans came from the fact that they were generally regarded not as a convenient method of acquiring debt free home ownership, but rather as permanent fixed charges and investments—much like some of our earlier railroad bond issues, which have contributed so largely to the financial straits in which many railroads find themselves today. As long as times were good, mortgagees discouraged any attempts by mortgagors to reduce or pay off principal. They preferred to keep the original debt intact by continuous renewals to preserve their full investment yield. In bad times when they needed cash and could not renew the mortgage, they, of course, found that the mortgagors could not pay up. Foreclosure was then the only answer.

This situation is eliminated by the plan set up in the National Housing Act. Under the provisions of the Act, the Housing Administration is not permitted to insure mortgages that do not contain amortization provisions satisfactory to the Administrator, and the Administrator has by regulation required that they be amortized monthly, because this is the way that the average small home owner receives his income. Under these mortgages, which may run for as long as 20 years and may be for as much as 80% of the appraised value of the property, the mortgagor pays each month, in a single payment, his amortization, interest, service charge, taxes, and insurance. It has been called the "all-in-one amortizing plan." Under this plan the mortgagor's home is not subject to the same danger of being lost as it was under the old form of mortgage, because his income is not exposed to the strain of suddenly being called upon to meet a large lump sum principal payment.

We received a short time ago a very interesting letter from a bank over in New Jersey. This bank in 1929 began making only amortized mortgages. In May, 1935, they appraised the properties on which they held loans and found that their loans then represented an average of 43% of the value of the properties on which they were secured. This was substantially the same average ratio on which the loans were originally made. This shows that the amortizations about equalled the depreciation of the properties—and this despite extremely adverse conditions.

I confidently believe that if all our home mortgages under $16,000, which is the limit we can insure under the Housing Act, had been of this type in 1929, we would not have experienced the tragic results that have come about in the past few years.

Third—Secondary Financing

Another unsound feature of the old system was the second, and sometimes even a third, mortgage, with exhorbitant interest rates, outrageous bonuses and renewal fees. These bonuses and other charges in connection with these second and third mortgages were, of course, hidden away somewhere in the so-called value of the property.

There is no place or need in the new system for the second mortgage. Ours

is the single mortgage system, and we will not insure a loan on which there is a second lien at the time of insurance. The provision of the Act, limiting the amount of an insured mortgage to 80% of our appraised value, is, I think, a sound one, because I doubt the wisdom of a man undertaking to own a home if he cannot put as much as 20% of his own funds into it, and, in every case where home ownership is economically justifiable, an 80% loan should be sufficient to make it possible without secondary financing. The elimination of the second mortgage not only reduces the original cost of the home, but also, by relieving the owner of the heavy burden of carrying it, strengthens the security of the first mortgage.

Fourth—Excessive Costs

When one takes into consideration the total cost of carrying the two mortgages generally necessary under the old system, including renewal expenses, bonuses and high secondary financing costs, that cost is found to be very much greater than the cost of carrying one insured mortgage for 80% of the value of the property. When once the home owner puts an insured mortgage on his property, he is secure against the payment of further fees, and also foreclosure, so long as he makes the small monthly payments required; and, before we can insure a mortgage under the provisions of the Act, it must appear that the monthly payments are not in excess of the reasonable ability of the mortgagor to pay. The payments usually are no more than normal monthly rent, and with each payment, the borrower is one step nearer freedom from debt.

Fifth—Complete Loss of Equity Upon Foreclosure

Under the old system, when the mortgage is foreclosed the mortgagor is through. He has lost all he had in his home and in addition, more often than not, is faced with a deficiency judgment.

Under the insured mortgage system, the mortgagor never loses any equity that he may actually have in the property.

Under the provisions of the Act, if the mortgagor defaults, the mortgagee forecloses, and, if it buys in the property, it conveys it to the Administrator, receiving in exchange from the Administrator debentures for the unpaid principal of the mortgage, plus interest from the date of the institution of foreclosure proceedings to the date of conveyance, together with the amount of all out of pocket expenses it has had to make for taxes and fire and other hazard insurance. In addition to this, the mortgagee receives a certificate of claim covering costs of foreclosure and such other items not included in the debentures as the mortgagor would have paid, had he paid the mortgage in full. The Administrator then takes the property and handles it in such a way as in his discretion will best preserve the value of the property. If the property is sold for more than enough to pay off the debentures and certificate of claim held by the mortgagee, the cash balance is returned to the mortgagor. Did you ever hear of a mortgage system that had this element of protection for an unfortunate mortgagor? Another very important feature, is that the Administrator may hold these foreclosed properties until such time as the market may be in a condition to absorb them without destruction of values. Compare this method of orderly disposition of the properties with the old method where all foreclosed properties were immediately thrown on the market, and you will readily see how this new system will support the real estate market in times of stress. Prior to the passage of the National Housing Act at a conference with some mortgage investors in New York, the belief was expressed that if all the mortgage lending institutions in New York could have withheld from sale for a period of nine months, the foreclosed properties which they had taken over, the whole New York real estate market could have been saved from the catastrophe which overtook it.

Let me now briefly call to your attention one more salient feature of this new system.

It is a mutual mortgage insurance plan, not a government insurance plan. **The Government does not lend a dollar of money.** The only direct financial connection the Government has with the insured mortgage program is that it has set up a revolving fund of $10,000,000 in order to start the Mutual Mortgage Insurance Fund out on a sound, solvent basis. In addition to this, the Government is paying the overhead administrative expenses of the Administration until the program has developed to a point where the mutual insurance fund may be sufficient to absorb these expenses, and has guaranteed the principal and interest of debentures issued by the Administrator in exchange for mortgages insured prior to July 1st, 1937. The Mutual Mortgage Insurance Fund is built up from the annual premiums paid by the mortgagors during the term of mortgages. These premiums accumulate at compound interest, and all that is not required to pay insurance losses and expenses of the Administration will be returned in the form of a credit on the principal of the mortgage which may result, if the ratio of loss is what we think it will be, in the complete payment of the debt before it finally falls due.

In brief, therefore, in the insured mortgage, the mortgagor gets the security of a long term mortgage which he can pay off like rent at a reasonable cost and without the crushing burden of renewals and secondary financing. He also gets the assurance that the value at which we appraise the property is the fair and real value without any hidden items. He also gets the security of knowing that even if he loses his property, he still retains whatever cash equity there may be in the property under an orderly liquidation by the Administrator.

The mortgagee gets the assurance that it will not have to take over and dispose of the property after foreclosure. It can convey the property to the Administrator and receive the debentures and certificate of claim which I have already described.

It requires no imagination to visualize how different conditions might have been today had the mortgage lending institutions of the country in 1932 and 1933 held in their portfolios amortized mortgages insured under some such plan as this. There would have been no wholesale freezing of real property, and the progressive disintegration of the mortgage market could have been promptly arrested. For, in a word, the Federal Housing Administration's contract of insurance is simply a conditional and continuing offer to the mortgagee to purchase the property, if foreclosure becomes necessary, at a price fixed by the amount of the unpaid principal plus the various other items which, as I have told you, are included in the debentures or the certificate of claim.

From the strictly investment point of view, also, the insured mortgage is peculiarly attractive to the mortgagee, not only because of its great security, but also because it possesses a higher degree of liquidity than any other comparable type of investment. Pending the organization, under Title III of the Act, of national mortgage associations, which are designed to bear roughly the same relationship to the mortgage market as the Federal Reserve Banks to the financial market, several adequate methods have been supplied by which banks and other lending institutions may raise money on insured mortgages in case of need. Under the Banking Act of 1935 and the Regulations about to be adopted thereunder by the Federal Reserve Board, members of the Federal Reserve System can borrow on these mortgages at the Federal Reserve Banks. In addition, any approved mortgagee, which is subject to the inspection and supervision of some governmental agency, may borrow on them from the Federal Home Loan Banks. Recently the RFC Mortgage Company, a Delaware corporation organized by the Reconstruction Finance Corporation, has made an offer to purchase, without recourse, under certain conditions, such of these mortgages as may be made in connection with new construction.

I now come to the discussion of a question in which I know you are more vitally interested than any other question in connection with the insuring of mortgages, and that is the question of Title. I must confess that I approach this subject with considerable trepidation, for I always hesitate to discuss anything with people who know a great deal more about it than I do. My ap-

proach is, therefore, that of one anxious to learn from you and receive the benefit of your expert counsel. Your own appreciation of the difficulties involved will, I am sure, accord me your indulgence. At best the question of titles to real estate is an intricate matter. Our problems are much more difficult and varied than is ordinarily the case because we must be prepared to insure mortgages in every state in the union as well as in Hawaii, Alaska, and Porto Rico. Due to the wide differences in the laws of these different jurisdictions relating to real estate, either arising from peculiar statutes or from decisions of courts, the questions are inevitably very diverse. In addition to these difficulties, our problem is somewhat aggravated by the fact that we are not directly concerned with the state of the title at the time the loan is made, as is the case with lending institutions. Title only comes into the picture for our purposes when the property is tendered to the Administrator after foreclosure. In spite of this fact, however, we have attempted and shall continue to attempt to go as far as we can to cooperate with the lending institutions on the question of title and to make the whole plan workable from a practical standpoint insofar as titles are concerned.

The suggestion is repeatedly made that we should pass upon the title to the property at the time we insure the loan. This we have decided not to do, for several reasons. In the first place, if we were to pass upon the title at that time we would probably have to turn the matter over to some reputable title company or title lawyer in the locality, and that being the case, why shouldn't we rely upon the title furnished by that title company or attorney to the lending institution applying for the insurance? In the second place, if our program is even half as successful as we have every reason to believe that it will be, the question of title will not arise insofar as the Administration is concerned, except in that relatively small percentage of cases where foreclosure occurs. It seems to us, therefore, that it would be a useless waste of money for us to go to the expense of having a duplicate examination of the title made in every case at the time the mortgage is written.

In the third place, and this is fundamental, the Act simply provides for the issuance of the debentures and certificate of claim upon conveyance by the mortgagee to the Administrator of title satisfactory to the Administrator. The Act in its present form does not contemplate the insurance of title by the Administrator, and for us to pass finally upon title at the time of insurance would, of course, in effect be equivalent to insuring title. Our insurance is simply insurance of the capacity of the borrow to repay the principal amount of the debt, and, as I have said, it takes the form of a conditional offer to buy property at a fixed price. Like every other purchaser of real estate, therefore, we must insist upon receiving a merchantable title—a title that can readily be sold when we in turn come to dispose of the property. At the same time we are keenly aware of the necessity of working out some arrangement which will relieve mortgagees from the very natural apprehension that their claim under the insurance may be denied by rejection of their titles at the time of conveyance to the Administrator on account of some arbitrary or technical defect. These are the two principles which must determine the general direction of our efforts to solve the title question.

Let me now tell you how we have tried to meet the situation, in accordance with these principles, in our present Regulations. We do not for a moment pretend that these Regulations represent a completely satisfactory answer to the problem, but we hope that with your advice and assistance we shall be able to revise them where necessary to achieve a result that will be acceptable to all. The Regulations provide that the title conveyed to the Administrator must be a good merchantable title, to property undamaged by waste, fire, earthquake, flood or tornado, and that the deed must contain a covenant which warrants against the acts of the mortgagee and all claiming by, through, or under it. They then set forth as follows the types of evidence of merchantable title that we will accept:

> "(a) a fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such; or
>
> (b) an abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by the legal opinion as to the quality of such title signed by an attorney at law experienced in the examination of titles; or
>
> (c) a Torrens or similar title certificate; or
>
> (d) evidence of title conforming to the standards of a supervising branch of the government of the United States or of any state or territory thereof."

The Regulations further require that the evidence of title be executed as of a date to include the recordation of the deed to the Administrator, and show that, according to the public records, there are not, at that date, any outstanding prior liens, including any past due and unpaid ground rents, general taxes, or special assessments. The evidence of title must also be furnished without cost to the Administrator.

We have construed these title provisions to mean that if the mortgagee gets one of these evidences of title at the time the mortgage is made, and that evidence shows a good merchantable title in the mortgagor subject only to the mortgage, that we will not reexamine the title at the time of the delivery of the deed, but will accept the evidence as sufficient, provided the title is continued from the date of the original title evidence down to and including the recordation of the deed to the Administrator, and provided further that such continuation shows that there are not outstanding at that time any prior liens, including taxes or special assessments past due and unpaid. If, on the other hand, the validity of the title is raised by some third party before the property is conveyed to us, or the continuation shows the invalidity of the title, then, of course, it appears of record that the title is not merchantable and we cannot accept it. But if no question has been raised about the title up to the time it is tendered to us, we will accept the evidence on which the loan was made.

A word with regard to building or use restrictions and reversionary clauses. Our Regulations provide in this respect that:

> "The Administrator will accept title from the mortgagee subject to building or use restrictions or reversionary clauses for the breach of such restrictions, if such restrictions have not been violated prior to the date of the deed to the Administrator."

There is perhaps room for amplification and clarification of the language of the paragraph, but I believe that, when carefully applied to the facts of particular cases, keeping in mind that our chief concern is the marketability of a title, it will be found to cover the situation adequately.

Our experience to date indicates that this particular problem most frequently arises in connection with easements or reservations of subsurface mineral rights. The easements are generally of the character normally granted to public utilities for pipe or telephone lines, or else just ordinary rights of way across the property to adjoining properties. Obviously it is impossible to lay down a hard and fast rule that will cover all cases, but we may say in general—and this is what our regulation purports to say—that any ordinary easement which is generally disregarded by prudent purchasers and lenders in the community will not be considered by this Administration as impairing title, because in these circumstances there can be no substantial danger that the exercise of the easement would damage the property to such an extent as to affect its marketability adversely.

In certain parts of the country, as you know, it is common practice to insert in deeds a reservation of mineral rights. Frequently neither the applicable local statutes nor the court decisions require payment of damages resulting from the exercise of such rights, or when the law does so provide, the provision is expressly waived in the original deed. Here again it is the practical situation that must be dealt with. It may be that there is little or no likelihood of the reserved

right being exercised. If so, the reservation is quite unobjectionable. Or, it may be that even if the right were to be exercised, or has been exercised, the circumstances are such that no appreciable impairment of the marketability of the property could result, or has resulted. Again the reservation is quite unobjectionable.

The only risk that the mortgagee must bear in cases of this kind, accordingly, is that of conditions changing between the time when the mortgage is insured and the time when the property is offered to the Administrator. Even then no difficulty will arise as long as the change in conditions, whether it involves the violation of a restriction or the exercise of a reserved right, has not resulted in an impairment of the marketability of title to the property.

OBSERVATIONS UPON THE ALLEGED UNAUTHORIZED PRACTICE OF THE LAW BY LAY AGENCIES

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The subject assigned to me seems to be regarded as necessarily contentious. I am advised that it is one which must be handled discreetly. I do not so regard it. If we approach the subject with frankness—and with a single eye to the interest of the public that is to be served—we will find, not only no room for controversy—but little room for disagreement. No segment of the business community is or should be more interested in the maintenance of an independent bar and of the highest standards for such a bar than the group represented here—and, if the bar is interested in serving the public with increasing promptness, accuracy and economy, it should welcome the development of the services which you as title men are particularly qualified to render.

Unfortunately, however, the subject has become hopelessly beclouded by being discussed almost exclusively in terms of shibboleths and meaningless generalities. In reading the literature and cases upon the subject one becomes somewhat bored by the repeated reference to the rather obvious fact that a corporation has no "soul," and by the repeated assumption that a lawyer by mere virtue of his license becomes clothed with a special moral sense not bestowed on other men. And, one becomes somewhat puzzled by the ease with which so many lawyers attempt to dispose of the problem by pointing out that corporations and laymen engage in business to make money—the inference, which is left to one's imagination or credulity, being apparently that lawyers have other ends in view. And one becomes somewhat confused when one sees so often quoted the comment of the court in the Co-operative Law Company case that "the bar would be degraded if even its humblest member became subject to the orders of a money-making corporation. At the recent American Bar Association Convention, a distinguished jurist stated that the harm in the unauthorized practice of law by corporations lay not in taking business from lawyers, but in that such corporations "degrade the practice of law into a graft or racket" and startled some of us by asserting the corporations could not practice law because the function of the lawyer is not personal gain but, "to see that wisdom and the will of God prevail in the affairs of men." Now it may be the function of the lawyer "to see that wisdom and the will of God prevail," but if so God indeed moves in mysterious ways his wonders to perform. No, this problem can scarcely be satisfactorily solved by the naive assumption that every lawyer is a Good Samaritan and every business man a Publican.

Now I fully appreciate the significance of the professional point of view as distinguished from the purely money-getting point of view, and as Justice Holmes has said "in the long run this affects one's whole habit of mind, as anyone will notice if he talks much with men." But I do challenge the assumption so often made that it is the exclusive possession of the legal profession. It has its roots not so much in altruism as in pride in work well done and in a farsighted willingness to await the ultimate reward—and is increasingly evidenced in business—particularly in those lines of business rendering a service or performing a fiduciary function. At any rate, I am quite certain that the distinction between the business and the professional motive is not nearly so patent to the layman as it seems to be to the lawyers who make speeches and the judges who write opinions on this question.

The subject of the unauthorized practice of the law needs to be discussed much more realistically than it has been. More attention needs to be given to the conditions which have given rise to the controversy. There needs to be a more practical approach and a less legalistic and ethical one, ethical in the narrow professional sense. And on the part of laymen and lawyers alike, the line where what may appear superficially to be in the public interest, becomes, though subtly perhaps, contrary to the public interest, needs to be discerned more clearly.

In brief, both lawyers and laymen alike need to learn to discuss this subject without perspiring.

The scope of the lawyers activities, the variety of the questions to be presented to him, and the number of tribunals with which he must be familiar, have increased tremendously during the last two generations. This was strikingly brought out in an examination that was made of the files of a leading law firm for the years 1874, 1904 and 1934.

One cannot read the early cases or the lives of the great lawyers of the last century without noticing the comparative simplicity of their task and the meager technical equipment required of them. In a sense perhaps to be successful at the bar in those days required a greater store of legal learning in the scholastic sense and a finer understanding of the niceties and artificial distinctions of the common law, than it does today. But that is all that was required. With a reading knowledge of the common law and a speaking acquaintance with the leading cases of his state, a lawyer of two generations ago could advise, and advise wisely, on almost any business matter.

Not so today. A lawyer can hardly advise on any business matter without an intimate, an accurate and an up-to-date knowledge not only of the law generally, but of particular statutory regulations and the rules of procedure of some particular state department or Federal Bureau. Every field of business has its own body of law. One of the State Bar Associations prepared a list of 200 fields of law in which the lawyers of that state were expected to be proficient. To be able to render prompt and accurate service for a reasonable fee in a great variety of fields —taxation, bankruptcy, corporate organizations, real property—to mention only a few—a lawyer must devote himself almost exclusively and continuously to that field, or have someone available who does so.

And yet throughout this country the individual practitioner holds himself out as qualified to render professional services in every field and takes on all comers. I fully appreciate the dangers of over-specialization. But whether the bar recognizes it or not, the average practitioner simply is not prepared to render prompt and reliable advice and service on the day-to-day matters that confront the business man or institution. The Secretary of the Illinois Bar Association reports that a recent survey showed that the average member of the bar of that state was experienced in less than ten percent of the fields of practice listed by the Association, and he says, "in the remaining 90 percent he is as inexperienced and incompetent as he was on the day he entered practice." He further states that "the tragedy of the present situation is that it is simply impossible for anyone to

become proficient in every field of the law, and no matter what the client's problem is (the lawyer) is too frequently tempted to handle it alone. As a result the complaints filed with the Bar Associations against lawyers of today indicate that most of them are the result of some lawyer trying to practice in an unfamiliar field." There is some specialization, of course, but too often only the client with a large amount of work along some particular line discovers the one specializing. This situation is doing more to discredit the bar than the few black sheep in the profession or the delay in the courts, but it is receiving virtually no attention on the part of the bar. A whole paper could be written on this phase of the subject, but it will suffice for the purpose of this discussion to call attention to it. Its existence will not be disputed.

We are here concerned with the results. Business men and institutions for purely legal services resort more and more to large departmentalized law offices, and to full time salaried attorneys, and on semi-legal matters to their Trade Associations. In the large law office they find a man who from daily contact with their particular kind of business can give them the service they demand. They find that a salaried attorney can use knowledge once laboriously acquired over and over again. They have discovered that their Trade Association is more up to date than Judge Smith, they once had on retainer. Now whether these tendencies are socially desirable or not, I do not know. But I do know that they occasion not a small part of the dissatisfaction which eventually vents itself in attacks upon lay agencies. If you discuss the subject long with attorneys you will find this to be the case.

Other tendencies of a different character have also been at work. It has been found that some services, once performed largely by lawyers, can be performed more economically and more effectively by business organizations. The collection of mercantile accounts, the performance of fiduciary functions, the examination and reporting upon real estate titles and the handling of escrows, are the more important of these. There has been nothing sinister about the development of organizations to perform these services—there has been no conspiracy—it has been an entirely natural development to meet needs that were not otherwise being satisfactorily met. The performance of these services by corporations and associations is due to the simple fact that they can best be performed that way. There is no point in arguing this fact or any other. Experience has proved it.

Now there is no denying that these agencies have taken over a great deal of work at one time largely, if not exclusively, performed by lawyers. But, gentlemen, history from the beginning is the story of successive encroachments. Progress stops the instant the right to serve in a particular way becomes a vested right. No better test of a new way of doing things has yet been devised than its ability to be accepted in the competition of the market place. Whenever every new method of procedure must be subjected to the test of priori theories, we return to the Middle Ages. The bar as well as every other trade or business must realize that "new occasions teach new duties." In the long run a new way of doing things can only be prevented from being accepted by the finding of a better. So I have no sympathy with the purely historical argument—the "once upon a time" contention. As a matter of fact, I think some of my lawyer friends would be disconcerted to find that historically the clergy had the prior right to draw wills.

The bar, however, is reconciled I think to the performance of the services which I have mentioned by lay agencies. I think we may safely assume as a premise, with which most lawyers will not disagree, that title companies, trust companies and the like, perform a useful public function.

The dispute arises in connection with the performance by these institutions of services incidental to their primary function or business. In the case of trust companies the difficulty arises chiefly over the preparation of wills and trusts, the giving of legal advice and the presentation of accounts and reports to the Probate Court. In the case of the title companies the difficulty involves chiefly the preparation of instruments of conveyance, the preparation of escrow instructions and the handling of the escrow, and the giving of legal advice and reports on titles. Now insofar as these acts are merely incidental to and in the aid of the conduct of a useful business their performance by those engaged in such business should not be questioned unless:

1—The existence of the confidential relationship of attorney and client is essential to the performance of such services without possible injury to the public, or,

2—Those engaged in the business are not qualified or competent to render the service, or

3—The performance of such services by such laymen may set in motion forces which in the long run might lead to undesirable results, such as a lowering of the standards of the bar.

These are the only possible grounds of objection that I can think of that have the slightest significance to the layman or to the public.

And it will be found, when the rhetorical debris is removed, that these are the grounds upon which the bar bases its objection to the performance of these incidental services.

1—The lawyers contend that the confidential and personal relationship of attorney and client and the undivided allegiance incident thereto, should be preserved at all hazards. To that I think we can all subscribe. And I think we can all agree that in the preparation of wills and testamentary trusts that relationship should be present in all its purity. One is on thin ice, be he lawyer or layman, when he presumes to advise one on such matters when he is interested in being named executor, trustee, or in having one appointed executor or trustee who will employ him in some capacity. And the only practical way to insure that the interest of the testator and beneficiaries alone dictate the terms of a will or trust, is to have him consult a lawyer, who, presumably at least, is influenced by no other motive. And the same considerations apply, though perhaps in a lesser degree, to the preparation of any contract or instrument when the terms and language of such contract or instrument must be phrased with care so as to create the exact obligation which it is intended that the client assume. In other words, whenever the instrument is sui generis in the sense that it creates a special relationship between the parties, it should be prepared by a lawyer. That is what we have lawyers for. That sort of service can never be performed properly by a business institution, nor does it lend itself to routine or the use of forms. But this contention of the lawyers is meaningless when applied to the preparation of ordinary instruments of conveyance. When a title company or a real estate broker prepares ordinary instruments of conveyance of more or less accepted form for a customer to give effect to a transaction already agreed to, or when a title company prepares an instrument required to make the title insurable, there is not created by any stretch of the imagination, the relationship of attorney and client. I can think of no ground upon which I could convince a layman that for such services he should have resort to the private, confidential and relatively expensive services of a professional man. In rendering this sort of service the elements of the professional relationship are not present whether performed by lawyers or by laymen, and no amount of legal casuistry can create them when they do not exist.

The second ground upon which the lawyers object to the performance of these services is that of competency. It is quite true, as the lawyers contend, that lawyers are licensed in order that the public may be assured of the competency of those who hold themselves out to practice. Now that a trained title man is competent to prepare ordinary instruments relating to the conveying, encumbering and clearing of titles to real property seems to me too obvious to discuss. They are the tools of his trade, the very breath of his nostrils. Certainly if a title man is not competent to prepare instruments of conveyance, we have been living in

a fool's paradise and all the abstracts, certificates and title policies issued by them are not worth a tinker's damn. Their competency to perform these services furthermore is too well attested by the practice of the lawyers themselves in relying upon it to warrant further attention.

That leaves for consideration only the contention of the lawyers that the performance of these incidental services tends to degrade and commercialize the bar. If applied to situations in which a corporation should employ attorneys on a salary to engage generally in the practice of law, the corporation retaining the fees, its meaning would have some force, but when applied to the performance of more or less clerical services incidental to another business, it simply hasn't any meaning. It doesn't make sense. On the contrary, it seems to me that the professional status of the bar is elevated by being relieved of the necessity of attending to minor matters of a semi-clerical and routine nature. Just how the bar is saved from commercialization by compelling every party to a real estate transaction to go to a lawyer to have him type in the names and description in a deed, or in a subordinate agreement, is one of those propositions that tax my mental processes. The developments of the last twenty years have presented to the bar endless new vistas of opportunity. The business man finds himself in a maze and more than ever in need of a guide. In this day of new opportunity for service unless the bar looks forward and upward instead of backward and downward, it will wake up some day to find that the train has gone by. If the lawyers in the words of the prophet will only enlarge the place of their tents and draw aside the curtains of their habitations, they will have more work than they can do.

Now how shall we apply the principles which I have outlined? In the preparation of instruments it seems to me that a title company should prepare them only when they are incidental to a pending escrow, or when incidental to the issuance of a policy or certificate of title. This is sound business practice entirely apart from the question of the practice of law. And even then it should prepare only instruments of generally accepted form and which are commonly used in real estate transactions. If this rule is followed you will avoid not only rendering a service which you are not competent to render, but you will also avoid compromising your status. The propriety of drafting such instruments under such circumstances finds support in the statutes of several states, in some of the leading cases, particularly of New York, and will be recognized by the public and most members of the bar.

In the handling of escrows and the preparation of escrow instructions, we must, I think, be guided by much the same considerations. If in the preparation of escrow instructions it becomes necessary to initially formulate the contract between the parties as distinguished from prescribing the duties of the escrow holder to give effect to a transaction already agreed to, it seems to me that the parties should be advised to consult an attorney. The escrow holder should not advise the parties when they are uncertain of their rights or obligations. The mere fact that signed escrow instructions may technically constitute a contract between the parties does not seem to me to be significant.

The matter of giving legal advice is the most difficult one to resolve satisfactorily. Two propositions seem to me to be fairly clear however. One is that no one but a lawyer should presume to give either legal advice or express legal opinions generally for compensation. The second is that none but a lawyer should presume to give legal advice as distinguished from expressing a legal opinion even gratuitously. But it seems to me that there is a distinction between expressing an opinion as to what the law is and giving legal advice. For example: I can see no reason why an attorney employed by a title company should not be free to tell someone what the law is on a particular subject if no charge is made, but I do not think he should presume to advise a customer as to what the customer should do in his particular circumstances. When he does that he presumes to be acting as the customer's attorney. In conclusion, therefore, I suggest that lay employees of a title company should avoid even expressing legal opinions except on these simple matters of more or less common knowledge and that an attorney employed by the title company should avoid under all circumstances the creation of even the semblance of the attorney-client relationship.

Now these principles which I have tried to sketch do not constitute rules to follow. The rules can only be formulated by applying the principles to particular instances as they arise. And these principles which I suggest may not be sound, but I think it important that we arrive at some sort of rationale on this question to which we can relate our conduct.

The title companies are engaged in a useful business. In the conduct of that busines they should avoid engaging in matters not germane to it. They should particularly avoid taking advantage of the fact that their business is so closely related to the law, of the fact the people have frequent occasion to seek their services, or of their privilege of advertising so as in any way, assume to perform services which in the long run can best be performed by members of the bar, even though the public at times may expect them to do so. On the other hand, the title companies should vigorously resist petty attempts to prevent them from attending to more or less clerical and mechanical matters incidental to their business and to which there can be no rational objection from the public's point of view.

I think we all appreciate the inestimable value, socially and politically, of a bar of independent practitioners. In a day when most people serve some sort of special interest, the independent lawyers are a leavening influence.

I know the title men of this country will enthusiastically applaud the magnificent efforts which the lawyers organizations are now making to elevate the standards of the profession, to improve the administration of justice, and to make the bar of still greater service to the body politic.

A former president of the State Bar of California in discussing this subject before the lawyers of my state reminded us that encroachments were not a new thing and that a very long time ago Cain complained that Abel was encroaching upon his favor with the Lord, and reminded us that it is recorded in the Fourth Chapter of Genesis that the Lord replied unto Cain: "Why complainest thou? If thou dost well shall not thou also be accepted?" I am sure that most lawyers take this broad and intelligent view of the subject.

The Frazier-Lemke Act

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The former Frazier-Lemke Act, which was invalidated as unconstitutional by the United States Supreme Court, constituted subsection (s) of Section 75 of the Bankruptcy Act. The new Frazier-Lemke Act was designed to replace the old and is likewise subsection (s) of Section 75. Section 75 as a whole is a recent amendment to the bankruptcy act, and is one of a number of similar amendments, applying to different classes of debtors, which represent a departure from the philosophy of the original bankruptcy act of 1898.

We have been accustomed to think of bankruptcy as a proceeding for the application of an insolvent debtor's assets to the payment of his debts pro rata. He turns over everything he has to his creditors, except the exemptions allowed by state law; and inasmuch as he has given all that he hath, no more is required of him. He is not obliged to pay that which he hath not, is considered entitled to a discharge in bankruptcy, and starts over again with a clean slate, and perhaps with a clear conscience. The essence of the ordinary bankruptcy proceeding is a general assignment for the benefit of creditors —a turning over of all of one's assets, to be applied on his debts.

The recent amendments to the bankruptcy act represent a departure in

that they seek to allow the debtor to remain in possession of his property and partially, at least, in control of it, its earnings to go to the creditors in the payment or partial payment of debts for a period at least, recourse being had to sale and distribution only as a last resort. The principal idea back of the amendments presumably is that a forced sale, particularly in times of depression, will not only blot out the debtor, but will result in very little substantial benefit to creditors. Consequently a machinery is devised to make it possible for the debtor to carry on, or at least to struggle on, in cases where there is any reasonable hope of his ultimate rehabilitation.

In large part, these amendments provide proceedings for composition and extension of the debtor's obligations. The court stays all suits and legal proceedings against the debtor and his property for a certain period, and in that period he tries to get his creditors or a certain percentage of them to agree to a scale down of claims, or to grant an extension of time to pay debts, or both. If the required percentage of creditors agree, the court is empowered to approve and enforce the proposal, and it is binding even on the minority creditors who do not consent. In corporation cases, approval of a certain percentage of stockholders is also required.

One of the amendments, providing along these general lines for composition or extension proceedings, applies to railroads; one to private corporations generally; and one to public or municipal corporations, including drainage and special improvement districts of all kinds.

The amendment dealing with individual debtors generally is Section 74 of the Bankruptcy Act. Section 75 applies to debtors who are farmers. Though these two sections differ in certain particulars, they are, in general, similar in character. Each provides that a debtor may file a petition in the United States District Court alleging that he is insolvent or unable to pay his debts as they mature; and that he desires to effect a composition or extension of time to pay his debts. The act empowers the court to approve a composition or extension proposal, if assented to in writing by a majority in number and amount of creditors holding claims. The extension proposal may extend the time of payment of both unsecured and secured debts. Section 74 provides that the proposal shall not reduce the amount or impair the lien of any secured claim. Section 75 as originally passed contained a similar provision. As a part of the new Frazier-Lemke Act, however, Section 75 (k) was amended to read as follows: "Provided, however, that such extension and/or composition shall not reduce the amount or impair the lien of any secured creditor below the fair and reasonable market value of the property securing any such lien at the time that the extension and/or composition is accepted, but nothing herein shall prevent the reduction of the future rate of interest on all debts of the debtor, whether secured or unsecured."

Section 75 provides for the appointment of an official in each county known as a conciliation commissioner. The debtor may file his petition either with the conciliation commissioner in his county, or with the clerk of the United States District Court. All proceedings against the debtor and his property are stayed upon the filing of the petition.

The original Frazier-Lemke Act provided that if any farmer failed to obtain the acceptance of a majority in number and amount of creditors to a composition or extension proposal, he could amend his petition and ask to be adjudged a bankrupt. Thereupon his property was appraised and his exemptions set aside to him. He then had the option of three courses: (1) He could, even without the consent of creditors, buy the property (or if you please, free it from all claims of creditors) by paying into court the appraised value in a lump sum. (2) With the consent of lienholders, he could purchase the property for the appraised value in installments over a period of six years. (3) He could remain in possession of the property for a period of five years paying a reasonable rental therefor.

The Supreme Court held that the act deprived creditors of their constitutional rights. The decision of the court did not invalidate the first part of Section 75 dealing with the composition or extension proceeding.

The new Frazier-Lemke act is in some respects more simple than the old. It likewise recites that any farmer failing to obtain the acceptance of a majority in number and amount of creditors to a composition and/or extension proposal, or if he feels aggrieved by the composition or extension, may amend his petition asking to be adjudged a bankrupt. The phrase "or if he feels aggrieved by the composition or extension," though it was in the old act too, has not, so far as I am aware, received judicial construction. Presumably it refers to a case where the debtor makes a proposal, it is agreed to by the requisite number of creditors, but before it is approved by the court, or perhaps even after it is approved by the court but before it is carried out, the debtor changes his mind and decides that he does not wish to proceed with it.

The act then makes provision for an appraisal of the debtor's property, and the setting aside to him of his exemptions. It also recites that the court shall stay all proceedings against the debtor and his property for a period of three years, during which time the debtor shall be permitted to remain in possession of his property under the control of the court, paying a reasonable rental therefor. At the end of three years or prior thereto, the debtor may pay into court the appraised value of the property, and the court shall thereupon convey full title to the debtor; provided that the court, upon the request of any secured or unsecured creditor, or of the debtor, shall cause a reappraisal of the property, or in its discretion may itself fix the value of the property after a hearing for the purpose, and the debtor shall then pay in the value so arrived at, rather than the original appraisal; provided, that upon the written request of any secured creditor, the court shall order the property upon which such secured creditor has a lien to be sold at public auction. The new act as originally drafted and submitted to Congress for its consideration, stated: "but no mortgagee or lienholder shall be permitted to bid on any property at any such sale in excess of the appraised value or the original principal, whichever is the higher." This clause was stricken out before final passage, and under the act as it now stands, the mortgagee can bid at the sale without limitation. This feature of the act is relied on by its proponents on the issue of constitutionality.

The act further recites that the debtor shall have ninety days to redeem any property sold at such sale by paying the amount for which such property was sold plus 5% interest.

If the debtor is unable to refinance himself within the three year period, then the court is empowered to appoint a trustee to sell and dispose of the property as in ordinary bankruptcy. The act also makes provision for the debtor's discharge in bankruptcy.

In brief then, the act affords the debtor a three year moratorium and gives him the right to purchase the property free of liens during that period, by paying the appraised value; provided, that the secured creditor can, if he chooses, force an auction sale of the property, at which he can protect his lien by bidding the amount of his debt; and provided, further, that the debtor may redeem from the sale within ninety days.

So much for the general outline. Now let us look a little more closely at some of the details.

I have mentioned that an appraisal of the debtor's property is provided for at the outset as soon as he files his amended petition. The act gives interested parties the right to file exceptions and objections to the appraisal, and the right to appeal therefrom within four months from the time the referee approves the appraisal. Under the former act, this was a very important part of the procedure since it fixed the amount for which the debtor could purchase, there being no right in the creditor to insist on a sale of the property. The lien creditor for his own protection was obliged to except to the appraisal if it was less than the amount of his lien, and perhaps to appeal from

the court's order overruling his exceptions.

The importance of this first appraisal under the new act seems to be considerably lessened. The lien creditor can protect himself by insisting upon a public sale. Furthermore, the act provides that whenever, at the end of three years or prior thereto, the debtor proposes to pay into court the appraised value of the property, the court upon the request of any secured or unsecured creditor, or upon request of the debtor, shall cause a reappraisal, or, in its discretion, after hearing, fix the value of the property. No appeal is provided for from this appraisal, or from the order of the court fixing the value. You will note that the reappraisal or order can be obtained at the request of the debtor. In other words, the amount of the appraisal made at the outset, perhaps as increased by exceptions and appeal of the secured creditor, can be cut down by the court, after a hearing, at the request of the debtor, in a proceeding from which there is no appeal. One wonders then whether secured creditors should go to the trouble and expense of objecting to the first appraisal. However, the courts may in practice tend to follow the first appraisal, and might conceivably take the position that a creditor who wishes to submit evidence as to the value of the debtor's property must do so at the time of the first appraisal. It seems clear, however, that there is less reason for providing for an appraisal at the outset under the new act, than under the old; for under the old act the attempt to purchase at the appraised value preceded the renting of the property to the debtor. Under the new act, the first appraisal is immediately important only in fixing the debtor's exemptions.

With regard to the exemptions, the new act differs materially from the old. The former law provided merely that after the value of the debtor's property had been fixed by the appraisal, the referee should make an order setting aside to the debtor his exemptions, subject to any existing liens to an amount equal to the appraised value of the exempt property. The latter phrase attempting to restrict the lien to the appraised value was very probably unconstitutional, inasmuch as the court, it would seem, would not have power to restrict the lien on property over which it had no jurisdiction. And it had no jurisdiction, having set aside the property to the debtor as his own. However, with the qualification indicated, the section merely set aside the exemptions, subject to existing encumbrances. The courts held under the former law, that the lienholder could foreclose his lien on the exempt property notwithstanding the stay of all proceedings against the debtor, inasmuch as the court had no jurisdiction over the exempt property after it was set aside. This rule was very important from the standpoint of the land banks, since their mortgages often cover the debtor's homestead, which is exempt from execution under state law.

The new act purports to close this loophole. It provides that the debtor's unencumbered exemptions shall be set aside to him as under the old law; but that his encumbered exemptions shall remain under the supervision and control of the court. At the end of the three year period or prior thereto, the debtor may tender into court the amount of the encumbrances on his exempt property up to the appraised value of that property, and shall thereupon be entitled to full possession and title free from encumbrance. Since the encumbered exempt property remains in the control of the bankruptcy court, the lien creditor may not foreclose, as he could do under the old law.

An argument may perhaps be made against the validity of this provision. After all, it enables the court to cut down liens on exempt property. To be sure, the court does not actually set the property aside to the debtor until after the lien has been discharged. Furthermore, the provision entitling the secured creditor to an auction sale, apparently applies to encumbered exempt property as well as to encumbered non-exempt property. Another question presents itself: Can exempt property be sold by the bankruptcy court to satisfy a lien thereon? Perhaps the answer is that Congress can make any disposition of the matter it pleases. It could probably disallow all exemptions entirely. Or it could set up a new schedule of exemptions for bankruptcy purposes independent of the exemptions allowed by state law. So perhaps it can provide that property otherwise exempt, if encumbered, shall be sold in the bankruptcy court to discharge the encumbrance. However, the procedure is so unusual as to give cause for comment. The court first says to the debtor and his creditor: "This property is exempt; it is not an asset of the estate for general creditors." Subsequently, on application of the creditor, the court, through a trustee, sells the property, in satisfaction of the creditor's lien.

Unlike the former Frazier-Lemke act the present one does not by its terms exclude from its operation debts arising after the passage of the act.

The act does not of itself provide a period of limitation after which no proceedings can be had under it. However, it is a part of Section 75, subsection (c) of which states that a petition for composition or extension may be filed any time within five years after the act takes effect. This section became effective March 3, 1933. Therefore, composition proceedings may be started up to March 3, 1938. All proceedings filed up to that time can continue on through the Frazier-Lemke stage.

Public officials are obliged by law to assume the constitutionality of an Act of Congress. Perhaps the same rule applies to governmental agencies. In any event I shall not address myself directly to the constitutionality of the Frazier-Lemke Act. However, it would seem not improper for me to mention some of the arguments being urged against the validity of the Act. If in the course of my remarks I indicate my feeling as to the soundness of these arguments, you will understand that I am expressing only my own personal opinion, and that I am not purporting to speak for the Farm Credit Administration.

I have already referred to the amendment to Section 75 (k) which permits, in the composition proceeding, the reduction of a secured creditor's claim to the appraised value of the property upon which he has a lien. It is asserted that this is precisely the sort of thing upon which the Supreme Court based the unconstitutionality of the old Frazier-Lemke Act and that it makes the act invalid. This argument would seem to be pretty difficult to answer, if the act permits the reduction of the secured creditor's claim without his consent. Whether it does so is perhaps open to question. Section 75 (g) provides: "An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after but not before it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims." The argument has been advanced that the phrase "including secured creditors whose claims are affected" is parenthetical merely, and does not refer back to "majority;" and that the clause really should be read: "by a majority in number of all creditors whose claims have been allowed, which number shall represent a majority in amount of such claims, including (interpreted to mean 'and') secured creditors whose claims are affected." Under this interpretation the proposal for composition reducing the lien of a secured creditor could not be approved by the court, unless the secured creditor consented to the scale-down.

A number of objections may be urged to this interpretation. One is that subsection (g) was not amended at the time of the change in subsection (k). Under the act as originally passed there can be no question but that subsection (g) meant a majority in number and amount of all claims. Furthermore it may be difficult to give a reasonable meaning to the proviso in new subsection (k) if the interpretation contended for is correct. It seems unnecessary to stipulate that the proposal shall not impair the lien of a secured creditor below the fair and reasonable market value of the security, if his lien cannot be affected without his consent.

It may, therefore, be considered that the suggested interpretation is a strained one. However, but for such

an interpretation, the act seems unconstitutional in view of the Supreme Court's holding in the Radford case. As between two possible interpretations, one of which will sustain the constitutionality and the other result in the unconstitutionality of an act of Congress, the courts are supposed to adopt the interpretation under which the act can be upheld. It may be, therefore, that the courts will hold that in the composition proceeding the lien creditor's claim cannot be reduced without his consent.

A somewhat similar consideration is involved in another section of the new act. The act contains a provision for the reinstatement of suits dismissed under the old act as a result of the Supreme Court decision. If this clause is to be interpreted to cover cases in which foreclosure has proceeded to a finality since the dismissal, the provision would seem to be unconstitutional. If the debtor, prior to the passage of the new act, has been divested of all interest in the property, it is surely not within the power of Congress to give the bankruptcy court jurisdiction of that property. Therefore, this clause should be interpreted as applying only to cases in which the debtor still has an interest in the property in question.

Perhaps similar considerations apply, to an extent, to that part of the new act amending subsection (n) of the old act. There had been a difference of opinion among the courts as to whether the filing of a debtor's petition affected a foreclosure proceeding which had already proceeded to sale, and all the debtor had was a right of redemption. The amendment attempts to make the point clear. It reads as follows:

"The filing of a petition or answer with the clerk of the court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under Section 75 of this act as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts, for purchase, contracts for deed or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered at the time of filing the petition.

"In all cases, where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld, for the period necessary for the purpose of carrying out the provisions of this section."

In states where the debtor's right to redeem is a personal privilege merely and not a property right, it seems that Congress cannot validly give the court jurisdiction of the equity of redemption. Therefore, the act should be interpreted as not applying to such cases. However, there seems to be a further difficulty in states where the right to redeem is a property right. Even though the bankruptcy court can be given jurisdiction over that right and can stay all pending proceedings affecting it, it seems very doubtful whether Congress can extend the period of redemption provided by state law. It seems difficult to interpret the statute in such a way that it does not purport to extent the period of redemption. However, inasmuch as the redemption is accomplished in the foreclosure suit and not in the bankruptcy proceeding, it may well be that the clause in question does not result in any unconstitutional exercise by the bankruptcy court of the powers conferred upon it by the act.

One clause of the act which has been particularly subject to criticism is the last sentence giving the court the right to determine whether the emergency has ended. One of the arguments urged against the constitutionality of the former act was that it established an absolute period of five years during which proceedings against the debtor would be stayed. In ordinary bankruptcy there is a stay of proceedings, but no definite period. If at any time the court determines that there is no equity in a particular encumbered tract, it can permit the lienholder to foreclosure. But the original Frazier-Lemke act gave the court no such leeway. In an attempt to meet the objection urged against the old act, the new act contains the following clause: "This Act is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate." This clause has been attacked as constituting a delegation of legislative power to the courts. In my opinion, the objection has merit. The clause in question is more likely to result in the unconstitutionality of the act than the supposed defect which it purported to cure.

Another point of attack on the act pertains to the disposition of rentals paid by the debtor. The language is: "Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear." The argument is that mortgages always require the mortgagor to pay taxes; whereas here the statute relieves the mortgagor of that obligation, and takes taxes out of rents upon which the mortgagee has a lien. I am not impressed with this argument. The mortgagor's personal obligation to pay taxes is discharged by the discharge in bankruptcy in any event. The rents used for taxes go to pay a lien paramount to the lien of the mortgage, and, therefore, the mortgagee gets the benefit of them. It would seem that under the act, the mortgagee has in this respect practically all the rights he would have in a foreclosure suit, except the right to a personal judgment for the deficiency.

We have a number of problems under the act which need not be discussed here. We are wondering just what is the effect of the reinstatement of a case dismissed as a result of the unconstitutionality of the old law. Specifically, if the appraisal had been made in the former proceeding, does it have to be done over again when the case is reinstated? Furthermore, we are particularly worried as to how we are to get good title in cases where we request an auction sale of the property upon which we hold a mortgage. The difficulty is that a sale through the bankruptcy court does not eliminate dower and homestead rights. This difficulty may have an important bearing upon the supposed efficacy of the auction sale to sustain the act's constitutionality.

If under the act the court has the power to permit the mortgagee to foreclose in such a case, perhaps the difficulty may be obviated. The wife will have waived her dower and homestead rights in the mortgage, and those rights will be eliminated by a foreclosure of the mortgage. Whether or not the phrase "the court shall order the property upon which such secured creditors have a lien to be sold at public auction" authorizes the court to permit the secured creditor to foreclose his mortgage under state law is perhaps open to question. If such a power is not vested in the court, then I see no way in which the secured creditor can protect himself by requesting an auction sale in states in which the wife of the mortgagor has a dower or homestead interest. I have considered the possibility of the mortgagee evaluating separately the wife's interest and bidding at the auction sale the amount of his claim less the value of the interest of the wife. However, inasmuch as the wife's interest is inchoate and does not represent a vested estate in the property, it seems doubtful whether the mortgagee in such a case would have a valid mortgage on the dower or homstead of the wife for the amount of the debt in excess of his bid.

There is also a problem as to public notice of the proceedings which may be of particular interest to title men. The act provides that the debtor's petition for composition or extension may be

filed with the clerk of the United States District Court, or may be left with the conciliation commissioner. In either case, the filing of the petition immediately subjects the farmer and all of his property, wherever located, to the exclusive jurisdiction of the court. Therefore, a transcript of pending proceedings in the Federal court will not necessarily catch all such cases. The point is particularly troublesome in view of the provision of Section 75 (r) that a farmer shall, for the purposes of the act, be deemed a resident of every county in which he carries on farming operations.

Our experience with the former act did not wholly justify the apprehensions which we had had concerning it. We took some losses in the relatively few cases where our debt exceeded the appraisal. But the losses were not caused by the act or the proceedings under it. They existed before the act was ever passed. The proceeding merely called the loss more sharply to our attention. To be sure, we have been put to a good deal of extra expense in watching and handling the proceedings. But if the act is really a benefit to agriculture, we will feel that this extra expense is justified. Whether it is a benefit or a detriment to agriculture, or to the farmers who take advantage of it, is a question upon which I express no opinion.

The Trend of Future Abstract and Title Advertising

By HARVEY HUMPHREY

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Security Title Insurance and Guarantee Company
Los Angeles, California

Taking "The Long View," very few of the advertising dollars being spent by members of this Association are accomplishing anything tangibly constructive for the individual company, are arousing an interest in or an appreciation of the value of the services rendered by an abstract or title company, or are building anything solid in the way of a foundation for future business or increased income.

Your Advertising Committee has just completed a study of some five hundred separate pieces of advertising submitted to it by the abstract and title companies from all sections of the United States. For five years past, your speaker has been a member of this Committee. From year to year he has had an opportunity to observe the types of advertising being used by the members of this Association. They include blotters; books; booklets; calendars; direct mail; folders; legal forms; magazines, newspapers and other publication advertising; novelties; specialties; outside contacts; and a hundred and one other miscellaneous types of advertising and publicity. With a few exceptions, what is the effect of this advertising? Let us cite a fictitious example which might be typical:

You and I operate abstract offices or title companies in a small community. Both of us believe in advertising. The volume of title business in our county is fixed, as elsewhere, by economic conditions and the law of supply and demand as it affects real property. Your Company has assets of $50,000, has been established for many years, is ultraconservative, and controls some 60% of the title business in the community. My Company has assets of only $10,000, is newer in the community, is more aggressive, gets its work out more rapidly and handles some 30% of the local abstract business. This leaves approximately 10% of the business which blows hot and cold between us. Your Company, to offset the aggressive methods of my Company, distributes a large quantity of attractive calendars throughout the community. The advertising copy on them stresses your financial strength, your age, and conservatism. Striking a responsive chord in the minds of the public, the floating title business of 10% is attracted to your doors, for the time being, along with some 8 or 9% of my business. My Company responds with an advertising campaign of its own. It distributes some blotters and takes some space in the local newspapers to tell the public that it can complete a title order in one-third the time required by your Company. As this campaign makes itself felt in the community, my Company regains its lost 8 or 9% of the business, together with the floating 10%, and some 6% of your Company's business. And so the battle ebbs and flows, each of us retaliating by changing our style of advertising or increasing our appropriation as we observe the business drifting from our doors.

Such advertising does nothing to increase the volume of title orders. It merely wears the present volume threadbare—worries at it as two dogs would worry at a bone. We tempt the poor customer back and forth until his tongue hangs out from sheer exhaustion. The only effect of this type of advertising is to tend to shift back and forth a business limited in quantity. It does nothing to make the public conscious of the merit of the service rendered by our companies. It's a case of which of us can blow his own horn the loudest. How much advertising of this character is done—advertising which in no way educates or sells the public on the usefulness of our service to the business world generally!

Is your Company five times better than mine because your assets are $50,000 and mine are but $10,000? Is your Company four times better because it has been in business four times as long? Is my Company three times better than yours because it completes its orders in twenty-four hours while it takes your Company seventy-two hours? What of it? Your harping on the fact that your Company is five times as large as mine does not educate the public on the merits of title service. My telling the public that I can issue an abstract three times as rapidly as you can does not increase the volume of title orders in our community from one hundred per month to one hundred thirty-five. Your reiterating the fact that you have been in business four times as long as I have is not particularly effective in arousing an interest in or an appreciation of the services rendered by a title company. It is our belief that advertising of this type—advertising which sings our own praises to the disparagement of our competitor—has a tendency to cause the public to feel that we are battling each other to the point that we would cut prices in order to get the business—causes them to shop around from company to company—causes them to lose respect for the title business generally. Which brings us to this question: Is there a form of advertising which both of us can use that will, while educating the public, correct this situation and at the same time increase the volume of title orders so that we will not be fighting over the same old business all the time but will have some new business to share?

In attempting to answer this question, may we make an observation or two? We do not believe that the abstract and title companies are taking full cognizance of the part their business can play in the great recovery program now under way, by assisting in the restoration of confidence in real estate as an investment—a fundamental security without which all other assets of whatsoever kind or nature would be of slight value, either from the practical standpoint of use or that of investment. Again, we are positive that such a fundamental commodity as real estate should occupy a much more conspicuous place in the present scheme of things. Finally, it is our conclusion that here is a sore spot which we can very definitely help to cure and in so doing improve our own situation immeasurably. Never, it seems to us, has there been such a timely opportunity for us to be of real service.

Real estate, which for some time has been scraping bottom, is on the eve of starting an upward swing. The nation's housing facilities are woefully inadequate. Vacancies in both residential and business property are decreasing. Property owners, until recently apprehensive about their holdings, are now more optimistic, some of them being actually a little cocksure. More prospective buyers are in evidence and investors are once more in the field on the lookout for advantageous realty loans. Building permits are on the increase. The FHA program is apparently beginning to really take hold, augmented by the activity of the RFC Mortgage Company. In our own field we have the opportunity of noting the improving tone of real estate. Trans-

fers and exchanges are becoming more active. Realty filings are increasing generally as the vast government lending program is becoming leavened with money from private lending sources. Every sign indicates that the real estate market is potentially ready for an upward swing and is just hovering on the brink waiting for some restoration of confidence that will shove it off.

The stage is all set. If we will only provide the push, the demand for real estate will go surging to new high peaks that will carry the need for our services along with it, resulting in many new title orders for us.

We can "set off this spark" by a well planned advertising and publicity campaign, creating confidence in real estate as an investment, which has behind it the concerted effort of all of the abstract and title companies in the nation. In undertaking such a campaign, we will accomplish five worthwhile things that surpass anything any of us have ever before envisioned—five things that are very much worth accomplishing. (1.) We will inspire confidence in the minds of the public in the basic commodity, the transferring and encumbering of which means our livelihood. (2.) As a consequence, the increased activity in real estate will result in many new abstract and title orders for all of us—not the old, moth-eaten ones that we have been chasing back and forth across the street but crisp, clean, new ones. (3.) We will become the official source of real estate statistics and information and this of itself will bring additional business to our doors. (4.) We will be able to sell the public on the merits of our business, the important niche it occupies in the business life of the community, and at the same time educate people as to the usefulness and absolute necessity of our service. (5.) By sponsoring such a campaign, we will gain the genuine and whole-hearted support of every realtor, mortgagee, banker, and property owner in our respective communities.

To be effective, what this campaign must accomplish is this: First: Create confidence in the minds of the public in the safety of real estate as an investment. Second: Make the public conscious of the need of reliable abstract or title insurance service as a safeguard for their investments, in exactly the same way that they are conscious of the need of protection for their other assets through other forms of insurance.

And now, as to how this job shall be done. It is not a job for any one company, though every company that adopts such a program will help the idea along just that much. To be successful and effective, it can only be done collectively. Cooperation is the only possible method.

Through cooperation, we have set up our state and national title associations. Who will deny that this step has not brought us a long way from the old days of "every man for himself;" has not been of inestimable service to us through the benefit of the exchange of ideas, experience, and practice; has not at times, in fact, saved our very necks when harmful legislation and other dangers threatened to put us out of business. Through cooperation, we have boards of title underwriters in some states which have enabled us to set up a standard price for our work, to adopt standard policies and forms, and to subscribe to standard practices. These are only two examples of what cooperation can do and has done for our business to date. Now we propose an advertising campaign built on the principles of cooperation. To begin with, therefore, we must bury the hatchet and work with each other. We feel sure that you would do this if you felt that any one of the five things we have pointed out above could be accomplished. Isn't that true? Here is one more example of where cooperation will mean dollars and cents in all of our pockets—will mean better business; surer futures; less antagonism, a better understanding, and a friendlier attitude on the part of our clients and the public. Isn't such a goal worth striving and making some sacrifices for?

Ordinarily, when we hear of cooperative advertising campaigns on a national scale, many of us immediately get a mental picture of full-page, cooperative ads in some of the national magazines. Such campaigns are fine but require a large appropriation—more than an organization such as ours can afford either individually or collectively. Such ads also require exceptional copy. With our membership scattered from coast to coast, from Canada to Mexico, with the variation in the product which we sell—abstracts, certificates, title policies—it would be difficult to prepare national advertising copy which would give a true picture of either our product or services. We therefore do not believe that it is practical to attempt this form of campaign. Rather, our proposed campaign is a fourfold one that has the advantage of being largely local in character.

First, *Publicity:* Throughout the country the newspapers are anxious to receive and ready to print publicity stories favorable to real estate. Get together with your competitor or competitors, form a local publicity committee, and discuss what to release in the way of publicity to your local papers. It may be a list of recent sales and exchanges in your community—released, of course, with the consent of your local realty brokers. The Realtors will be glad to get the publicity, the papers will be glad to print the facts, and the releases will indicate activity in your local real estate market. Some companies are furnishing stories to the papers on realty filings, mortgage and trust deed financing, building permits, vacancy surveys, population increases, and utility connections such as gas, electricity, water and telephones. Some of this data is easily available in your own files and can be accumulated from the records of the various public offices you contact daily. Some of it you will have to obtain from your local utility companies, legal newspapers or your chamber of commerce. In any event, experience has shown that when you once start furnishing such data to your local papers, they will feature it, give you credit, of course, and under no circumstances listen to your discontinuing it. Other companies make a specialty of releasing short reports to the papers on new legislation, recent court decisions, information on paying taxes and many other things of interest to property owners, realtors, mortgages, and bankers—facts which are not conveniently available to them but which are "stock-in-trade" to us. All such items find a ready spot in the real estate development sections or news columns of the newspapers and all play their part in stimulating interest in real estate ownership and real estate as an investment. The beauty of this part of the proposed plan is the fact that it costs you nothing except your time and any miscellaneous expense you might incur in accumulating outside data.

Second, *Local Title Publications:* Supplementing your publicity program, one of the finest forms of advertising is a publication or house organ dealing with subjects similar to those mentioned in the preceding paragraph on publicity. A California company over a period of years published such a magazine dealing with building permits, realty recordings and realty financing. This publication also carried brief, well-edited items on the importance of title service, latest developments in legislation, etc. So effective was it that the week following the mailing of each issue saw the number of title orders handled by this company increase some 20%.

The frequency and regularity of a house organ makes it a powerful medium of advertising. Repetition is a strong psychological force. Once your readers find something interesting and worthwhile in your publication they welcome its appearance. Being authentic in its statistical data it is authoritative. If they accept it as authoritative in this respect, they will accept it as authoritative in matters of real matters of real estate investment and title practice as well. Such a publication is one type of advertising which, skillfully handled, not only sells the public on real estate as an investment but also subtly gets over the necessity for adequate and dependable title protection.

Get together with your competitor. Launch a publication of this type, mail it to a commonly selected mailing list and split the expense. You'll be astounded at the favorable reaction you receive from the public and the degree to which it causes people to start talking and thinking in terms of real estate. As to the cost, an attractive

4-page publication, 8½x11 inches in size, printed on good coated stock, can be placed in the hands of your clients for approximately five or six cents per copy. This cost would cover printing, envelopes, postage, addressing, cuts, engraving, and the salary of a clerk to compile the statistical data carried in the publication. The cost is based on an issue of 5,000 copies. Said cost can, of course, be materially reduced by multigraphing or mimeographing your publication, which, when well done, is almost equally effective.

Third, *Talks and Speeches:* From time to time you are asked to speak on the subject of your business before your local luncheon or service club, a class in your public schools, a chamber of commerce or similar meeting. Here is a real opportunity to get over our proposed program. To begin with, your talk to be acceptable, in all probabilities, will have to be limited to a treatment of some phase of the title or abstract business or the place it occupies in the business life of the community and cannot take the form of a eulogy on your own company. There are many ways in which our business can be pictured in an interesting manner. You can trace its growth from the Colonial days, before this country became a republic. You can describe the tremendous amount of detail and briefly trace each step in issuing an abstract or title order. You can point out what a wealth of information must be accumulated in the building of a complete and adequate title plant—information, some of which you may never use, but which must be included just the same against that day when it might be required. You can select some well-known property in your community and trace its chain of title through all ownerships from the beginning, pointing out how it has steadily increased in value, and adding a bit of romance and human interest here and there. In the preparation of talks telling of some phase of the title business, it is comparatively easy to weave in interesting facts and data regarding the commodity with which our evidences of title deal. When you have completed the delivery of a talk which skilfully combines the two subjects, your listeners will not only be converted to the idea that real estate is the basis of all wealth and is after all one of the best investments in the world but also will realize that as an investment it can only be safe if the title, evidencing its ownership, is adequate and dependable.

So strongly do the companies in California feel on this subject that many of them maintain public contact men who, as an important part of their work, line up and make such talks. Just before coming to Memphis for this convention, they voted an appropriation of $400 in prize money for a contest open to title employees for papers, the subject of which was "any phase of the title business which is effective in arousing an interest in and an appreciation of the value of the service rendered by a title company." The contest is being sponsored by our Boards of Title Underwriters under the supervision of our State Public Relations Committee. As a result of it we hope to assemble, edit, and release outlines for some very fine speeches for the use of our members.

Here again is a phase of our proposed cooperative campaign which will cost you nothing. Discuss this plan with your competitor. Dig up ideas for a couple of good talks. There is ample material in your county. Choose the idea that appeals to you most. Dress it up and weave into its structure enough facts on real estate in your community to make it sell your listeners. You'll not long want for an audience. As soon as they learn that you have such information available, the members of your realty board or service club will be camping on your doorstep eager to have you address one of their meetings.

Fourth, *Adopting and Keying All Printed Advertising to This Same Vein of Thought:* Newspaper and magazine space, blotters, books and booklets, calendars, direct mail, folders, novelties and specialties—all offer unlimited possibilities in getting over our proposed program. You don't have to increase your advertising appropriation. Simply take those mediums that you are now using and key the copy to fit our theme. In such advertising mediums as books, booklets, folders and direct mail, ample opportunity is offered for telling your complete story. In detail, you can describe the necessity for and usefulness of abstract or title service. Direct mail may be used to particularly good advantage as a means of educating the public. The additional space also gives you the opportunity of deftly including some information on real estate supported by factual data.

A splendid example of what can be done in the preparation of booklets is a series now being issued by Title Guarantee and Trust Company on the municipalities of Los Angeles County. Each of these booklets portrays the history of the growth of a city—from 1769, the day the title to the land on which it is located was vested in the King of Spain. These histories, of course, follow the thread of title and in so doing describe the enhancement in the value of real estate with the passing of the years. In the introduction to the booklet entitled "Santa Monica" President Morlan says, 'I am quoting) "The life story of Santa Monica, and of every city, lies buried in the deeds conveying its land and in the contests over land titles. The records of property transfers and court actions are the dry bones of local history. If to them is added the results of a little study and of pleasant talks with men who have good memories, they take on flesh, blood and life. This booklet, which I asked W. W. Robinson to prepare, springs out of Mexican archives, United States patents, first deeds, old court files and early maps; the musty source material upon which every land owner in Santa Monica must rely and to which every title insurance company goes to build its plant. I felt that if the dry bones of public and private records were shaken up a bit a story might come forth of interest to many people." (That is the end of the quotation.)

We urge everyone to secure a copy of this booklet. Study it and see if you do not agree with us that it would be difficult to do a finer job of selling real estate as an investment or the important part played by title service than is done in this booklet—and yet no direct reference is made to either of these subjects anywhere in the publication.

Blotters, calendars, novelties and specialties are ideal for carrying short messages dealing with real estate as an investment and the importance of title or abstract service. Repetition in brief, succinct paragraphs driving home these messages will produce results. Newspaper and magazine space when small can be employed in the same manner. When larger, such space lends itself to even more effective messages, particularly when dressed up with illustrations and charts.

In my own state, if you will once more pardon the reference, several companies devote their newspaper and magazine space to ads of this type. Here is a sample of an ad, 3 columns by 16 inches in size, containing an illustration of an attractive little home, which Title Insurance and Trust Company ran in the metropolitan dailies of Los Angeles: (I am quoting)

Many Los Angeles County Families
Now Have
NEW HOMES

In every neighborhood new homes now sparkle in the sunshine.

Since the first of this year 1,734 new single homes have been built in the city of Los Angeles. Today in city and county thousands of new homes are under way because:

1—Building lots can be purchased now at prices much lower than those formerly asked.

2—Building loans for legitimate projects are easy to obtain.

3—People are thinking about new homes.

Have you considered the needs of *your* family? Perhaps your home is now inadequate.

Plan to own your own home.

Ask a real estate broker to show you a lot or a house in the locality in which you would like to live.

(I have finished quoting.)

You will find a copy of this ad in the Advertising Exhibit.

Our own company carries the following copy in a half-page ad in the California Real Estate Magazine:

(Quoting)

HAVE FAITH

Maintain your confidence in California Real Estate. There is no sounder investment.

(End of Quotation)

The newspaper advertising of the Chicago Title and Trust Company offers the finest example of the theme we have been discussing that has ever appeared. You are possibly familiar with these campaigns, but here briefly is a summary of them.

The first one was built around the theme "100 Years of Chicago Land Values." An ad was devoted to each section of the city with historical data about the growth of that section and the steady increase in its realty values. Each ad was concluded with a statement reading in part as follows: (I am quoting) "Real estate values in most sections of Chicago have moved up and down with the five great land cycles through which the city has passed. Every major financial crisis--1837-57-73-93 and 1929—caused land values to depreciate. But panic, war and fire have never destroyed these values nor permanently depressed them. Within four to six years, land values always have turned upward again. Then has followed a constructive period of twelve to thirty years, during which aggregate values have advanced to a new peak far above any previous one, and thereafter have never again gone as low as in any previous depression. Chicago real estate, conservatively valued and well purchased, has proved itself one of the soundest and most profitable forms of investment." (The quotation is finished.) In a statement regarding the purpose behind this campaign, carried in the first ad of the series, the Company said in part: (Quoting) "This company does not trade in real estate nor real estate securities. For 86 years its business has been to keep the records of Cook County real estate, to make abstracts of title and issue title guaranty policies. The records of the company have played an important part in this study of Chicago land values. By assisting in the publication of the results, the Chicago Title and Trust Company hopes to serve the interests of sound and conservative real estate ownership in Greater Chicago—to assist recovery —and to advance the knowledge of real estate as an investment." (That ends this quotation.) These ads are one-page in size and handsomely illustrated with cuts and charts.

The second series was on home ownership. Listen to some of this copy: (I am again quoting) "No time like the present. Now is an excellent time to buy a home. More than 96% of single family dwellings in the Chicago area available for rental are occupied. Increasing occupancy means higher rents and higher prices, but there are still attractive opportunities to purchase a home. Plan to buy your home." And a second one: (Still quoting) "A Homely Recipe. A little capital—a little courage—a little self-denial are all that are needed to acquire a home. A little capital for a small down payment. Courage sufficient to buy and live in a home within your means. Self-denial until the home is paid for. Plan to buy your home." And again: (A third quotation) "Back to the Land. The home owner enjoys an independence which typifies American traditions. In him the value, obligation and responsibility of citizenship are exemplified. Buying and making a home is the great adventure of life for the average family. Right now there are hundreds of attractive opportunities in the Chicago area." (And one more quotation) "A sign of the times. While the real estate market is still far from normal, the number of homes closed in escrow through our office currently is larger than during the same period last year. Increasing activity in real estate transfers has always been a forerunner of higher prices. A family in need of a home will do well to look for it now." (The end of this quotation.) And so this copy runs through twelve beautifully illustrated full-page ads. Each ad closes with the statement, "Ask a real estate broker to assist you in your selection," and at one side in small type are these: "3 Suggestions. Select a home you can afford to own. Make sure it is convenient to schools and transportation. Insist upon a title guarantee policy by Chicago Title & Trust Company." While these ads were appearing in all of the larger Chicago daily papers, many publications cooperated by publishing editorial matter calculated to turn the attention towards home buying and to feature the increased activity in the residential real estate market.

The series now being released by the Company deals with the six factors indicating real estate recovery—Occupancy, Rent, Taxes, Mortgage Money, Construction Costs, and Operating Costs. This data has also been published by the Company in a booklet under the subject "Six Factors in Real Estate Recovery." We call your particular attention to this booklet and the newspaper advertising of Chicago Title and Trust Company, which you will find in the Advertising Exhibit.

Printed advertising such as we have just cited is not prepared to exploit the individual company. It is written to stimulate activity in the real estate market and convince people that real property is an ideal investment. Such companies are looking to the future. They realize that while this type of advertising may not mean business tomorrow, next week or next month, it will give impetus to the real estate market, inspire confidence in real estate ownership and financing, and as the market gathers momentum new title orders will result and all title companies in the community will profit by the new busiess thus produced.

Now as to the preparation of advertising copy in this vein. You can either get together with your competitor, agree that your future policy will follow these lines and then each prepare your own copy, keeping the theme always in mind, or, better, you can get together and work out suitable material and then each of you use separate ads thus approved or use all of them either with joint signatures on the same ad, or separately and simultaneously. The future advertising committees of the Association might be called upon to assist in the preparation of suitable copy or might even be instructed to prepare complete advertising pieces as suggested in a letter from Mr. Pullen, a member of this year's committee, from which I quote as follows: "A number of our abstract and title companies use blotters and calendars. These have a definite value as advertising media, I believe, particularly blotters in that (1) they are relatively inexpensive, (2) they are useful to the recipient, and (3) they can be mailed as enclosures with statements and correspondence at no extra expense for postage. It occurs to me that perhaps more of the members would use these if we could place them in their hands at a smaller cost than they could buy them individually. This might be done by furnishing a series of blotters, perhaps each one bearing a monthly calendar, and each one carrying suitable advertising. These could be bought in large quantities at low prices and in that way any company could order as many as it could use and have its name imprinted on the number desired. By purchasing the blotters through the central office and having each blotter state one single advantage of a title evidence it would serve not only to educate the public generally in title matters but would give a national hook-up through The American Title Association to every individual member firm, thus strengthening the value of membership in the Association." (I have finished the quotation.) This seems to us an excellent idea.

In conclusion, may we ask you to try and get a mental picture of the possibilities of such a campaign as we have here outlined? One thousand, nine hundred and thirty-six companies in forty-five states of this nation simultaneously releasing carefully prepared data regarding the soundness of real estate as an investment, coupled with cleverly worded educational material on the importance of protecting that investment by obtaining the best in abstract and title service. Two or three publicity stories every week in the newspapers of almost two thousand communities throughout the country. And in every one of these counties, reliable facts and figures on real estate emanating regularly from one or more title offices, in printed form, through the mail, and by spoken word. Is it any wonder that these offices would soon come to be regarded as the logical source of such information?

Such a campaign would give real property a nation-wide impetus such as it has never known. With the potential shortage in housing facilities, the thousands of investors who are looking for a safe place for surplus funds, the tremendous financing program of the Federal Government, with real estate at prices that will not soon, if ever, be duplicated, or in other words, with everything all set for it, such an advertising campaign would prove the fuse that would set off a blast of real estate activity that would almost amount to a national boom. The resulting flood of new title business that would pour into our offices would many, many times more than pay back our investment.

Through the sponsorship of such a campaign, we would gain not only the genuine and whole-hearted support of every realtor, mortgagee, banker, and property-owner in the community but also their friendship, their good will, and their cooperation. All of us know that through the recent years of depression many of these individuals have regarded us in any but a friendly light. Many real estate brokers have complained that our prices were so exhorbitant that their sales were spoiled. Some mortgagees and bankers have said that our services in refinancing were superfluous and that we were entitled to only a fraction of the fee we charged. Countless property owners have considered us only as a necessary evil and howled to high heaven about our rates, even at a time when we were actually charging only a portion of our regular fee in an attempt to cooperate with the Federal Government in helping to put over the program of the Home Owners' Loan Corporation.

Think what it would mean to us to have all of these individuals friendly, ready and willing to cooperate, all boosters for our service, and all feeling that we deserved the gratitude of the entire community for the contribution we had made. If we had their good will and unqualified support, our task of completing their education in the use and necessity of our title service would be doubly easy.

We're optimistic enough to believe that the cooperative advertising plan which we have proposed would accomplish all of this and more. The Railroads of America are now considering a cooperative advertising campaign on the subject of Transportation, without the mention of a single individual road. They feel if they can sell people on the idea of traveling that each of the roads in turn will share in the increased revenue from the resulting traffic. If the railways can cash in on a campaign based on Transportation, we believe that the title companies can cash in on a campaign based on Real Estate as an Investment.

Isn't it worth trying?

Report of 1935 Advertising Committee

HARVEY HUMPHREY

Los Angeles, California

The record of the work of your Advertising Committee during the past year may be cited as an example of what cooperation can accomplish when really given a chance.

At the beginning of the year the only idea that the members of your Committee had was the idea that they wanted to accomplish something worthwhile in the way of advertising for the membership of The American Title Association.

The first lift came from Executive Secretary James E. Sheridan, who suggested a short article on advertising which his office could send out as a part of its regular bulletin service. This was done and came out as Bulletin No. 69.

Our next step was our letter to the membership in March, asking for samples of effective advertising and publicity, used in each community, in order that the Committee could make a study of present methods and publish its findings in a Bulletin on Advertising. This we felt would be particularly beneficial to those members who could not attend our convention and personally see the Advertising Exhibit —would, in fact, bring to them a sort of Advertising Exhibit in miniature. Through the cooperation of our membership, some five hundred pieces of material were submitted, and after making our analysis, through the cooperation of my own Company, three thousand twelve-page bulletins, containing this study of advertising methods now in use by our members, were mailed out September 1st by Mr. Sheridan.

In July, Mr. Wm. Gill, Chairman of the Abstracter's Section, contributed an excellent idea to your Committee in the form of a suggestion that more interest could be created in the Convention Advertising Exhibit if the contest element were injected. With the cooperation of Mr. Gill, President Henley, and Executive Secretary Sheridan this idea was worked out, as described in a bulletin, mailed with the above mentioned Advertising Bulletin. Further cooperation was lent to this plan through additional letters addressed to all state association members by their officers, requesting them to forward their advertising to Memphis as part of their state entry in the Exhibit. This Contest idea has enlarged the Exhibit materially this year.

The Advertsiing Exhibit at this Convention is also a splendid example of cooperation both on the part of members submitting material and the help which your Chairman has received from the other members of the Committee.

Finally, three of the four members of the Committee are present at this Convention and would be happy either individually or collectively to discuss your advertising problems with you. As we stated in our letter in Bulletin No. 69, we do not set ourselves up as experts but we will be glad to give you our opinions, suggestions and criticisms for whatever they are worth.

Perhaps in passing you would like to know how the members of your Committee individually feel about advertising. Mr. Paul P. Pullen, Advertising Manager and Director of Business Development for the Chicago Title and Trust Company is a firm believer in continuous, educational and cooperative advertising. One of his ideas along this line forms a recommendation later set out in this report. He says in part, (I am quoting) "I have always been impressed with the fact that the advertising job for title companies is one of education and continuous cooperation. It is educational in that so few people, compared to the total number of real estate owners, are cognizant of what title insurance is and does. It is cooperative in that there is no real competition among title companies in the same area and there is plenty of business to go around." (I have finished quoting.) (Business must be better in Chicago than it is in some of our other communities, Paul.) "My further thought on the matter," he continues, "is that spasmodic advertising involves a large waste of money and effort. It is better to do a small amount of advertising continuously than to try to cover large advertising space spasmodically."

Mrs. Helen Lucas, Manager of the Atlas Abstract Company of Holdenville, Oklahoma, states that she does not feel qualified to pass upon title insurance advertising but of advertising from an abstracter's viewpoint, she says in part, (Again quoting) "Abstracting is a peculiar thing—the man who benefits from the abstract never pays the bill and never has anything to do with where the abstract is made. Ninety percent of our business comes from real estate agents, bankers, lawyers, mortgage loan and oil companies. Hence, I think, without question that some form of direct mail advertising has a much greater value than some other types of advertising. Personally, I know that one of the most effective things we have ever done is to give some useful gifts, to the above customers particularly, once a year, something they will use and keep before them all the time." (That is the end of this quotation.)

The third member of our Committee, Mr. J. L. Boren, Manager of the Bluff City Abstract Company of Memphis, Tenn., has been busy a good part of the year on plans and preparations for this Convention. As Vice-Chairman of the Entertainment Committee, he is helping to preside over the "Reception

Room," an innovation tendered gratis to visiting delegates. And if you don't think that that is effective advertising, just visit the Reception Room and watch "J. L." in action.

The opinion of your Chairman on advertising was partially expressed in the Advertising Bulletin, mentioned herein, and partially in a paper on Advertising being presented at this Convention.

As a part of this report we would like to make two recommendations to the incoming officers of the Association. (1.) In line with Mr. Wm. Gill's suggestion to your Committee, the contest idea in connection with the advertising exhibit, either as set up or with some variation, should by all means be continued and we so recommend. With more time to plan, it can be made much more effective next year and possibly a perpetual trophy offered. Also other developments of this contest idea might be considered—angles which were also suggested by Mr. Gill. (A) A contest between State Associations with a trophy for the Association putting out the best publication, bulletin or letter service to its members. (B.) A contest which would contemplate a contest within the state association first and then the winning advertising material exhibited as the state entry in our National Convention Display. (C.) A contest open to all companies individually, with a trophy to the company entering the best advertising or single ad in the Exhibit.

(2.) Mr. Paul P. Pullen of our Committee makes the following suggestion —a suggestion which we have also mentioned in our Paper on Advertising: (I am quoting) "A number of abstract companies use blotters and calenders. These have a very definite advantage as advertising media, I believe, particularly blotters in that (1) they are relatively inexpensive, (2) they are useful to the recipient and (3) they can be mailed as enclosures with statements and correspondence at no extra expense for postage. It occurs to me that perhaps more of the abstract companies would use these if we could place them in their hands at a smaller cost than they could buy them individually. This might be done by furnishing a series of blotters, perhaps each one bearing a monthly calendar, and each one carrying the advertising of The American Title Association. These could be bought in large quantities at low prices and in that way any small abstract or title company could order as many as it could use and have its name imprinted on whatever number it desired. By purchasing blotters through a central office and having each blotter state one single advantage of a title policy or abstract it would serve not only to educate the public generally in title matters but would give a national hookup through The American Title Association to every individual abstract firm, thus strengthening the value of membership in the Association." (I have finished quoting.) We recommend that the incoming officers consider this suggestion of Mr. Pullen's and if acted upon favorably that the 1936 Advertising Committee be instructed to prepare suggested copy and obtain prices for such a series of blotters.

On March 25, 1935, your Advertising Committee wrote you as follows: "For several years past, the efforts of The American Title Association Advertising Committee have been almost wholly confined to setting up a display of title and abstract advertising at the national convention. Very little else was done . . . While the convention display is most valuable, its usefulness is limited to the delegates in attendance and the thousands of abstracters and title men who are unable to attend derive no benefit whatsoever. In order that the 1935 Committee may be of some service to every member of the Association we are asking you . . . to write to us and tell us of any type of advertising and publicity that has been used with success in your community . . . Send us samples . . . and with this information before us we can analyze it and send a bulletin to our members setting out the highlights . . . Thus your Committee can serve as a sort of clearing house for advertising that has produced results. Such an exchange in ideas should prove of benefit and will in a way be a substitute for the display at the convention for those members who cannot attend."

Response Gratifying

The response to this letter, while somewhat limited, was most gratifying. Answers were received from almost every section of the country, nineteen states in all, and the desire to cooperate with your Committee was only equaled by the hope and belief expressed in many of the letters that the resulting bulletin would be of benefit to the membership.

Advertising Matter Analyzed and Described

All material forwarded to us has been studied, and is described in detail in this Bulletin. For your convenience, it is set up under the following thirteen headings: Blotters; Books and Booklets; Calendars; Direct Mail—Letters, Cards and Bulletins; Folders, Financial Statements and Rate Schedules; Legal Forms and Folders for Same; Magazines and Miscellaneous Publications; Maps; Miscellaneous; Newspaper Advertising and Publicity; Novelties and Specialties; Outside Contacts and Talks; and Scratch Pads. This analysis was printed and mailed out to all members from National headquarters in September.

The committee wishes to express its appreciation to President Benj. J. Henley, Executive Secretary, James E. Sheridan, Wm. Gill, Chairman of the Abstracter's Section, and the members of this Association who have, during the past year, given us the benefit of their ideas, suggestions, and cooperation for the advancement of our program. The thanks of the Chairman is also hereby publicly tendered to the members of the Committee.

Maybe Your Advertising is Not Here

Please remember that there were many hundreds of companies from which we did not hear. Also some of the companies from which we did hear undoubtedly neglected to send copies of all of their advertising material to us. Still again, some companies told us briefly of their advertising and did not enclose samples, some of which may have been outstanding. Our analysis is necessarily limited to that material before us. We hope that we have done it justice and that the analysis has been handled in a way that will be of service to you. We have tried, as nearly as possible, to picture these various forms of advertising for you—tried to bring to you an advertising exhibit in miniature. We would like to enclose samples of every piece, but this, of course, is impossible.

How to Use This Bulletin

May we make this suggestion as to the use of this Bulletin? First (admitting that all of us need advertising of some kind): Try and analyze your clients, your community, and your sources of business. In doing this, ask yourself these questions: Do I wish to appeal to any one certain group or the public generally? Considering the class of people in my community, what type of advertising might appeal to them? In analyzing my sources of business, shall I try to educate them through prepared courses of education or carefully planned talks? Shall I try to sell them on my product through logical display space and lucid pamphlets? Shall I cultivate their friendship through a campaign of direct mail? or, shall I make a bid for their goodwill by making them a gift of some kind? Second: When you have come to some decision, turn to the section of this Bulletin where that type of advertising is described. If you are an abstracter, study those ideas used by abstracters first, but do not overlook the ones used by title men as well. And always remember this: Advertising is one of the most flexible things in the world. A well prepared blotter or scratch pad may carry a message just as effectively as a newspaper ad and vice versa, so do not overlook any bets. The idea you want may be a pamphlet or it may be a gadget. Third: When you have found something that sounds as if it might have possibilities, write to the company using it and ask them for a sample or a full and complete description of it. When we asked the membership to submit their data we did not also ask if we might offer samples of their advertising pieces to any members wishing them but some have voluntarily offered to send samples to anyone interested and we feel sure that others will be glad to do so upon re-

quest just as you would be willing to pass your idea along to the other fellow. Fourth: And while you are studying the contents of this Bulletin for the answer to your own advertising problem, may we urge you to reread that part of it devoted to Comments by the Members. Buried in one of those letters may be the germ of the very idea you are looking for.

Trends and Conclusions

If the contributions we received represent a true cross section of the advertising picture in our Association (and it must, for those who are interested in advertising cooperated with us), it would be a little difficult to discover a trend or draw a conclusion. This is particularly true when you consult the thirteen headings and learn that no one form of advertising was greatly favored over any other. However, if your Chairman may make a personal observation, he will point out one trend. He has had the privilege of serving on the Advertising Committee for the past five years. One very definite factor is noticeable this year, and that is a marked improvement in quality and character of advertising over the past four years. This causes him to draw one very obvious and encouraging conclusion: Business is better—We're taking a new lease on life —and in a little more cheerful frame of mind, not only are our ideas becoming brighter but we're optimistic to the point where we'll spend some money in dressing up those ideas.

A Word of Appreciation

In conclusion, may we take this opportunity of expressing our appreciation to every individual and firm who cooperated with us in this task. Without your ideas, your suggestions, your splendid letters, and your encouragement the publication of this Bulletin would have been impossible. We do thank you for this opportunity of serving you and if only one company gets only one worthwhile idea out of this mass of material we will feel amply repaid for our work. May we ask one favor of you in return? If you can find time, will you write to us and give us your reactions, good or bad. We'll be as glad to have criticism as commendation, for in either event we'll know you are thinking about advertising at any rate.

Titles for Resettlement Administration

MONROE OPPENHEIMER

Assistant General Counsel
Re-settlement Administration
Washington, D. C.

The introduction of your chairman, describing Assistant Attorney General Blair and myself as "Missouri mules", far from being insulting, was somewhat appropriate to the subject matter of my remarks here today. I have in mind a rather famous opinion of Judge Lamm of the Missouri Supreme Court in which he speaks of the Missouri mule as having "neither pride of ancestry nor hope of posterity." From certain complaints which have been made to me as to the method in which abstract and title work has been handled in the past, I am somewhat suspicious that your chairman might have had in mind this epigram of Judge Lamm.

I frankly recognize that certain aspects of the abstract and title work inherited by the Resettlement Administration from the old Land Program have been the source of considerable complaint and friction, and that these complaints and friction might be regarded from a hasty analysis as precluding our Land Title Section from having any pride of ancestry in the old Land Title Section to whose functions it has fallen heir. However, when it is remembered that the original Land Program was instituted under tremendous handicaps I believe you will agree that whatever imperfections may have developed in the stress of emergency activities were more than compensated by the substantial progress which was in fact achieved.

As you no doubt observe, I am speaking extemporaneously. My remarks are not in the nature of a formal address but simply an attempt to explain what the Office of the General Counsel is doing in connection with the abstract and title work, and to indicate how certain difficulties which have occurred in the past and which were inherited from the old Land Program are being corrected.

The Office of the General Counsel of the Resettlement Administration was established in June, 1935. By Executive Order 7028 there was transferred to the Resettlement Administration the powers and functions of the Federal Emergency Relief Administrator and the director of the Land Program, together with all personnel employed under their supervision. Naturally a little time was required before we could become oriented to the work which had been carried on. Upon analysis we found a Land Title Section in Washington consisting of approximately one hundred persons carrying on a great variety of functions. We soon learned of the complaints which were being received from abstractors and title companies and became acutely aware of the friction that was developing between our office and the abstracting and title certificate profession.

Upon analysis of these complaints we found that they dealt in the main with two matters. First, the price at which abstracts were being obtained, and, second, the delay which abstractors and title companies were experiencing in securing payment for abstract bills.

In order to correct these difficulties we were successful in borrowing the services of Mr. Edward Wyckoff past President of your association, for a few months last summer. Mr. Wyckoff came to Washington in the month of July and by the end of August we succeeded in making a very thorough survey of what our title work really was and how it should be organized on the most efficient possible basis. In addition, Assistant Attorney General Blair, whom you have just heard, was of the greatest help to us in or reorganization. In fact, it is difficult for me to adequately express the appreciation which we have for the splendid cooperation which the Department of Justice and particularly Mr. Blair himself have given to us.

As a result of the joint work of Mr. Wyckoff, Mr. Blair and our staff, we were able to arrive at a reorganization of our Land Title work so as to greatly simplify title clearance and expedite the payments of abstractors and title companies.

Under the procedure which we inherited, abstract contracts were submitted to Washington after solicitation of prospective abstractors had been carried on in the field. When the contract was made, specific abstracts were likewise ordered from Washington for delivery to the field attorneys of the Department of Justice. When the Department of Justice field attorneys had rendered their preliminary opinions these were not sent to the home office of the Department of Justice. Instead they were sent to the Land Section of the Land Program where the abstracts were reviewed a second time and in effect a second preliminary opinion prepared. Curative work was obtained after this second examination, through correspondence between the Land Title Section in Washington and attorneys located in the field. Only after the abstracts had been reexamined by the Land Title Section, and the curative matter obtained, were the opinions of the Justice field attorneys delivered to the Department of Justice in Washington.

It was our mature opinion that this procedure involved unnecessary duplication of work and needless delays in correspondence. To correct this situation, we drastically reorganized the Land Title work. The Washington staff was reduced from about one hundred to about fifteen. The field staff was correspondingly enlarged. Abstracts are now examined only once in the field and then transmitted directly to the Department of Justice. Curative matter is obtained in the field by field representatives, eliminating the delays and difficulties of attempting to obtain curative matter through correspondence.

With this background in mind I can return to the question of delays in securing payments for abstract work.

The form of abstract contract employed by the Land Program required that no abstract could be paid until the abstract had been continued to show vesting of title in the United States. This meant that abstracts could not be paid until title clearance was completed. An attempt has been made to meet this difficulty as to the old abstract contracts by expediting title clearance in the manner pointed out above.

The second difficulty which we found

was that certain requirements of the Comptroller General's Office had not been complied with by the old Land Section. The abstract contract had not been filed with the General Accounting Office; required data as to the method of securing the abstract had not been obtained; the bills which were submitted were not in accordance with the accounting and auditing requirements of the General Accounting Office, and the required voucher forms had not been furnished to the abstractors for submission with their bills. We are at the present time attempting to correct these defects as expeditiously as possible. The proper voucher forms have been forwarded to the abstractors with instructions as to the method for preparing their bills. The abstract contracts have been filed with the General Accounting Office and required data with respect to the letting of the contracts is likewise being supplied. I am happy to say that checks have already begun to move to abstractors and that we anticipate that further payments will be made without much greater delay.

As to future abstract contracts, I am confident that we have profited sufficiently by the experience of the Land Program so as to avoid most of the delays which have so unfortunately arisen under the old abstract contracts. In the first place the new form of abstract contract provides for the payment of a specified percentage of the cost of each abstract upon preparation of the initial abstracting work and the approval of the form of the abstract by the Attorney General. As a result it will no longer be necessary to wait until the continuation of the abstract at the time of closing before the abstractor can receive any compensation. Secondly, even as to the final payment, our new title clearance procedure should enable payment within a relatively short time. Thirdly, we are complying meticulously with the requirements of the General Accounting Office and are supplying all abstractors and title companies with necessary instructions for the proper preparation of bills and vouchers.

With respect to the prices at which abstracts were obtained, there is nothing much that the Office of the General Counsel of this Administration can do, assuming that any particular instances of prices were such as to warrant complaints. Since the arrangements represent existing contracts we have been able to find no legal basis upon which payment thereunder could be at any rate other than the specified contract rate.

Whatever may have been the difficulties with respect to price under the old Program, I believe that the present procedure of our office in securing abstract contracts should work out satisfactorily to all concerned. Our present procedure is the procedure prescribed by statute for the awarding of all government contracts; namely, on the basis of competitive bids from all abstractors or title companies in a position to prepare the work in question. The lowest bidder, assuming he has the facilities for carrying out the abstract work within the time required, will be awarded the bid. I do not anticipate that there will be many instances in which the lowest bid will be so obviously out of line with the ordinary price for similar work as to preclude us from awarding the contract to such bidder.

I realize that difficulties which have arisen in the past cannot be completely dismissed by a talk of this type. I do hope, however, that you will believe that we are making every possible effort to correct the difficulties under the old contracts so far as is legally possible. As to future contracts, I feel quite confident that there will be relatively little cause for friction. Naturally there will be occasional misunderstandings, occasional delays. The Program for which we are responsible is of such magnitude that it would be a miracle if occasional misunderstandings, delays or difficulties did not arise. However, I do believe that the reorganized procedure which we have developed will enable us to enter into abstract contracts and to expedite payments thereunder, satisfactory both to the government and to the individuals or firms furnishing such services.

I feel quite fortunate in having been in this city at this time so as to be able to make this explanation of our past difficulties and the new procedure under which we are hoping to avoid similar problems.

Report of Legislative Committee

McCUNE GILL
Chairman
Vice-President, Title Insurance Corporation of St. Louis
St. Louis, Missouri

This is the Legislative Committee speaking; and modestly reporting that its members in every State have again defended the faith and saved the nation. That, with the aid of reams of fervid oratory delivered in committee rooms, and thousands of seltzer bottles emptied in hotel rooms, your business has been preserved for posterity. Or if not for posterity, then at least for the next two years.

ARIZONA passed a fine United States Judgment Act which provides for docketing all judgments Federal and State and also recording them in the Recorder's Office before they can become a lien on property in that County. We compliment J. J. O'Dowd of Tucson, and his associates, on getting this law on the books. In five years, when all present judgments expire, this new State will have a Judgment System that will be the envy of some of the older States, where they don't even have a judgment docket, but you must follow each day the minutes of every pending case.

CALIFORNIA operates under the unique system of holding two legislative sessions instead of the usual one. At the first session all of the bills are introduced—thousands of them. Then the legislators go home and talk over things with Benjamin J. Henley, N. W. Thompsan, Edward D. Landels, and the rest of the boys. After being fully advised, the legislature convenes again for the second session, and kills all of the bills introduced at the first session (or most of them). California boosters claim that over ten thousand speeches were made at this year's sessions, (many more, of course, than in any other State). But most of the 41 bills affecting title companies and the 166 affecting title law, failed to pass. One bill declared that title insurance is contrary to public policy! Another would declare price agreements invalid. One bill sought to abolish deeds of trust, another permits the noteholder to appoint a successor trustee and another would have created the office of Public Trustee. One of the mortgage bills would have compelled perpetual renewals of mortgages. There was also a bill providing for a public tract index in each County. Another would make a title company liable for slander of title if it expressed any doubt as to the validity of any title in California. The California legislative committee was kept as busy as a one armed man hanging wall paper in a room full of wasps. There was also an outline bill or "Skeleton Bill," as it is called, changing the Torrens Law. (It seems that skeleton bills are usually all that the name implies.) But there were some good bills introduced, too, such as those permitting gin marriages and dog tracks, also one forbidding the sale of striped bass.

COLORADO has another peculiar custom, that of introducing some of its bills by the title or heading only. They figure that so many of the bills will be killed anyway, it's hardly worth while writing them out, so Donald B. Graham of Denver tells us. One of their bad bills would compel (not merely authorize) Recorders of Deeds to make abstracts. It didn't pass. Several good bills liberalizing Probate Procedure were put through.

DELAWARE got along without any title bills this year according to J. L. Pyle of Wilmington. They must have their own way of keeping out the weird bills that infested the other States this year.

DISTRICT OF COLUMBIA, according to Charles H. Buck, introduced the most beautiful "practicing law" bill you ever read. It provides that title insurance companies can report on, certify, and insure titles, draw deeds and mortgages and do any conveyancing work they wish. If this is the New Deal we're in favor of it, (but unfortunately it didn't pass). Geo. H. O'Connor also calls attention to a bill changing the method of selling real estate anywhere in the country under order of sale in any United States Court. A bill was passed clearing up

(or attempting to clear up) the troublesome question of estates of persons who have disappeared.

FLORIDA abstracters couldn't find anyone else to fight with so they began fighting with each other about title insurance reserves. An extra "convention" at the State Capitol, was called by President P. R. Robin and the bill was stopped, although for a while it kept the legislative committee jumping around like an animated cartoon.

GEORGIA proposed a "luxury" tax of $250 per year on bachelors. And passed a "luxury tax" on investors by providing that all property sold under power in a security deed must bring its full market value or be sold again. Another act provides a twenty year statute of limitation on building restrictions if the City has a zoning ordinance (without allowing any temporary period in which to sue). This, as Harry Paschal observes, is full of practical and legal questions.

IDAHO, so J. H. Wickersham tells us, had a double nightmare, a movement to reduce the prices of abstracts and title insurance, and a vigorous Torrens agitation, all at the same time.

ILLINOIS was the scene of foreclosure moratorium and anti-deficiency bills; also one providing that the owner could remain in possession during foreclosure. And, of course, there was the *usual* attempt to make a road show of the Torrens Act—it is now playing only in Chicago. All of these bills fell in the massacre which ensued, so Jess K. Payton of Springfield tells us.

INDIANA had a Torrens scare but nothing happened. There were also some tax relief measures, according to Willis N. Coval and H. E. Stonecipher of Indianapolis. Coval says that nothing humorous ever happens in the Indiana legislature because their legislators are always selected for their efficiency and capacity! They must have improved only recently, because some time ago they tried to change the value of the mathematical symbol pi because 3.14159 etc. was too long. This year's laws (from Absent voters to Yellow bass) includes one good one which provides for a suit to quiet the title of exempt property and relieve it of judgments which appear to be but are not a lien. Another act permits guardians to sign government mortgages, according to Charles P. Wattles of South Bend. A vicious practice of law bill failed.

IOWA considered an anti-deficiency bill and the discussion brought out an interesting fact—that neither the Federal Land Bank nor the Federal Farm Credit organization can make loans if the element of personal liability of the borrower is eliminated. Remember this when fighting your next anti-deficiency bill. When Uncle Sam says he will walk out of a State it's news. And we don't want him to walk out. Another surprise is the fact that under many of the Old Age Pension laws the States have a lien on the real estate of the beneficiary—one more lien for title men to watch. We are indebted to Senator Claude Stanley and E. J. Carroll for these interesting items.

KANSAS legislation has been very capably presented in two recent articles by Fred T. Wilkin and W. G. Fink in the Kansas Abstracter, monthly magazine of the Kansas Title Association. This magazine, by the way. is one of the best of the State bulletins—reason, Pearl K. Jeffery is the editor. One of the bills is a reverse reciprocity measure providing that no lawyer from another State can appear in a Kansas foreclosure or other law suit without local associate counsel, if the lawyer's home State discriminates against Kansas lawyers. They still believe in the lex talionis. A ten percent title insurance company reserve law passed. Also a currative act for decrees on publication service after ten years. But a bill to prohibit any person interested in an abstract or title company from practicing law, and another to require counties to compile tract indexes were killed in Committee, says John W. Dozier. A story in one of the articles in the Kansas Abstracter illustrates a method of persuasion that can be effectively used by those interested in stopping legislation. Sometime ago an anti-cigarette bill was introduced in Kansas and the argument was used that cigarettes are injurious to the health of the community. An opponent of the bill introduced a companion measure forbidding the sale or use of mince pies which he claimed injured the health of the users more than cigarettes. One of the surest ways to kill an obnoxious bill is to ridicule it to death.

KENTUCKY didn't hurt the title companies, and passed certain constructive acts, for example one allowing fiduciaries to invest in Federal securities and another making it compulsory for a person attacking a tax title to reimburse the holder for amouts paid. W. B. McFerran of Louisville makes this report.

LOUISIANA occupies the peculiar position of having had six extra sessions of the legislature in a year when there shouldn't have been any session at all. Those of us who think we have trouble enough with only one session can sympathize with Lionel Adams and our other Louisiana friends.

MARYLAND introduced some practicing law or barratry bills but they were defeated. Various moratorium bills also failed, per Joseph S. Knapp, Jr. of Baltimore.

MINNESOTA, according to H. C. Soucheray, passed its usual crop of curative laws, this time on seals, witnesses and foreclosures. It would seem that Minnesota cured everything with its numerous curative acts at the last session, but they must have forgotten something. Let us hope that all of these dry cleaning acts will be upheld by the courts.

MISSOURI was the scene of one of the strangest sort of "practicing law" bills. It provided that title insurance companies could continue to issue policies and do all of the work connected therewith, but the public could not use the policies until an opinion was obtained from a practicing attorney saying that the policy was all right. The *bill* did not pass. Among the other bills were eight attempting to tax mortgages in eight new and different ways, the weirdest one providing that the mortgage should escheat to the State if taxes were not paid. There was also a moratorium bill, and those opposed to it argued that the Frazier-Lemke Act took care of the situation nicely—and the Supreme Court obligingly waited until the legislature had adjourned before holding Frazier-Lemke unconstitutional. Among the bills passed was a Federal Judgment Act which is probably useless because the legislature insisted on attempting to establish uniformity without docketing. The FHA bill, which you know, was sent by the President to each Governor with a "must pass" tag on it, barely got through after being somewhat cut up in the committees. C. B. Vardeman, John Henry Smith, James M. Rohan and "the undersigned" were among those present at the various Committee hearings, and of course, Chet Platt, the efficient State Secretary, who is located at the Capital and "knows everybody." Redick O'Bryan, State HOLC counsel, did good work in putting through amendments to the guardianship statutes.

MONTANA stopped a Torrens law, and also one regulating the fees of abstracters, we are informed by W. B. Clark of Miles City (out where the deer and the antelope play). One would think that abstracters' fee acts would all be unconstitutional, except, of course, in States where the abstracters have had license laws enacted which give the legislature the right to fix fees. Those contemplating the introduction of Abstracters' License laws should consider this possibility.

NEBRASKA. W. C. Weitzel of Albion tells us that the Abstracters Bill failed, but one prohibiting Judges from making abstracts passed. One of the other acts indicates that heretofore Indians' and colored folks' testimony in Court was taken with qualifications. This is a reflection on the white race, which has been found just as capable of giving false testimony as anybody, no matter how sunburnt he may be. Another act permits English legal notices in foreign language newspapers—*so* as to make sure that nobody can read them. Another permits administration on estates of persons absent seven years; but don't pass any titles under this until the Supreme Court tells you what happens if the dead man turns up alive—or dead, with a wife and six children who didn't get the property.

NEVADA passed an act validating defective acknowledgments after three years. They "cure 'em quick" in the West. But a Federal Judgment Conformity Act failed; the lawyers just

don't want to be bothered to record their judgments. So says O. W. Yates of Las Vegas. The title business came through unscathed.

NEW JERSEY is one of those States sending out a State bulletin and the only one that has ever attempted a weekly issue. As in the other bulletin States the success of this one is largely due to the zeal and genius of its lady editor, Lina D. Panciera. Those States not now issuing bulletins would do well thus to utilize the talents of their women members. In the legislature this year a bill establishing an optional system of land boundary descriptions and surveys passed, and, of course, is a help in a State which does not enjoy Thomas Jefferson's great inventionsections, townships and ranges. One act recognizes private rights of way over vacated streets, a good thing to watch even without such an act. Another very good bill authorizing payment of a judgment to the Clerk of the Court and removing the lien pending an appeal did not pass. One act which passed validates foreclosure titles where the wife's name was unknown. A bill to license abstracters (heretofore found only in the Western States) was introduced but failed to pass. There was also a practice of law bill, as in other States. All God's chillun got practice of law bills this year.

NEW YORK had quite an epidemic of Torrens bills, nine in all. One would have made the law compulsory and another would have set up a State guaranty fund. But none passed according to (and perhaps because of) John T. Egan and his associates in the Title Guarantee & Trust Company. The printed pamphlets of George L. Allin, John L. Fink and Frederick Tanner on this subject, are especially fine, and will be useful in other States if (or rather when) it becomes necessary to battle with Sir Robert's rather lively ghost.

NORTH DAKOTA is one of those States where the abstracters' fees are so small that even the Torrens law can't compete with them, although it costs only fifteen or twenty dollars to get into the Torrens system and four or five dollars for each subsequent certificate. Even so the legislature wanted further to reduce the abstracters' fees this year. But the title makers emerged from the battle "without scratches," so A. J. Arnot writes.

OHIO passed a United States Judgment Conformity bill which provides for docketing and seems to be perfect —it should be with Charles C. White of Cleveland, the foremost authority on the subject in the Country. Anti-deficiency bills in great numbers were introduced but defeated. The legislature probably thought the depression was unconstitutional anyway. Among the "nuisances" that passed are two acts making automobile drivers' bonds and supersedeas appeal bonds liens on real estate when recorded.

OREGON passed a law that the Recorder must (not may) certify as to whether there are any chattel mortgages filed affecting any person, for fifty cents per certificate, according to Walter M. Daly, G. F. Peek and U. S. Page. If you have ever tried to make a profit on chattel mortgage certificates at several times this fee you can see why the County Clerk's Association violently opposed this bill. Another bill gives a lien on real estate for assessments under the Workmen's Compensation law—another kind of lien to watch. Isn't this merely taxation of real estate? Our idea of the worst job in the world is that of the Attorneys General who must defend the constitutionality of all of these new laws.

PENNSYLVANIA legislators spent some of their time in discussinng whether skunks should be encouraged as furbearing animals, or exterminated as a nuisance. They also had a similar discussion with reference to the Rule in Shelley's Case, and came to the conclusion that it should be exterminated as has happened in most other States (although it really wasn't such a bad rule when you wanted to destroy a few pestiferous contingent remainders and make a sale—and get another title order). Pennsylvania likewise tried to give married women the right to sell their property without the consent of their husbands, but it seems that most of the legislators were holding their real estate in their wives' names to defeat creditors, and were'nt any too sure of their wives. So the bill failed. Authority for this is found in the very interesting and sparkling report of the legislative committee at the State convention. It was presented by C. Barton Brewster. Another bill provided that male persons must wear bathing suits on the beach; as originally written it said that "all persons" must, but the owners of the beach hotels said that would ruin their business.

RHODE ISLAND is tryinng to decide whether it will be Democratic or Republican, so E. L. Singsen tells us. An ideal condition for bill control. All you need do is to cross ruff one party against the other.

SOUTH CAROLINA, according to J. Waties Thomas, did not propose any bills affecting either title men or title law. The old time religion is good enough for them.

SOUTH DAKOTA abstracters fought off an abstracters bill which would have been disastrous, so John Sutherland, R. G. Williams and W. S. Gunderson tell us. (All of the so-called "abstracters acts," by the way, do not help the abstracters). A bill permitting the Recorder to report on chattel instruments also failed to pass. A mortgage moratorium bill that was passed contains an emergency preamble, which if true, should arouse the sympathies of the most stony hearted lender, (and incidentally ruin the credit of borrowers in South Dakota for years to come). It says that "crops have been poor, and prices low, the drouth was terrible, everybody is out of a job, and one third of the population of South Dakota is impoverished and on relief." Hence borrowers needn't pay their debts until 1937, and can't *waive* the provisions of the law, nor can deficiency judgments be obtained in certain cases. A few more laws like this, and the Statue of Liberty will begin to have hysterics.

TENNESSEE passed the stereotyped practicing-law bill prohibiting corporations from engaging in either law practice or law business, with a penalty up to $500 and costs, plus treble the amount of fees received, so W. S. Beck of Chattanooga tells us. Never put off till tomorrow what you can do today—there may be a law against it by that time.

TEXAS has long numbered among its amateur sports the evening pastime of chicken stealing. Now comes somebody, (a Northerner, no doubt), and tries to professionalize and commercialize this ancient recreation. So we find a bill introduced (so W. C. Morris of Houston, tells us) to prohibit "the business or occupation of stealing chickens, turkeys, ducks or geese, for profit, and providing special, (and no doubt very unusual), rules of evidence in such cases." Another important bill, "to promote the production of better eggs in Texas," was introduced by a Senator who does not see very well and who was somewhat at a disadvantage in local meetings, (largely attended by his opponents). Still another bill exempted all wearing apparel from execution. It seems the out-of-State creditors are even taking your clothes.

UTAH spent most of its legislative session in attempting to devise new means of raising taxes. That's why proposed acts are called "bills,"—the tax payers have to pay 'em. An Abstracters Act passed the House after much effort on the part of the abstracters, but it got behind a liquor bill in the Senate and didn't get through. We know just how you feel. A good quiet-title act did pass, however. We are indebted to R. G. Kemp of Salt Lake City for these items.

WASHINGTON passed a bill providing for a State stamp tax on deeds, an upset foreclosure bid act, and one authorizing declaratory judgments. A bill to provide a special proceeding to oust tenants who won't pay rent failed (naturally). So says F. L. Taylor.

WISCONSIN, according to Royce E. Wright of Milwaukee, passed a United States Judgment Act which provides for docketing and seems to be valid. A bill to allow abstracters to draw deeds was introduced and a new platting Act was passed. The legislature also did a very fine thing this year in setting right a grave injustice done to the abstracters at its last session. You will remember that at that time the legislature passed a law forbidding free lunch with beer, and also, to prevent technical subterfuges, free beer with lunch. You can imagine the roar or indignation that went up not only from the title men but from millions of other worthy citizens of Wisconsin protesting

against this un-American, tyrannical and oppressive measure. Heeding this universal demand the legislature this year changed the law so that Wisconsin abstracters can now get cheese, crackers, sausage (if cold), fish (if pickled), bread, butter, popcorn and pretzels with their beer. And all free.

Thus, Mr. President, do you see why we "viewed with alarm" the great flood of proposed legislation which at the beginning of the year threatened to engulf us. And thus also do you see why we now "point with pride" to the magnificent accomplishments of that noble band of patriots, the members of your Legislative Committee, who so completely and successfully averted this dire calamity.

Report of Judiciary Committee

RALPH M. HOYT
Chairman
General Counsel, Title Guaranty Company of Wisconsin
Milwaukee, Wisconsin

The object of this report is to bring us all down to date on several legal subjects that are of particular interest to abstracters and insurers of title.

Moratorium Legislation

The outstanding decision of the past year on the subject of moratorium legislation is that of the United States Supreme Court declaring the Frazier-Lemke Act unconstitutional. *Louisville Joint Stock Land Bank v. Radford*, 55 Sup. Ct. 854. Under that act, which was made applicable only to mortgages already in force at the time of its passage, the holder of a mortgage upon a farm was required either to assent to the sale of the farm to the bankrupt mortgagor at its then appraised value, on a deferred payment basis with interest at one per cent per annum on the deferred payments, or, if he failed to give such assent, he was subjected to a five year stay of proceedings during which the mortgagor was to have possession of the premises upon payment of a rental fixed by the court, with an option in the mortgagor at the end of the period to purchase the farm at its appraised value. In a unanimous opinion written by Mr. Justice Brandeis this act was held unconstitutional as taking the mortgagee's property without just compensation, in violation of the Fifth Amendment to the Constitution of the United States. The court pointed out that if the mortgagee elected the first alternative (an immediate sale of the property to the mortgagor on deferred payments with only one per cent interest), he was deprived of a reasonable return on his money, while if he declined such election he was subject to a postponement for five years and a compulsory sale at the end of that time at an appraised value, being deprived during the interval of all control of the property and of the right to enforce his security and resell the property at a price which might pay the indebtedness in full. The court significantly pointed out that in all previous bankruptcy acts the object had been to free the debtor of his obligations and divide his assets ratably among his creditors, but that the Frazier-Lemke Act was the first one which attempted to provide him, at the creditor's expense, with the capital to set himself up in business again.

Title Company Activities

The question of the extent to which title companies may participate in activities that are claimed to constitute the practice of law has been a subject of considerable interest during the past year though apparently only one case on the subject has been decided during the year by a court of last resort. That case is *Land Title and Abstract Company v. Dworken*, 193 N. E. 650, in which the Supreme Court of Ohio affirmed a judgment enjoining a title company from furnishing opinions on titles except in connection with the guaranteeing of such titles; from drawing or advising as to the preparation of deeds, mortgages, releases, liens, affidavits, contracts, and other documents pertaining to real estate; from counseling or advising patrons on legal matters in litigation or proposed litigation involving titles not insured by the company; from preparing or advising in the preparation of escrow instructions, other than provisions necessary for the protection of the title company as escrow agent; and from furnishing opinions in foreclosure certificates or otherwise, stating whether the necessary or proper parties have been named as defendants. The Ohio court, in its decision, confined itself largely to general observations upon what constitutes practice of law, and to construing an Ohio statute which authorizes title companies to furnish abstracts and certificates of title and to guarantee titles. This statute was held not to authorize any of the acts enjoined.

Since the Ohio decision a consent decree somewhat similar to the decree in the Ohio case has been entered in a Minneapolis court, and agreements on the same general subject have been entered into between some title companies and bar associations, notably in the State of Washington and in San Jose, California.

Deeds in Lieu of Foreclosure

The validity of deeds given by mortgagor to mortgagee in lieu of foreclosure is a matter of vital interest to insurers of titles. It is to be expected that as land values revive there will be a good many efforts made to set aside such deeds on the ground of fraud, coercion, or inadequacy of consideration. The cases on the subject during the past year, however, have not been numerous, and no startling new principles have been announced. In the Wisconsin case of *Osipowicz v. Furland*, 260 N. W. 482, it was held that such a deed, of property which had cost the mortgagor over $15,000 and was still being assessed for taxation at $13,800, was invalid for inadequacy of consideration where the mortgage indebtedness to be extinguished was only $9,700. In the Iowa case of *Shanda v. Clutier State Bank*, 260 N.W. 841, a deed from mortgagor to mortgagee was sustained upon a finding that the value of the property did not substantially exceed the amount of the indebtedness, though the satisfaction of the mortgage was retained by the bank and not put on record. In *Talley v. Eastland*, 82 S.W. (2d) 368, the highest court of Kentucky held a deed from mortgagor to mortgagee was a mere mortgage even as against a subsequent purchaser from the mortgagee, it appearing that the mortgage was never satisfied of record, the notes were never surrendered, and the deed contained a provision that the grantor therein might "redeem" the property within a year upon making a certain payment and might remain upon the premises during such year. The court held that the subsequent purchaser of the property was chargeable with notice of all these circumstances which, on their face, were sufficient to prevent the deed from being absolute. In *Jett & Wood Mercantile Company v. Koeneke*, 44 Pac. (2d) 199, the Supreme Court of Kansas held that where the mortgagor had died and no claim upon the mortgage indebtedness was filed against his estate, so that personal liability for the debt no longer existed, a deed from the mortgagor's heirs to the mortgagee could not be a mere mortgage but must be an absolute conveyance, for the reason that there can be no mortgage without a debt.

Reattachment of Junior Liens

During the past two years much importance has suddenly become attached to the question whether a junior lien which has been cut off by foreclosure of a senior lien reattaches to the premises if the former owner reacquires them. The question rarely arose before the Home Owners' Loan Corporation began functioning, because the original mortgagor was seldom equipped with funds to make the repurchase, but when funds for that purpose became available from the Home Owners' Loan Corporation the question of reattachment of junior liens became very important. Some of us took the position that even if the junior lien does reattach, it remains a junior lien only and does not have priority over the Home Owners' Loan Corporation mortgage because the latter is a purchase-money mortgage, being given to secure the funds which made the repurchase possible. It is pleasing to note that two courts of last resort during the past year have upheld this priority, one in Georgia and the other in Tennessee. The Georgia case, *Cherokee Fertilizer Company v. Federal Land Bank*, 177 S.E. 570, squarely adopts the purchase-money theory in sustaining the priority of the new mortgage. The Tennessee

case, which was brought by the Home Owners' Loan Corporation itself for a declaration of its rights under such a mortgage *(Home Owners' Loan Corporation v. Guaranty Title Trust Company,* 76 S.W. (2d) 109), adopts the less clean-cut theory that where the foreclosure of the first mortgage and the reacquisition of title by the mortgagor with the assistance of Home Owners' Loan Corporation money are "practically contemporaneous and parts of the whole transaction," the Home Owners' Loan Corporation merely steps into the shoes of the former first mortgagee and succeeds to his priority as a "beneficial intermediary, a substitute mortgage creditor, entitled in all good conscience and equity to the first lien originally created in favor of the original creditor." This still leaves the question open in Tennessee as to whether the Home Owners' Loan Corporation would have priority if its participation in the matter were entirely disconnected and remote in time from the original foreclosure of the first mortgage. In the Tennessee case the court was asked to go the whole length of holding that a junior mortgage does not reattach at all, but it declined to do so and on the contrary adopted the Massachusetts doctrine that the junior mortgage does reattach if it contains a warranty of title. On this general question whether junior liens do or do not reattach, two additional decisions came down during the year, one in Georgia holding that they do reattach *(Bowlin v. Hemphill,* 179 S.E. 341, syllabus only), and the other in Texas holding that they do not reattach in the absence of fraud or collusion *(Jester v. Bickers,* 72 S.W. (2d) 1103.)

Title Insurance Liability

Four cases of interest on the question of liability under title policies have been reported during the past year.

In *Alabama Title and Trust Company v. Millsap,* 71 Fed. (2d) 518, the Circuit Court of Appeals for the 5th Circuit held that an exception in Schedule B to the effect that the insured is not protected if he is not a "purchaser for value" of the real estate cannot be construed as requiring him to be an *innocent* purchaser for value, and that he is entitled to the protection of the policy even though he purchased with notice of a defect in the title, so long as he paid value for the property.

In *Re Gordon,* 176 Atl. 494, the Supreme Court of Pennsylvania held that under a policy reciting that the title company "does hereby insure * * * that the title of the assured to the estate, mortgage or interest described in Schedule A is good and marketable and clear of all liens and encumbrances," the mere existence of a prior mortgage creates an immediate liability under the policy, for which an action may be maintained without waiting for the prior mortgage to be foreclosed or the amount of damage to be definitely liquidated by such foreclosure. The measure of damages upon the policy in such case, the court held, is the difference between the value of the mortgage covered by the policy in view of the existence of the prior mortgage, and the value it would have had if there had been no prior mortgage.

In *First Carolinas Joint Stock Land Bank v. New York Title and Mortgage Company,* 174 S.E. 402, the South Carolina Supreme Court held the title company liable on a mortgage policy as against its defense that the bank, which furnished it the abstract for examination, thereby made the abstracter its agent and thus had constructive knowledge of two prior timber deeds which were omitted from the abstract. The court held the abstracter was the agent of the applicant for the loan, not of the bank. The further defense that the bank had failed to file a statement of its loss, as required by the policy, within sixty days after occurrence of the loss, was held untenable in view of evidence that the amount of the loss could not be ascertained until the bank had completed its mortgage foreclosure and determined the amount of the deficiency.

The case of *M. R. M. Realty Company v. Title Guaranty and Trust Company,* 280 N.Y. Supp. 22 (App. Div.), involved land which had been originally a part of the bed of the Hudson River but had been granted by the City of New York to a private party in 1827 upon condition that he and his assigns must erect and keep in repair certain wharves, subject to reversion of title to the city if he failed to perform the condition. The title policy was issued subject to this condition, which was expressly mentioned in Schedule B, but the assured sued for reformation of the policy on the ground that he did not realize that the policy contained the exception until a prospective purchaser rejected his title on account of it three years later. The court held the policy was issued without fraud or mistake and the policyholder was not entitled to reformation; but it further held that the policy-holder's title was good and merchantable anyway because the city had waived and abandoned the condition by permitting other people to fill in the land beyond the premises covered by the policy, so that the plaintiff's land no longer touched the water and he could not possibly build and maintain wharves.

Liability on Abstracts

It is gratifying to report that throughout the length and breadth of this land no decisions have been reported during the past year on the question of the liability of an abstracter—from which we must conclude that the efforts of the American Title Association in the direction of better and more perfect abstracts have been one hundred per cent successful.

Report of Committee on Membership and Organization

P. R. ROBIN
Chairman
President, Guaranty Title Company
Tampa, Florida

It can readily be seen and understood that a Committee on Membership and Organization can best function through correspondence with the Executive Officers of the various State and Regional Associations.

It is commonly known that methods and procedure which will produce the maximum results in one State may not prove so successful in another State; and, for this reason, your Committee has largely relied upon the officers and committees of the State and Regional Associations to produce the best results possible in the method and manner peculiar to their own territories; with the exception, however, that your Committee did, by correspondence, offer and recommend certain methods of operation.

For the past ninety days, your Committee has been in constant touch with the officers of the various State and Regional Associations, inquiring into the best possible means for effecting a larger membership in each particular State; and, to the end of gathering information which may be of benefit in the future. Questionnaires were prepared and forwarded to the officers of the various Associations with the request that same be answered and returned.

The information gathered from the States hereinafter mentioned shows a gain of seventy-one members, which would be approximately five percent. The fact that there is a gain, no matter how small, should be very encouraging to the Officers of the Association, to the extent that we are led to believe that the business of the title industry is on the up-grade; and also that the title people are realizing the importance of The American Title Association, since recognition has come from practically every institution requiring our services.

The Executive Officers of our Association rendered your Committee splendid cooperation by constantly publicizing, in many ways, the absolute need of close cooperation for the benefit of the industry. In particular, Mr. William Gill, of Oklahoma City, and our Executive Secretary, Mr. Jim Sheridan, should be complimented for the splendid results their efforts produced.

There are twenty-nine State Associations and one Regional Association affiliated with The American Title Association. Of this number, we have received twenty-one reports in the form of answers to the questionnaires. The contents of these reports vary to a great extent, and are indeed interest-

ing. The following questions were asked:

1—How many members did you have in good standing at the close of 1934?

2—How many members have you in good standing now?

3—What methods were used in your State to induce eligible non-members to membership in your Association?

4—Do you publish a monthly bulletin and use same to assist your Membership Committee in its drive for members?

5—Is your State divided into Zones or Regions? If so, do you use your officers heading such Zones or Regions to obtain members from their particular territory?

6—Do you have a Title Examiners' Section directly affiliated with your State Association? If not, don't you think that such a Section formed would be of material benefit to your State Association?

The actual results obtained can best be presented in the form of a chart:

State	No. of Members for 1934	Present Membership	Gain	Loss	Is Association Bulletin Published
Arkansas	26	22	0	4	No
California ...	92	92	0	0	Yes
Florida	45	46	1	0	Yes
Illinois	84	84	0	0	No
Indiana	47	48	1	0	No
Iowa	99	99	0	0	Yes
Kansas 131		147	16	0	Yes
Louisiana	5	5	0	0	No
Michigan	57	53	0	4	Yes
Missouri 100		112	12	0	Yes
Montana	47	45	0	2	Yes
Nebraska	76	115	39	0	No
New Jersey ..	32	31	0	1	Yes
North Dakota	59	64	5	0	Yes
Ohio	43	67	24	0	Yes
Oklahoma ...115		115	0	0	Yes
Pennsylvania	22	22	0	0	No
So. Atlantic ..135		135	0	0	Yes
South Dakota	58	69	11	0	Yes
Texas 112		83	0	29	Yes
Washington .	42	44	2	0	No
Total 1427		1498	111	40	

In the majority of cases, the answers received to Question No. 3 were: the use of letters, circulars, and personal contact. However, in many other instances the publication was used to considerable extent.

Question No. 4 is answered by the above chart, which shows that fourteen out of twenty-one State Associations are issuing bulletins.

In answer to Question No. 5, out of the twenty-one States listed, sixteen are divided into Zones or Regions.

In answer to Question No. 6, out of the twenty-one reports, seventeen of the State Associations do not have a Title Examiners' Section affiliated directly with the State Association; but the majority of these seventeen agree that it would be of material benefit to have the close cooperation of the Title Examiners in connection with their Associations.

RECOMMENDATIONS:

First—Your Committee believes that all State Association Publications should contain in each monthly issue a Directory of all members in good standing. This method, for Florida, not only brought early results but increased our membership to the highest number in the Association's existence.

Second—That the Chairman, Director, or Vice-President of each Zone or Region of a State Association be charged with the duty of actively engaging and securing members in his particular territory.

Third—That the formation of a Title Examiners' Section, directly affiliated with the State Association, be encouraged in Abstract States. It is believed that the closer cooperation between the Title Examiners and the Abstract Companies will assist materially in increasing the membership of an Association where such a Section functions.

Report of Committee on Federal Legislation

HENRY R. ROBINS
Chairman
President, Commonwealth Title Co.
Philadelphia, Pennsylvania

A Committee, whose duty is to report on Federal Legislation at this particular time, should be composed of members with the attributes of Solon, John Marshall, Gilbert and Sullivan, Mark Twain, and possibly a touch of Baron Munchausen.

To make a comprehensive report on what Legislation has been suggested, what has been attempted, and what has been enacted into law, would result in a publication as extensive as the Encyclopedia Brittanica.

Therefore, to bring the Report within the bounds of reason, the Committee will call attention to a few of the Legislative enactments, which it is believed are of interest to the Association.

In view of the able addresses by our distinguished guests, it would be merely vain repetition for this Committee to comment on the Legislation in connection with the Federal Housing Administration, the Home Owners' Loan Corporation, the Frazier-Lemke Act, and Government Land Acquisitions.

It would also be superfluous to comment on all the suggested and attempted Legislation. However, there is one Bill which was introduced into Congress, but which did not reach final action, which we think should be called to your attention, namely, Senate Bill No. 2914, to provide for the establishment of a Federal Mortgage Bank creating a permanent discount and purchase system for mortgages on urban real estate. It was supported by the National Association of Real Estate Boards, and if introduced in a subsequent session of Congress, should be analyzed by this Association with a view to giving it either support or opposition.

The matters which the Committee believe to be of sufficient importance to be brought to your attention, are:

First—The Banking Act of 1935, Section 303 A of Title II, which clarifies a situation which was disturbing to a number of banks, which customarily do a mortgage business.

This Section amends Section 21-A of the Banking Act of 1933, which formerly read as follows: It shall be unlawful: "For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor."

The amendment does not change the wording as above set forth, but adds the following: "Provided, That the provisions of this paragraph shall not prohibit national banks or state banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers from dealing in, underwriting, purchasing and selling investment securities to the extent permitted to national banking associations by the provisions of section 5136 of the Revised Statutes, as amended (U.S.C., title 12, sec. 24; Supp. VII, title 12, sec. 24): Provided further, That nothing in this paragraph shall be construed as affecting in any way such right as any bank, banking association, savings bank, trust company, or other banking institution, may otherwise possess to sell, without recourse or agreement to repurchase, obligations evidencing loans on real estate."

The first part of this amendment, which permits banks to purchase and sell investment securities to the extent permitted to national banking associations, is rather limited because such associations are confined to the purchase and sale of securities solely upon the order and for the account of customers, and in no case for their own account. The second part of the amendment, however, will be very helpful because it will permit banks to sell whole mortgages as long as they do not agree to repurchase them and as long as they sell such mortgages without any guarantee of payment.

Second—A matter of interest to all title companies who are called upon to insure lands fronting on navigable waters is the question of the right of the Federal Government to change harbor lines. This difficulty originated in an action entitled Garrison v. Greenleaf Johnson Lumber Company, 215 Federal 576, affirmed by the U. S. Supreme Court 237 U. S. 251. Without

going into details, the holding was substantially as follows: Riparian owners who have erected on the waterfront wharves and other facilities of commerce which conform to the harbor line as established by the Federal Government have no right to compensation when Congress in the exercise of its power over commerce establishes a new harbor line which requires the demolition of a portion of such structures.

Since this case, the title companies, in some localities at last, when they have been asked to examine title to land which was formerly under water, have placed a rather drastic exception in policies. This exception is in approximately the following form: "Right of the Federal Government to change harbor lines and to direct the removal of any structures and fill without compensation." The result of this exception of course has been to impair the marketability of the title and to make it almost impossible to obtain a loan from any institution where it is proposed to make improvements between the original high water line and bulkhead line.

The intention in fixing the bulkhead line is to invite the upland owner to fill in and improve his property out to such line. If this invitation is accepted and such lands are filled in and improved, the owner should be compensated if thereafter the Federal Government decides to change the bulkhead line and take part of the upland owner's property. From a standpoint of public policy, it is necessary that an upland owner be assured of such compensation, because otherwise he would be unwilling to expend money in developing his property; and in a great many cases under the present conditions he would be unable to finance such an improvement because lending institutions would not be willing to make him a loan if there is a chance that the Federal Government may take some of the property without compensation.

Authority for the establishment of harbor line is found in Title 33, U.S.C., section 404, which provides in part as follows: Establishment of Harbor Lines; Conditions to Grants for Extension of Piers, etc. Where it is made manifest to the Secretary of War that the establishment of harbor lines is essential to the preservation and protection of harbors, he may, and is hereby authorized to cause such lines to be establish, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him.

Possibly the present difficulty could be eliminated by amending this section so as to add the following after that portion of the section quoted above: "and if any fills or any other improvements are, or have heretofore been made, on any lands between the upland and bulkhead lines as established in accordance with this section, said line or lines shall not be moved further inshore except upon compensation being made to any owner whose lands or improvements are taken or may be affected by any such line or lines."

Third—Another matter which all of us are greatly interested in these days is Section 77-B of the Bankruptcy Act. In considering this act from the standpoint of title insurance, it is, of course, not only necessary to pass on the question of constitutionality, but perhaps the more serious difficulty will lie in determining whether the proposed reorganizations are properly brought under 77-B, and if so, whether they have complied with all the provisions of that statute.

Fourth—The "Wealth Tax Act" signed by the President on August 30, 1935, at 6 o'clock P. M., stated by many taxing authorities to be the most carelessly considered tax bill in many years. It is not a complete taxing Act in itself; it consists of thirty sections, mostly amendments to the Revenue Acts of 1926, 1932 and 1934. Except as respects Estate Taxes, the new rates will not be effective until taxable years beginning after December 31, 1935. Some of the features of interest are:

(a) The increase in the normal and surtaxes of individuals on incomes over $50,000.

(b) The changes in the graduated income taxes of corporations which will result in slightly lower taxes for corporations with net incomes of about $44,000 or less, and in increased taxes for corporations whose net income is in excess of that figure.

(c) The increase in the capital stock taxes and a new basis of rating excess-profit taxes.

(d) The new provisions as to Estate Taxes. The rates in each of the brackets have been increased, and the exemption is reduced from $50,000 to $40,000.

These new rates and provisions are made effective immediately upon signing of the Bill by the President. Therefore, the Estates of persons who died after 6 o'clock P. M. on August 30, 1935, Eastern Standard Time, would be subject to the increased taxes.

(e) The increase in Gift Taxes. The taxes are increased. Gifts made during the balance of the year 1935 will be at the old rates.

Fifth—Although the Committee did not intend to discuss Federal Legislation which is the subject of the addresses by our guests, it has been thought advisable to call attention to one or two points of interest. The Federal Housing Administration Act, Title I, has been extended, making it possible to borrow up to $50,000 instead of $2,000 as originally. Under Title II, the interest rate has been standardized on all mortgages to the extent of establishing a maximum rate of 5%; and an amendment has been added under which interest at the rate of three per cent per annum is paid on the unpaid balance of the mortgage from the date of starting foreclosure proceedings to the date of turning over the title to the Administrator. This answers certain objections to the plan previously made by the life insurance companies.

Sixth—A question has arisen as to the power of the Federal Government to create Federal Savings and Loan Associations. The authority for their creation is in the Home Owners' Loan Act of 1933 as amended April 27, 1934. The Committee has been informed, but has not as yet had time to check up the fact that the constitutionality of the Act in this particular has been attacked, and the lower Federal Court has rendered a decision upholding the constitutionality, but that it is the intent of the parties, if possible, to carry this case to the Supreme Court of the United States.

Seventh—The Social Security Act, signed by the President, August 14, 1935. The purposes of which are:

To provide for:

(1) Old age pension, appropriations to be matched by the States, the purpose of federal assistance being to care for aged and needy persons arriving at age 65 prior to ample retirement benefits being available.

(2) Retirement Benefits. These are to be paid by the federal government beginning in 1942 to persons over age 65; provided contributions have been paid for at least five years. An excise tax is imposed upon the employer and is to be collected by Bureau of Internal Revenue and paid into the U. S. Treasury as internal revenue collections. An income tax is imposed upon the employee, measured by the employee's wages received after December 31, 1936.

(3) Unemployment insurance. The program is to be carried out essentially by the states. A federal tax is levied upon employers; provided a state has an unemployment law meeting the standards of the federal act; otherwise, its citizens are excluded.

Administration is to be under a Social Security Board composed of three members appointed by the President.

There is another subject of Federal Legislation of interest to all title insurance companies, which the Committee omitted from its Report as those in charge of preparing the Convention Program have assigned it as the topic for a special address, namely, "Deductions Allowed for Income Tax Purposes to Insurance Companies."

In closing, the Committee desire to express their feeling that the foregoing report is not as satisfactory to them as it might be, being more or less of a loose list of subjects, and not a logical and sequential analysis.

But, with no further apology than the statements contained in the opening paragraph, it is respectfully submitted.

Report of Committee on Resolutions

MARK B. BREWER
Chairman
Oklahoma City, Oklahoma

To the representatives of the Federal Government appearing on our program we are particularly thankful, and we extend our thanks for participating in our program and discussions. For the meritorious and untiring efforts rendered by the entire official family of the American Title Association in the interests of the Association, to make this one of the most successful years in our history, we express our deep appreciation. And most especially do we appreciate our President, Benjamin J. Henley, Secretary Jim Sheridan, Chairman William Gill of the Abstracter's Section, and John Henry Smith, Chairman of the Title Insurance Section, whose efforts and energies have been most untiring and efficient.

October 16, 1935.

To the officers and members of American Title Association, assembled in 29th Annual Convention:

Your Committee on Resolutions present the following for your consideration:

Resolutions

WHEREAS, we have been most royally entertained and provided the unexcelled hospitality and charm for which the Old South is traditionally noted, and no expense or effort has been spared by our hosts, the Tennessee Title Association, to make this Convention one of our most successful and enjoyable, and

WHEREAS, this convention has been particularly honored by representatives of the Federal Government, coming on our program, who have given much of their time to present most able and timely addresses and papers on subjects bearing directly on the title business, thereby creating and encouraging a finer feeling of cooperation and closer coordination of our work with the various federal departments.

THEREFORE BE IT RESOLVED: That we extend our sincere thanks to our hosts, the Tennessee Title Association, and especially the General Chairman, John C. Adams, and his splendid Committee as well as Mrs. R. H. Anderson and her gracious aids on the Ladies Entertainment Committee, for all that they have done for the comfort and delight of our ladies.

To the management of the Peabody Hotel, our appreciation for the excellent services shown this Association all during this Convention. Every officer and employee has been particularly courteous and most efficient.

Respectfully submitted,

MARK B. BREWER, Chairman.
WILLIAM WEBB
CHARLTON HALL,
Committee on Resolutions.

The Report of the Nominating Committee was received and adopted by unanimous vote. For list of our new officers, see pages 1 and 2 of this issue.

ENTERTAINMENT

Words fail us in attempting to describe the entertainment given our delegates, their ladies, and our distinguished guests. From the moment of our arrival until our departure the Tennessee Title Association members were on their toes to give to us every comfort, every form of entertainment conceivable, every indication of their genuine desire to show us true Southern hospitality.

A barbecue party on the Wilson plantation, one of the largest in the world, was one of the high points. There we were entertained with food for the body and food for the mind, the latter in the form of Negro spiritual music.

The ladies were given a bridge luncheon at the country club. The gentlemen enjoyed themselves in the Golf Tournament. All—ladies and gentlemen—spent one entire evening at the annual Banquet and Ball.

The hospitality of our Tennessee people will live long in our memories.

ABSTRACTERS SECTION

William Gill, Chairman

Report of Chairman

WILLIAM GILL
Vice-President, American First Trust Company, Oklahoma City, Oklahoma

First of all may I thank you for your expression of confidence in choosing me as your Chairman for the year 1935. I deeply appreciate the honor, and only hope that in some way my efforts have been of benefit.

This convention belongs to you—please feel free to offer any suggestions or criticism you see fit and take part in all of its deliberations—in that manner the officers of the Association, (who are merely chosen to carry out the wishes of the membership), will have a better knowledge of how best to serve the members. Without having your viewpoint your officers are seriously handicapped.

Naturally you are concerned with the possibilities of the future—all of us are. Providence has not bestowed upon me the power or ability to gaze any deeper or any farther into the commercial world than it has upon you. If you have clearly viewed the picture of the "Title World" as portrayed by recent developments, you must agree that all is not rosy for those whose chosen field is that of making abstracts. Pessimism should be no part of our make up, and yet it is of vast importance to clearly face the perplexing problems confronting our business. No longer are the problems of the abstracter confined to the borders of a state. Conditions and practices of other states have a material effect upon the abstract business as a whole.

In order to secure more uniformity throughout the United States, and to give each State Association a concrete worthwhile program, with the approval of the officers of the American Title Association and the Executive Committee of the Abstracter's Section of the American Title Association, I asked representatives of abstract states to meet in Oklahoma City January 13th and 14th of this year. At this conference 11 states were represented, and there was prepared a Fourteen-Point Program. At the mid-winter meeting of the American Title Association held in Chicago February 1st and 2nd, the Board of Governors of the American Title Association unanimously approved such program. Likewise such program was approved by the Mid-winter meeting itself after consideration of same.

It is extremely gratifying to see every state convention of abstracters to whom such program has been presented, adopt enthusiastically as its program the "Fourteen Point Program" suggested. Thus we find a greater desire for uniformity upon the part of numerous states than has previously existed. I urge those present at this convention to devote all of the energy you possess in seeing that your own state Association slackens not its speed in carrying out the program in its entirety.

This program, as many present today know, was not prepared by theorists, but by practical abstract and title men and women. It by no means is a "cure all" and perhaps my enthusiasm for it is greater than yours. It was prepared with the hope of creating a condition which would increase the stability of the abstract business. To merely adopt it means nothing. Unless your state Association puts every point of the program in effect and persistently and consistently sees that it is strictly observed by the membership, it will be of but little avail. If you will do this. I have no hesitancy in making the assertion that the likelihood of Torrens Legislation will be materially reduced—you will find an amazingly satisfied public and many an abstract office will move from the red to the black side of the ledger.

This program has been presented to the members of the American Title Association by the Abstracter's Section as a challenge—will you accept it with a determination to "put it over in a big way" or will you in a half-hearted way adopt it and forthwith forget that there remains much work to be done by you as a member of your own State Association? I again urge you to take an active part in the affairs of your

Association and make this program your "pet hobby," cooperating in every way possible with those who are sincere in their efforts to render the highest type of service possible, and clear up a lot of confusion now existing in the public mind as to the "Whats" and "Whys" of the abstracter and his business.

There is no use "kidding ourselves" —the sentiment against the present system of abstracting is increasing. Not because someone perhaps has a better plan of evidencing the ownership of real estate, but primarily because of the utter lack of uniformity existing in numerous states, not only as to services rendered, method of doing things, but likewise of the wide variance in the cost of the product whether it be abstracts in the so-called abstract states, or Title Insurance rates or Title Certificate charges in those states where that type of service prevails. This was clearly expressed by a speaker at the Miami Convention in his statement to the effect that the work of his organization was seriously handicapped because the abstracter would not give prompt service—because many abstracters had their own pet way of abstracting—because in many instances the abstracter's certificate was prepared for the protection of the abstracter rather than the protection of his client. Perhaps the speaker may have been as much to blame as the abstracter by reason of his practice of using anyone who called himself an abstracter rather than seeking the best—and I mean by that patronizing abstracters of known responsibility and integrity—abstracters who are interested enough in their business to be affiliated with the American Title Association with a view of being able to render a higher type of service than the irresponsible, fly-by-night, financially incapable abstracter so prevalent in many states. Never before was cooperation so badly needed, and never before has there been in evidence such a willingness on the part of the abstracter to give complete protection and satisfactory service. As long as the membership of the Abstracter's Section remains alert and accepts meritorious criticism with an honest desire to correct same, then that long the future of the abstracter is assured. The Torrens System of evidencing titles has been and is a matter of grave concern to us all. To reduce the likelihood of further advancement of such an unsatisfactory and unsafe system, it is only necessary for those of us engaged in the abstract business to give the public satisfactory service and to endeavor to sell the public upon the necessity and value of the abstracter to the community.

It was not only a pleasure (but a revelation as well), to view over a thousand abstracts, coming from 25 states in the office of Mr. R. P. Barclay, Abstract Advisor for the Home Owners' Loan Corporation, Washington, D. C., which many of you so promptly sent upon request. In passing, may I suggest, that many abstracters would no longer be engaged in the abstract business were they required to pass an "intelligence test." That is, if you permit me to reach such a conclusion, after having spent many hours looking over that vast array of "documents" purporting to be abstracts. To say the least it was disgustingly disappointing to see the "razor back type" along the side of the "blue ribbon winner." Anyone would possess a mental deficit, after viewing those abstracts, were he not quickly sold on the possibility of marked improvement had more uniformity been in evidence. Although many of the abstracts in question were not prepared by members of the American Title Association, in the "public mind" we necessarily assume much blame not justly due. Every act of commission or omission, whether favorable or otherwise, to some extent reflects upon the entire abstract field.

Publicly I desire to express my appreciation to Mr. Horace Russell, General Counsel of the Home Owners' Loan Corporation, Mr. R. P. Taylor, Mr. Tom Sherman, Col. Harvey Jones, and last but not least, Mr. R. P. "Prock" Barclay, Abstract Advisor, for the valuable assistance and splendid spirit of cooperation shown "at every stage of the game." Never before, in the history of Governmental Agencies, do I recall the earnest desire upon the part of any agency to render the abstracters such willing service given by these men.

The Home Owners' Loan Corporation gave outstanding recognition to State Associations in permitting Mr. Barclay and numerous Regional and State Counsel to attend the so-called "Circuitous Conventions" held this year in the states of Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, Nebraska, Missouri, Colorado, Oklahoma, New Mexico and Texas—12 states in all—one convention following the other. Thus the membership of these states were enabled to get first hand information regarding the wishes of such an important customer. Likewise they received with interest, "behind the scene" pictures so ably painted by our Executive Secretary Jim Sheridan and many members for the first time became personally acquainted with the man who has and is now doing more for the abstracter than any other individual—I again refer to Jim Sheridan. May I suggest that you give serious consideration to the advisibility of having your own state included in a similar series of State Association Conventions, which I recommend without any hesitancy, be held during the year 1936. It was my good fortune to attend State Conventions in Iowa, Missouri, Kansas, Oklahoma, Arkansas and Texas during the past year. The spirit of enthusiasm existing in those conventions would be extremely beneficial to any so-called "live wire, progressive, up-to-date" abstracter.

The question of "How best to advertise" is of great importance to every abstracter. I would like to see each State Association have an advertising exhibit at its annual convention, and the best from each state then displayed at our next National convention.

Since we are all awake to the importance of "better abstracting," would it not likewise be beneficial for each state to conduct its own abstract contest, and the first, second and third winning abstract displayed at the National convention?

It would be a marked lack of gratitude upon my part should I fail to express my appreciation to President Ben Henley, Vice President Henry Robins, Treasurer Leo Werner, Secretary Jim Sheridan, Mr. P. R. Robin, Chairman of the Membership Committee, and Mr. Harvey Humphrey, Chairman of the Advertising Committee of the American Title Association, as well as to the Members of the Board of Governors and Executive Committee of the Abstracter's Section, together with State Presidents, secretaries, and numerous "lesser lights" for the splendid cooperation given me as Chairman of this Section.

The American Title Association "Ship of State"—at the close of this, its twenty-ninth annual convention—after running through many years of "rugged waters" will be turned over to a new crew—the present official family will join with the other members of this Association by taking hold of the rope —pulling the old ship still seaworthy, up the stream into uncharted waters, thus lightening as much as possible the labors of the "New Administration." The many friendships and acquaintances made during the past year will always be cherished by me as priceless possessions. It has indeed been an enjoyable experience to serve a group so patient and charitable and so willing to respond when called upon. May I repeat what I have often said before: "Let us forget the past—devote our energies to the many problems of the present and look hopefully into the future."

Home Owners Loan Corporation — Its Abstracts of Title

R. P. BARCLAY

Abstract Adviser, Home Owners Loan Corporation, Washington, D. C.

Before leaving Washington, I was specifically enjoined by Judge O. B. Taylor, Associate General Counsel of the Home Owners' Loan Corporation, to bring you his greetings and goodwill. I take pleasure in doing so.

It is a great pleasure to be with you today and to see among you the faces of so many friends from all parts of this grand land of ours.

I cannot conceive of any group of

men and women gathered together in a National Convention whom it would be greater honor to address.

You have been chosen by the members of your various State Associations to represent them at this Convention, and by their acts you come accredited as leaders in your chosen profession. A number of you have been selected to direct the activities of your National Association. Such honor speaks for itself as to your ability to lead and your disposition to make friends and keep them loyal to you and to your Association, its aims and purposes.

Your lives are not, or should not be, a daily and sordid grind. If you are interested beyond the mere surface of your examinations, you will find romance in your work. Romance and oft-times tragedy. You saw the tragedy of the home owner as it developed into rapidly increasing numbers of foreclosures, and there was nothing you could do to help the sufferers.

Hundreds of thousands of fathers and mothers, many of these mothers, widows, were confronted with the inevitable loss of their homes. In many cases, the mortgaged homes had already been foreclosed upon. A lifetime had been spent in self-denial and saving that a home be assured in which to house and raise their families, and for themselves in their old age.

Stark terror stalked and there was no warmth or light in their households There were no smiles or laughter among the children. Hope seemed dead. Fear, constant Fear, reigned supreme. There was momentous menace in these conditions, which was not limited to the immediate present or even to the present generation. The shadows cast were in the morning of the lives of the cheerless young, and early morning shadows are long. These threatened to extend indefinitely into the future, blighting the lives of generations to come. Then, in the midst of gloom and despair, HOLC was born.

Immediately succeeding the passage of the Act of June 1933, the building of the HOLC organization began. It was probably the most tremendous and important task that has ever been undertaken in times of peace. I mean in times when the nation was not in actual war, for there was no peace in the homes of those for whose relief the Act was passed. Unrest and unease compassed the land.

There was no precedent to follow. The course was over uncharted seas. No lighthouses or bell buoys marked the danger spots, but nevertheless, they were avoided. A skilful pilot was at the helm.

Credit is due to many, but our entire Country owes a debt of gratitude to Mr. John H. Fahey, Chairman of the Board, and to Mr. Horace Russell, General Counsel. It was to their far-sightedness and unremitting, indefatigable work that the outstanding success of this Corporation is to be credited. Everything could not be done at once, but speed was mandatory, for the suffering was acute. Many grave problems presented themselves. In the forefront of these came the matter of good titles, for what could be more important in lending money, small as to individual amounts, but huge in the aggregate, than assurance of good title to the property upon which the loan is made? Of course, proper appraisal of the property value and other matters of routine are important, but of what value are they if no title, or a poor title, is shown?

Proper consideration was given to the fact that by far the greatest number of loans would be closed in the centers of population—over larger cities and towns. Naturally the facilities for obtaining good and reliable abstract service in these places and the risk of loss on loans was there reduced to a minimum.

Also, the ability of the abstract companies to make good losses occassioned by their errors was a fact to be emphasized, for this serves to minimize possible loss percentage because of concentration in volume.

None of this is to be construed in the least as reflection upon the ability, care and dependability of abstracters in smaller and less densely populated regions, but who have proven themselves by their work and the reputations they have established. They are legion and to them we extend our appreciation and congratulations for they have overcome heavy odds. Moreover, we know many of you of this class and take off our hats to you.

Unfortunately, there are many abstracters in almost every abstract state whose work does not measure up to the standard, or near standard. This is not news to you. You know it and we appreciate deeply the effort you are making to educate this class and by so doing raise their product to a state at which the public can afford to invest money in real estate, either by loan or purchase, with protective assurance as to title. This is surely a great service you are offering them in many states and they should seize upon it since it provides a gratuitous foundation upon which they can build a business entitled to faith and credit and assure increased and continuous profit to themselves. Until they are so brought into line they are a dam to the efforts you are strenuously making, and the source of much uncomplimentary comment to which the experienced and conscientious abstracter is unfairly made a party.

For years I have sincerely wished that the various states would pass laws requiring rigid examination of abstracters before issuing license to them. The public is entitled to this protection to the capital it invests. The abstract profession is entitled to it to protect its reputation, expand its influence, and increase the popularity of the abstract system.

We sincerely hope that when you return to your respective states, you will do all within your power to assist us in the efforts we have made along these lines. While we make this request in the interest of this Corporation, we do not feel that it is wholly selfish. It is our unqualified belief that it will inure to the great benefit of all abstracters, and especially will it prove of inestimable benefit to the ones who need it most—those now performing unreliable service.

You are doubtless wondering when I shall enter into that portion of the topic assigned to me under the heading—"Home Owners' Loan Abstracts." That is really just what I have been doing. After all, the Home Owners' Loan Corporation asks only for good abstracts and comprehensive, clear certificates which state what searches the abstracter has really made. That is asking no more than is the natural obligation of every abstracter to every client.

There have been practices, which have become fixed, in many communities and some entire states, which have proven confusing to the members of our staff of legal examiners, both in Washington and in our State and Regional Offices. These relate to the manner in which the abstracts are compiled and arranged, but still more importantly to the wording of the certificate to the abstract.

I wish that time permitted telling you in some detail of the trip that I recently made with your always alert and practical Executive Secretary, James E. Sheridan. Together we visited State Title Association Conventions in twelve states and in each of those states the Conventions voted approval of a form of certificate which was agreeable to them and promptly approved by those of HOLC in Washington who are vested with that authority. In all of these states we discussed fully and frankly, and each side made compromises which seemed fair, reasonable and safe. Surely this successful record would not have been unbroken if HOLC had made unreasonable requests.

Many of you here were present at those meetings and to enter into detailed discussion would not be interesting to you or profitable in this meeting.

Before proceeding further as to some other matters that we hope will produce results, I do want to say that in each of these states I heard either Mr. Bill Gill, of Oklahoma, Stub Williams, of South Dakota, or Jim Sheridan, your Executive Secretary, present and have passed the 14 Point Program. I want to congratulate each of these men and your association upon this. It will, without doubt, prove one of the most far-reaching things you have ever done, beneficial to all of your clients and members alike.

And now we come to some matters, which though not so pleasant, must, we feel be brought to your attention, and again with the request that you unite with us in our efforts to overcome cer-

tain practices of abstracters in some of the sections of some of the states.

It is unfortunate that some of these devote much time and attention in producing a certificate which is intended to surround them with the greatest possible protection against their own errors. How short-sighted, to say the least! What an injustice to their clients and also to those who are engaged in the same field of service and whose first thought is, and it should be, to give assurance to their clients and protect their interests.

If an abstracter does not have faith in his own work, how can he expect his patron to continue to have faith either in him or his work? If he will not stand back of his abstract with all of his resources, is it fair that he deliver it to and receive payment from one who is investing his money upon the strength of its correctness?

There are a few abstracters who limit in their abstract certificates their liability to such extent that, in the event of loss occasioned by their error in the abstract, such liability would scarcely make a good-sized dent in even so small a loan as is the average loan of HOLC. Surely they can not expect to continue to enjoy HOLC patronage unless such limitations are removed.

Another, but widespread and always dangerous practice in many states is that of describing property, in instruments or proceedings appearing in the abstract, by reference only to description contained in caption or to some numbered item appearing in the chain of title.

We know, and you know, that this is a dangerous and inexcusable practice. If there are any doubting Thomases among you I believe that I can convince you of this within a few moments, and shall be glad to do so at any time.

We have made every possible effort to get all abstracters to abandon this practice in abstracts made for HOLC. Many still persist. From one state, through the thoughtfulness of the President of the Title Association of that state, I received a copy of an educational course carefully compiled by the Association. In it there appears what amounts to an emphatic command that all abstracters set out fully the description of property in each instrument abstracted as it appears of record. Notwithstanding this, there appear, from a recent survey of the abstract practices in that state, twenty-one member abstracters who are continuing this practice. There are many non-members doing the same thing.

And now I wish to call your attention to another important matter. Do not labor under the impression that your work for this Corporation will end when the recent additional appropriation by Congress has been absorbed. I do not pretend to know just what the future policy of HOLC will be with regard to its abstracts, but I do know, and you know, that this is an amortization plan over a fifteen-year period and it is reasonable to expect that re-servicing of titles will recur in all closed cases, the first as well as the last. It is also a logical deduction that those who have performed good abstract service in these cases may look forward to additional work from this source for many years to come, and that our interest in abstracts and abstract certificates is still a matter of vital concern to us.

And do let us all, abstracters and members of the HOLC forces, work together with a spirit of genuine interest and cooperation, never forgetful of the fact that we are privileged in participating in saving homes to those in dire distress and in reviving broken morale and spirit, the effect of which will extend through generations to come.

I thank you.

DISCUSSIONS

MR. GILL: At this time, I am going to take the liberty of introducing to you, as far as I know, one of the oldest abstracters, in years of service, in the United States—Mr. Almor Stern, of Logan, Iowa.

MR. STERN: I have been in the business over fifty years. There is one suggestion I want to make to you and that is, to keep in touch with your Legislators. I care not for their ability, but let us keep in touch with them. Let us be active in those things that lead up to legislative rights—State or National. Let us be on speaking terms with the men who are to pass the laws —to serve your country, as well as to serve ourselves. I am pleased to be here.

"DAD" PAINTER, (Colorado): This is my first experience at a National Convention. I have nothing to offer except to say that I started into this fifty years ago, and haven't been able to get out of the business. Hope to continue a good many more years.

MR. BARKER (Bonneville, Ala.): My office has been operating since 1881. During this 54 years, I have put in 27 years in the business. I appreciate that if it had not been for the efficient work you gentlemen have done all over the United States, the Association would not have reached the height, membership, and activity it has at the present time.

MR. HERMAN F. HANSEN (Union, Mo.): Gentlemen, as an officer of the Missouri Title Association, have had a thought on my mind for sometime which I feel will be of interest to all Abstracters in Missouri, if not every where.

In some localities, Government Employees have come in and set-up their own bookings, made their own contracts and are taking what rightly belongs to us. Therefore, I feel that this matter should be brought before this body, so that proper action can be taken thereon. There is being taken out of existence about two and one-half million acres of land. The abstracts of this land are being made by men coming in from other places.

A resolution was passed, asking that the Board of Governors of American Title Association give consideration to this matter.

(Note—At a meeting of the Board, held later in the convention, this subject was discussed at length. It was decided that vigorous action be taken in Washington and elsewhere to prevent a repetition of these practices.)

MR. ARNOT (North Dakota): In Re-settlement Administration abstracts, are they requesting certified abstracts or are they going to take a memorandum and be satisfied with that? I ask it for the reason that in some States they have a license law.

MR. SHERIDAN: To begin with, resettlement no longer possesses the authority to make a contract itself. The contract and the second party of the contract must be approved by General Blair. In the second place, the Department of Justice now has 35 or 40 field men who are examining abstracts. I don't know how long a title they are going to demand. I think that there is no hard and fast rule that will obtain.

MR. GILL: Under the new procedure I might give you a little information that I have in a letter from the Resettlement Administration on October 9th:

Re-settlement Administration
Washington

Mr. William Gill, President,
Oklahoma Title Association,
101 First National Building,
Oklahoma City, Oklahoma.

DEAR SIR:—

Reference is made to your letter of September 13, relative to the abstract situation in the State of Oklahoma.

Please be advised that we have just formulated a new procedure for the obtaining of abstract contracts and have cleared this procedure with the General Accounting Office. The necessary forms of contracts are now being printed and will shortly be forwarded to our Regional Attorneys.

Under our new procedure Regional Attorneys will contact all available abstracters with the purpose in mind of obtaining proposals to furnish us the abstracts necessary on any given project. Such proposals will be in the nature of bids and the contract will be awarded to the successful bidder in accordance with the usual Government regulations.

Sincerely yours,

MONROE OPPENHEIMER,
Assistant General Counsel.

MR. DYKINS: That is the understanding I got from an address yesterday but I just received a telegram from the Regional Attorney in our Section. He is asking for a certain form that was agreed upon at our annual meeting, setting out how we should evidence the title and I have

just wired my Secretary to send it on to him. I assume that we are going ahead with the old contract under FERA.

MR. SHERIDAN: Mr. Wykoff told me we had to fulfill old contracts. They could not be amended.

MR. GILL: I might give you a little further information for whatever it may be worth to you. I asked Mr. Oppenheimer if they were going to withdraw Government employees who are now doing abstracts and pay the present existing price schedule in a County. He stated he would, provided it is no higher than present paid by the general public. Under existing contract work we can do nothing but if our own side of the question is properly submitted we may be successful in having Government employees who are now making up titles withdrawn and in time get that work for private companies.

PAUL JONES (Indiana): In talking about bids for Re-settlement, on a trip in the southwestern part of my State I ran into a field attorney who was evidently sent up to our State from another District but was given authority to take bids on this work. I would like to have some information as to what kind of bids these field attorneys can make and what basis they ask it on. This man asked for bids on the basis of so much per acre, which was entirely foreign to our practice. We have no way of knowing how to bid on abstracts at so much per acre. He intimated that the bid would be let to the lowest bidder but there was nothing to indicate that we would get the work because we were the lowest bidder. I would like to ask whether we can bid by the entirety or what we are supposed to bid.

MR. GILL: The past form of procedure has nothing to do with what is going to happen in the future. Mr. Oppenheimer did not tell me what procedure is being worked out now and don't know what the new procedure will be, but he did tell me the price would be on a per instrument basis and not upon an acreage basis. I would like to drop this suggestion, that whenever those Government men contact you and put up any price that seems unreasonable that you give this information to us. Many times we might do something for you if we received information quickly.

MR. KINKEAD (Arkansas): I would like to know under what head does this acquisition of forest lands come.

MR. SHERIDAN: There seem to be two answers, Mr. Kinkaid. There is no definite answer, for some of it is in Foresty under the Agriculture Department. In Re-settlement, however, there are doubtless forest lands.

MR. SHERIDAN: It depends on how it came through as to appropriation from Congress.

MR. HARVEY PEARSON (Illinois): One of the local retail credit companies called me up and wanted to inquire about some price for service in connection with FHA in which the information came to me that some of the National Credit Associations have made a contract to issue a report as to taxes and judgment in which they were to bid the sum of $1.00 for that service. He wanted to know if I would give him the information for 50c. I told him we wouldn't be interested in it. I wondered if any of you had any similar experience. Apparently in our County there isn't going to be any abstract work in that connection in a great many instances. This may be in connection with Title I of the act only.

MR. KIRKPATRICK (Oklahoma): As to Title 2 the FHA are not going to make loans without title evidences. If the private lender desires to take an evidence of title that is not necessary and the loan goes bad, then the FHA will tell him he selected his abstracter and he is left holding the sack.

MR. BARKER (Indiana): We have been making abstracts for the FHA in the regular way, paid for by the applicants.

MR. GILL: As another matter of information I would like to know how many abstracters here operate under bond law. Is there any State here that pays less than $50.00 per year on $5000.00 bond premium.

Colorado—$25.00.
New Mexico—$2,000.00—$10.00.
Nebraska—$10,000.00—$50.00.
North Dakota—$10,000.00 to $25,000.00—$5.00 per $1,000.00.
Montana—$5,000.00—$25.00.
South Dakota—$5,000.00—$25.00.
Oklahoma—$5,000.00—$50.00.

Is there anything we can do or anything you want to do following out Mr. Sheridan's suggestion. Is there anything you think we may be able to do to furnish these bonds in some manner, either cooperative or otherwise.

The following motion was made by Mr. Kirkpatrick: That there be appointed a Committee to make a study of this and report back at another meeting.

MR. GRAHAM (Colorado): A subject of great interest to us in Colorado for the reason that we have seven Counties that have no private abstracters. We want them. We are faced with the difficulty of not being able to obtain a bond because of this. A thing of that kind would be of great interest to us.

MR. GRAHAM: I second the motion.

Motion seconded carried.

MR. GILL: Are there any States where under the terms of your bond you are not liable to anyone who relies upon the accuracy of your work, or is your liability limited only to the person for whom you make that abstract.

COLORADO—I think we are liable to anyone.

NEBRASKA—To anyone relying on us.

MONTANA—Anyone who experiences damage.

NORTH DAKOTA—We are liable to anyone.

NEW MEXICO—Liable to anyone.

MISSOURI—Only liable to person for whom you make abstract.

SOUTH DAKOTA—Liable to those who suffer by the certificate.

MR. GILL: I wonder if I might ask before you leave the Convention that each State operating under bond statute give me this information:

FIRST—The amount of bond.
SECOND—To whom are you liable.
THIRD—What do you pay for the bond.
FOURTH—Do you furnish any indemnity of any kind.

MR. GILL: There was a matter brought up this morning by Mr. Kirkpatrick. That is the question of Regional meetings, the advisability of having regions through the United States composed of a number of States. Mr. Kirkpatrick, will you very briefly explain that at this time.

MR. KIRKPATRICK: The theory of it is this, your National Association is supposed to serve its members. I believe I am safe in saying that 90% of the Oklahoma Title Association members belong to the National Association because you have to belong to the National to belong to the State. The principal reason they belong is because of the benefits they receive. If you had some way to reach the man in the little Counties who doesn't have the opportunity to leave that plant to come up here, or the money to come with either, if you can devise some way of reaching those men by taking as many as four States and having one meeting a year, you will have a stronger organization. This happens to be the fourth Convention that I have attended. This is the only one that it was not hard for me to attend and the reason is that I was on my way to Atlantic City. In other words, I think we should place at the disposal of our small men an opportunity to participate in our National affairs. For that reason I want to bring before the body the question of forming Regional Districts of four or five States and let them work out their problems and participate in our National meeting.

MR. GILL: This was presented to our Board of Governors in February in Chicago and the Abstracters Section was authorized to do as it wished. Do you think a plan of that kind would be advisable? If you don't think such a plan would be advisable, you can reject it. I would like to hear from some of you whether or not you think it would be beneficial.

MR. McHENRY (Iowa): I think it right for the National Association to use its funds for the benefit of the members but I think it would be an expense which the members will not take advantage of. I want to ask this question. How many members attend the annual meetings of the Oklahoma Title Association?

MR. GILL: 85 to 100.

MR. McHENRY: Do you get over 50% to attend a State Convention.

MR GILL: Yes. I think the people come to the National Convention who are interested in the work and if you have District meetings I think you will have almost the same group there that you have at a National Convention. It is up to each State to support the National Convention and have their own State meetings and for the National Association to furnish, when possible, some of its personnel to go to State Conventions. I think you can reach them that way.

MR. GILL: It seems this question has three problems. Is it going to create any more interest on the part of the abstractor? Is it a duplication of effort and expense? Is it going to increase attendance at National Conventions? What are your thoughts in that connection? If we did take Oklahoma, Texas, Louisiana, into a Regional meeting, would it increase interest?

MR. MAYO (Louisiana): I am not much of a trotter. I have been going to abstract meetings now for twenty-two years. We try to keep up with the State Association. If we were able to get a Regional meeting and bring some good man down to Louisiana we might educate somebody else in Louisiana to go to the National Association meetings and if they did this because of the interest which they had obtained from a Regional meeting, we would gain something.

MR. WILLIAMS (South Dakota): I think your meeting in Oklahoma City last January answered the question as to whether it would affect the attendance at the other meetings. I know of one or two that would not have been to the Mid-Winter meeting if there had not been a meeting at Oklahoma City. It did not detract at all. I believe if the Land Bank District could have this it would be a wonderful thing for the Association. I believe Regional meetings would answer that so that there would be time to discuss what you want to know.

MR. GILLILAND (Iowa): It would be my suggestion that if there are problems between the various adjoining States that those States might get together and hold such meetings as might tend to iron out their problems. Personally I would prefer seeing our members attend our State Conventions in greater numbers and have attractive programs. In Iowa we had a great program in May. We had Jim Sheridan and Bill Gill and between the two of them we had a great program, and I believe we would have more successful State meetings if we would not go into these Regional meetings, however, if we determined there were problems which might affect the surrounding States we could call a meeting, settle those problems and save our money to attend the National Conventions.

MR. GRAHAM: I make a motion that this matter be passed over until the Mid-Winter meeting.

Motion seconded and carried.

MR. GILL: I would like to bring up one more question if I might. That is the question of a series of State Conventions. Quite a few States took part in a series of State Conventions this year. I would like to hear what you think of this series of Conventions. Do you like the idea? Of course, as I said this morning, your officers do not know what you want unless you express your opinion and if you want us to serve you, you must let us know what you want. What do you think of the plan of a series of State Conventions somewhat along the line we had this past Spring?

MR. EIDSON (Missouri): If I might express the attitude of the Missouri Title Association I am frank to say that we have never at any time during my experience with the Association had a more satisfactory and a better meeting than we have had this year with the assistance of your representative from the Abstracters Section of the American Title Association. I am quite sure that I express the sentiment of the State of Missouri when I say we are heartily in favor of a series of meetings in the future. It takes some outside member of the American Title Association to really bring to the members of our State Association the message they want to hear and I am heartily in favor of a continuation of the program as adopted this year.

MR. GRAHAM (Colorado): Colorado would like it very much.

MR. SEARS: Texas is very much in favor of that.

MR ARNOT: I think when we have State meetings it is a mistake when we don't invite two or three abstracters from neighboring States to be at those meetings, because as my friend Mr. Eidson says, a person is not without honor save in his own County. I think it is a mistake to have a State Convention without having visitors from neighboring States and I think it is especially beneficial to have men like yourself and Mr. Sheridan present at those meetings.

MR. DYKINS (Montana): We had the largest and one of the most interesting meetings. We had Mr. Barclay from Washington, Mr. Jim Sheridan and Stub Williams present. It was a real meeting.

MR. HUTCHISON (New Mexico): We had with us Mr. Sheridan, Mr. Barcley and Mr. A. M. Frazier, Regional HOLC Counsel from Dallas. It was the biggest meeting we ever had and we got a lot out of it. On behalf of the Mexico Title Association we are in favor of continuing it.

MR. PAINTER (Colorado): I am heartily in favor of the plan that was adopted last year of the officers making these visits to the various States.

MR. WILLIAMS (South Dakota): We have had the annual meetings for a number of years and at each meeting we have had a lot better time than at the preceding one. It looks as if it won't be long before we will have every abstracter in the State joining the Association.

MR. ARNOT (North Dakota): There isn't any question but what we are in favor of it. We had a large attendance last year and it was a very interesting one.

MR. CAPRON (Nebraska): We had approximately 75% at our last State Convention, due, I think, entirely to the advertising we put on that we were going to be contacted by American Title Association officers.

MR. GILL: I wonder if we might, in order to officially convey this to the Board of Governors inasmuch as they pass on the amount of money to be spent, have a motion to request the Board of Governors to carry this out next year and leave it up to each State to come into this if they want to.

MR. KINKEAD: I make such a motion.

Motion seconded and carried.

MR. PEARSON (Illinois): One question came up with reference to the same situation. Just recently the State of Illinois was contacted by a Bonding Company offering a bond to us in Illinois to cover our liability that we assume under our certificate. We are not required to have any bond and to my knowledge it is the first time it has been offered to anybody in Illinois. I am just wondering if there is anybody here that carries such a bond that is not compelled to carry such a bond.

. . . (South Dakota): Five years ago I wrote to about six or eight Insurance Companies just for that information and there was not one in that County which does it.

MR. HANSEN (Missouri): I just want there to be no misunderstanding as to the liability. We spoke of the liability of the abstracter in the different States. In Missouri you have heard that our liability is very limited but I am sure the abstracters in Missouri will reimburse anyone who suffers a loss through their work. A great many of the abstracters think they should take care of the matter and do.

Eliminating Free Service

MR. GILL: We appreciate the fact that you have to give some free service although it costs you a lot of money. Have you any thoughts as to how you may eliminate some of that free service or how you can cash in on some you are now giving.

MR. McCLURE (Arkansas): About a year ago we had several calls from rental men for lists of ownerships on property. We now give out a list showing the last deed of record and encumbrances since the date of the deed and that is all we give them. We give them that ownership with the certificate as to title for $1.50 and we now have about 12 or 14 building firms which get that ownership on every case where they are furnishing material for building. With rental agen-

cies we get 50c per call for ownership. We find that we get more of them. We have eliminated our free service entirely in this way.

MR. GILL: Do you have any competitors?

MR. McCLURE: Two and they make the same charge.

MR. FURR (Indiana): We had probably the same proposition. We used to have a lot of our customers who could ask for a pencilled memorandum of title. We found out they were using this information instead of ordering an abstract so we eliminated pencilled memoranda. Instead of charging $1.00 or $1.50, we raised it to $10.00.

MR. DOZIER (Kansas): We have the same thing up in our County. We are just across the river from Kansas City. We furnish lumber companies and also parties who want a mechanics' lien or ownership certificate. We get $5.00. We furnish ownership encumbrances, judgments and tax certificate for $5.00. Or we have what we call a mechanics' lien certificate for which we get $5.00.

A Proper Minimum Certificate Charge

There are quite a number of States who are not working on a minimum price schedule. What a minimum charge would be has been asked me a number of times during this Convention. I would like to ask what constitutes a proper minimum charge. I take it that is a general certificate. Do any of you charge less than $3.00 for a general certificate?

MR. MAYO (Louisiana): We have been getting $5.00 straight fee certificate for about 35 years and with the amount of extra work, which is probably more than 50% additional data, and as it probably takes about a days time, for that time you can't make anything unless you get $5.00, and I think it should be more.

MR. McDANIEL (Missouri): We get $8.00 for one certificate.

MR. ROBINS (Florida): Florida does not have a regular uniform certificate over the State. Ours is about the average, $10.00, whether it is one year or ten years, but this does not include Federal judgments.

MR. PAYNE: I had no trouble whatever when I raised the price. I undertake to sell my customer on the idea of the work that has to be done to make an abstract. I don't let him leave my office, if I can help it, dissatified. If you take the time to reason these things out you can show them there is a lot of work there. Of course I am in an agricultural county and my dealings are largely with the farmer and I just take the time and sell them on the idea, talk them into it.

MR. HARVEY PEARSON (Illinois): This gentleman back here said they were attempting to eliminate certificate charge. We think that is heading us the wrong way. To many the matter of the certificate charge goes further than just the work. Your charge per item is made on the basis of actual work in showing that item. Then you come down to the matter of judgment search for which we do not charge directly. That is the only item that is not paid for but I always felt that your certificate charge was more or less an insurance charge. If you preach that to your customers they don't seem to mind it. When they think it is a surety proposition they can't blame you at all for setting up a reserve from which to pay your losses. I am afraid the gentleman who is trying to eliminate certificate charges is heading us the wrong way.

Why a Uniform Price Schedule

MR . . . (Missouri): We have in our part of the State this situation. Joplin is located in Jasper County with part of it reaching over into Newton County. We feel that a uniform price in those two Counties should prevail. We charge $7.00 for a certificate. 26th Street is the line which divides the Counties.

MR. JONES (Indiana): The situation in our State must be roughly classified into three groups. One, the large Cities where they are getting adequate prices, the other, the great majority, in agricultural Counties, and the third, we might say Counties that are eligible for forest reserve. I am much in favor of a uniform price but with the various conditions in the different Counties I would like to know how it could be done, with values at such a large differential.

MR. HUTCHISON (New Mexico): In our State one of the first things we did was to try to establish a uniform price. Of course in our State there is some of our lands in Sante Fe with metes and bounds description, which take survey description. We established a certificate price ranging up to $7.50 and a minimum charge of $5.00, $1.00 to pay for Government certified land, and $1.50 minimum for charge on the other pieces of land. It has worked out very well. These are all minimum prices. If you have a uniform price you eliminate arguing between the clientele and eliminate price cutting.

MR. SMITH (Michigan): I find that we are compared to Mr. Jones of Indiana, Michigan having some Counties of large population and then Counties with more large Cities and some with poor valuations. I think it was in 1928 that we adopted a price schedule in which we recognized that difference in population and put our prices on a population basis.

The Nominating Committee of the Section brought in its report. It was adopted unanimously. For list of officers, see pages 1 and 2.

Title Insurance, Legal and National Title Underwriters Sections—Joint Session

JOHN H. SMITH, Chairman
Title Insurance Section
President, Kansas City Title & Trust Company, Kansas City, Missouri.

LIONEL ADAMS, Chairman
National Title Underwriters Section
President, Lawyers Abstract Company, New Orleans, Louisiana.

JACK RATTIKIN, Chairman
Legal Section
President, Home Abstract Company, Fort Worth, Texas.

Report of Chairman Legal Section

JACK RATTIKIN
President, Home Abstract Company Fort Worth, Texas

The activities of the Legal Section have been less than I had hoped they would be for this year but nevertheless of benefit to the entire Association. Since our last meeting a number of the new activities of the new deals that affect real estate have either been appealed or declared unconstitutional. Many of the moratorium acts in the various states have been declared unconstitutional. Some have been modified by the decisions of the Courts.

At Bar Association meetings in some of the States we have been criticised by some for infringing upon the work of the attorneys in these States. Some criticism was made at the Bar Association meeting in Los Angeles. However, I find that in most cases the criticism is more or less mild. I think that we can improve relationship of the American Title Association with the Bar Association by having our examiners join the local Bar Association. I think that will help to clear up any misunderstanding that may exist between our Companies and the Bar.

A great many attorneys of the life insurance should belong to this Section. We can readily understand the problems of the examiners of the life insurance companies. It is necessary that they keep in touch with constantly changing laws in all the states and many have found it practical and advantageous to turn to the local title companies in each State. I think we should work to secure more uniformity of laws that affect real estate in the different States.

Since our last meeting the Frazier-Lemke Act has been declared unconstitutional and we have a new Act. We don't know what the Courts are going to do to that. You have already heard a very able discussion of it and lawyers of course are interested in the titles that will be affected by this Act.

We have also been interested in the uniform certificates of abstracts and

the standardization of title insurance policies. Through the work of Mr. Gill we have been most active in working out a uniform certificate. The examiners must depend upon proper evidence of title in making their examination and are particularly interested in the certificate. Therefore, we are interested in getting greater uniformity in each State and the title evidence that is to be furnished.

The Legal Section would recommend that we encourage the formation of a legal section in each State Association. We find that there are practically no activities in the State Association insofar as the examiners are concerned. By forming these legal sections in each State Association it will make the National Association stronger. There has been some Torrens legislation this year, or an attempt to have it passed. These bills were introduced in Missouri, Florida, New York, and New Jersey. All of them have failed to pass. Two pamphlets have been gotten out on the Torrens Legislation showing the fallacy of it and they are available for those who are interested in them.

Report of Chairman National Title Underwriters Section

LIONEL ADAMS

President, Lawyers Abstract Company
New Orleans, Louisiana

The Underwriter's Section has no formal report to submit to you gentlemen so that I will be brief.

In the early part of this fiscal year, the Administration hoped to work towards two objectives, first, the preparation of a uniform owner's policy for adoption by the Association; and second, the submission of a report to this convention upon the advisability or inadvisability of term rates for title insurance. Shortly after the adoption of these two objectives, it became patent that conditions in the industry were so unsettled, largely because of the indeterminate stand taken by various Federal housing agencies on the subject of title determination, as to render untimely the pursuit of these objectives. It was the view of the Section that it could best serve its membership by urging title insurance upon the various housing agencies of the Federal Government. We feel that material progress has been made and are able to report a major achievement. Although not successful in having the Federal Housing Administration require title insurance in connection with all insured mortgages, we might reasonably expect that the FHA will require title insurance in connection with all insured mortgages on low cost housing projects. You may expect a regulation to this effect to be issued shortly by the Administrator.

The importance of the preparation and adoption of a uniform owner's policy by this Association is accentuated by the report of those who contacted the Federal Housing Administration, the Legal Department of which will in connection with low cost housing projects insist upon the ATA or LIC form of mortgage policy. Not knowing that we had no uniform owner's policy, the regulation will also call for the use of the ATA or LIC owner's policy.

It is my conviction that the preparation and adoption of a uniform owner's policy should be made a major purpose of the Section in the coming year, and it might be well for someone to offer a motion recommending such activity to the incoming administration of this Section.

(On motion duly made, seconded and unanimously carried, it was recommended to the Section that it prepare for submission to the next convention a uniform form of owner's policy.)

Report of Chairman Title Insurance Section

JOHN HENRY SMITH

President, Kansas City Title & Trust Company, Kansas City, Missouri

At the outset I want to say that our guest speakers in this Convention have spoken in no uncertain language. The Honorable Horace Russell paid us a great compliment when he said that in the making of one million loans throughout the various States that not one dime had been misappropriated by either an abstracter or title company. We should cherish our reputation in this, gentlemen, it was indeed a great tribute to this organization. I am informed that we have an unusually large attendance at this Convention. I have enjoyed it and think it is more worth while than any Convention that your Chairman has ever attended. The Missouri Title Association is now issuing monthly a monthly Titlegram. Under the auspices of the organization my friend, Mr. Vardeman, has written a curriculum on how to make an abstract and not only that, but how to arrange the title. It should be in the hands of every abstracters association.

In our own title section we have been most of us issuing the LIC and ATA policies, which are very similar in character. I believe that there are few reasons why the conditions in our title policies should not be the same, so that when a man receives a policy in Kansas City or New York, or anywhere else, that he would know that the conditions and stipulations of that policy were the same. It is very obvious that you could not make the policies exactly alike for the reason that the exceptions under Schedule "B" in the different States would necessarily vary.

In this five years of depression many good title men and women have gotten out of the business by reason of the lack of business, maybe never to return. Business of course now does not justify the employment of more people but I am wondering whether we are going to continue to make our training ground of new recruits our own office. New construction is coming and that is very necessary to our volume of business. I am wondering what we are going to do about new recruits. Any office that has been running for any length of time must necessarily have old employees. Of course the old age pension program is coming which we must all meet. I have never heard of a chair teaching title insurance in any school in the United States. In Kansas City the realtors have what they call a Realtors Institute for training young men and women to be taught the real estate business, salesmanship, the handling of property and everything connected with the handling of real estate. Perhaps we should be thinking along that line, of having an institute for educating men and women for our industry centrally located somewhere in the United States.

Extension of Title Insurance Beyond Home Territory

LIONEL ADAMS

President, Lawyers Abstract Company
New Orleans, Louisiana

MR. ADAMS: Several weeks ago I had a letter from our Secretary, Mr. Sheridan, suggesting that I prepare a paper on the subject of the extension of title insurance beyond home territory. Mr. Sheridan wrote me that a number of member companies were seeking information of him on this subject. I advised Mr. Sheridan that I considered the subject not only an interesting and important one but a very timely one, as I felt that the present inability of the title industry to furnish title insurance in every community of the nation was seriously mitigating against the use of this the most superior form of title evidence being required by federal agencies. I stated to Mr. Sheridan that it was highly doubtful that I could find time to prepare such a paper, but would advise him later if able to do so. This seems to have been taken by our most efficient Secretary as a commitment on my part to deliver the paper requested, for I find my name on the published program for a talk on this subject. As but fifteen minutes are allotted to the subject, it is perhaps fortunate that I did not try to prepare a paper, which would require not less than an hour's time for proper treatment.

I think the subject is so interesting and touches the abstractor in such a way that it really should be handled in a general and not a sectional meeting. Or at least in a joint meeting of the National Underwriters and Abstract Sections of our Association. Regional or national title insurance offers

so much to the local abstractor and ties so admirably into his activities that he should have a keen interest in the subject.

I believe that with the limited time at our disposal that the greatest good would flow from the treatment of the subject in open forum.

Those of us engaged in a regional or national title insurance business realize that it is only through the application of the principles under which we are writing insurance that the home purchasers and mortgage lenders in many parts of the nation can be given title insurance. The volume of business in many communities does not justify the creation of title companies with adequate capital to do a strictly local business. The only answer thus far found which successfully meets this situation is the regional or national title company.

Just what is a regional or national title insurance company?

It is a company writing title insurance policies upon the approving opinions of title of attorneys satisfactory to it, predicated upon abstracts of title compiled by approved abstracters, or, in communities where there are no abstract companies, upon a record search of title. It becomes patent from this statement that a close community of interest exists between local abstract companies and national or regional title insurance companies.

Letting this general definition suffice, I will now take up seriatum the questions propounded to Mr. Sheridan by member companies and included by him in one of his recent bulletins.

The first two questions being interrelated, I shall treat them together:

1: "What is the limit of valuation of property that the various companies which engage in thus writing title insurance are willing to operate on this basis?"

2: "At what valuation do they refuse to operate on this basis and insist that a full abstract, or one brought down to date, be prepared by the local representative in order that they (the title insurance company) may opinion the title in their own office."

These two questions, I think, intend to determine the maximum risk which a regional company will assume in insuring titles upon the opinions of approved attorneys without requiring independent examination by staff attorneys. The first question has no direct answer as too many varying factors are involved. The capital structure of the particular company would be one of the factors. The ability and financial responsibility of the attorney whose opinion is to be insured would be another. It stands to reason that a regional company does not have the same high regard for all attorneys on its approved list. It holds some to be abler and to have a higher degree of financial responsibility than others. It is the policy of some regional companies to require a review of the abstract by their staff attorneys in all cases involving more than $10,000.00 Other companies require a review in such cases only as involve more than $50,000.00.

In order to get the discussion under way, I am going to call upon Mr. Carlton L. Hall of Seattle to read to the meeting a very instructive letter which he wrote our Secretary in this connection.

MR. HALL: "In answer to your circular of the 20th ult. "Extension of Title Insurance:"

Instead of answering the set questions, I believe it will be more informative to state briefly our plan of operation. Under the Washington Insurance Code (paragraph 7080 Remington's Revised Statutes), it is unlawful for any insurance company to write, place, or cause to be written or placed, any policy of insurance covering risks located in our State except through a duly licensed agent of said company, residing and doing business in our State. We must, therefore, operate through an agent even in our Home Office in Seattle (King County).

We do not appoint an agent for any county unless:

(1) Such agent is our subsidiary and, therefore, wholly our instrumentality, and we own all of its capital stock and the title plant; or

(2) If we are unable to acquire the full ownership of the capital stock and of the title plant, then at least we must have a controlling ownership and thus full management of the local title company and plant; or

(3) We have a lease of the local title plant and management thereof and the business is operated on a division of the net operating profits; or

(4) If in any county there are two title companies, and one is the agent of one of our competitors, then in order to assist the other local title company to get its share of the title business and (1), (2) or (3) either cannot be had, or we deem the same undesirable, we appoint such company as "solicitor," authorizing it to solicit and receive applications and we insure titles on complete abstracts submitted by such solicitor on division of the premiums, the abstracts being returned to the solicitor after they serve our purpose.

In one county, this method is somewhat simplified by allowing the local abstracter to give us a synopsis of the title, he passing on the regularity of the execution of the instruments, and we base our reports and policies on the same, but if our examiner is not wholly satisfied with the showing before him, he supplements the showing with such examination in that county as he deems necessary.

Our examiners are lawyers admitted to the Bar and must have satisfactory records at the Home Office before they are assigned to any outside county, and thus put on their own. They are assistant secretaries of the company and have authority to sign all reports and policies, but, as a matter of our own internal authority, they must submit fee policies in excess of $15,000.00 and mortgage policies in excess of $30,000.00 to the Home Office for approval, and likewise they are instructed to refer doubtful points of law to the Home Office, regardless of policy liabilities, because generally speaking they have not adequate law library facilities and too frequently not the time to devote to original investigation and, moreover, the particular point may have been already settled in the Home Office.

Our plan of operation is the result of an experience in the early days of our company. We had appointed a local abstracter, whose character and reputation for skill and diligence was very high, as an agent, but his share of the premiums so blinded him that he covered uninsurable titles, particularly tax titles not supported by appropriate statutes of limitations, and so not only inflicted serious financial losses upon us, but also hurt title insurance in his own county, and we resolved never again to give opportunity for such mischief in independent hands, and this notwithstanding one of our competitors does appoint agents with authority to write policies. Incidentally, time and time again we find that their agents have insured titles which we have rejected, and so we are more and more convinced of the soundness of our plan, even though it may involve some loss of business."

MR. ADAMS: 3. Do you insist on an original order that the abstract be examined by an attorney located in the county wherein the land lies?"

I would say generally that companies would prefer to accept the opinions of satisfactory attorneys domiciled in the community in which the land is located, for the local attorney is often possessed of knowledge beyond the record not had by attorneys at more distant points. It happens often, however, that satisfactory attorneys cannot be found in given communities, in which cases the companies will approve attorneys in adjacent counties.

In communities in which it is not customary for a vendor or mortgagor to furnish a commercial abstract, it becomes almost essential to approve a local attorney, for to require a commercial abstract in such communities where the prevailing practice is for the attorney to make a record search of title, is to increase the cost of title determination to the prejudice of the company's clients.

Does any one wish to add anything to my statement?

I hear no response so we shall proceed to the next question.

4. "On an order for the extension of title insurance policy previously written, do you insist upon examination of the record title from the date of the original title policy to the new date by an attorney? Or, are you willing to accept a preliminary report based upon the work of the local abstracter? (In

answering this question, you are asked to assume that the local abstracter is not an attorney.)

It is the practice of most companies to require an opinion of title in connection with each policy written covering the fifty year period last past. No company that I know of would accept a preliminary report of title from a local abstracter who is not an attorney.

5. "Do you permit the local attorney to pass upon all questions of title, or do you insist upon interpretation by the attorneys in your own office of involved questions of title—as, for instance, where there may be a future estate involved?"

Most companies attempt to educate their attorneys to submit to them for final determination all moot questions which present themselves in the examination of title. The approved attorneys not only do not resent but welcome this policy. When we bear in mind that our staff attorneys have a grasp of the contract liability which we assume under our policies which the local attorney cannot possibly have, the soundness of this position requires no argument.

6. "Is your arrangement exclusively with a local abstracter? If there be two abstracters, will you make a contract with both?"

I think it is the universal practice of regional companies to approve all competent abstract companies in each community for the practical reason that the prospective purchaser or mortgagor may already own an abstract which, if acceptable to the insuring company, results in a material saving in cost to him. I would say that unless a regional company has appointed a local abstract company its agent in a community the above practice prevails. Naturally, if the title insuring company has appointed one of several abstract companies in a given community as its agent, it will insist upon abstracts being compiled and certified to by such agent who, because of the volume of business forced to him, is usually willing to recheck and recertify to any abstract which the vendor or mortgagor may have.

This completes the inquiries contained in Mr. Sheridan's bulletin. Are there any questions?

MR. PORTER BRUCK (Los Angeles): Does the loss experience of companies operating under the regional or national plan differ from those doing a strictly local business?

MR ADAMS: As I have monopolized most of your time, I shall call on Mr. H. Laurie Smith, of Richmond, to answer this question.

MR. SMITH (Richmond): One of the most serious aspects of the regional business is the disbursement of loan proceeds. Under the old system, the proceeds of loans were theoretically disbursed by the loan correspondent. Where title companies furnish full title service, you will find that the funds are actually disbursed by the local attorney. Without meaning to reflect upon the legal profession, to which I happen to belong, the experience of National Title Companies, from that standpoint, have not been happy.

MR. SOUTHWICK (Cincinnati): Do the laws in all the different states permit having agencies around the state?

MR. HALL (Seattle): We appoint agencies.

MR. DALY (Portland, Oregon): We can do business in any county of the state and appoint agencies in a certain number of counties and operate in those counties.

MR. SMITH (Richmond): Are there any companies engaged in local business which have seen fit to differentiate on long and short term mortgages?

MR. FORWARD: We charge more for a 15-year policy. We are trying to increase the rate by about 20%. Something should be done about it. The older property has just ceased to move, and you only get a crack at it once every 15 years.

MR. ADAMS: I entertain a motion of the Underwriters Section to give special interest to the matter of rates.

Moved, seconded and carried.

Deed in Lieu of Foreclosure

HOWARD P. MORLEY

Vice-President, Abstract & Title Guaranty Company, Detroit, Michigan

A deed in lieu of foreclosure constitutes a legal transaction, sometimes loosely referred to as a voluntary conveyance. The essence of the transaction is a conveyance to a Mortgagee of that right, title or estate which remains in the Mortgagor after the creation of a mortgage. The nature and origin of the interest held by the mortgagor must therefore be considered. This will be found in the early history of the Equity court.

The jurisdiction of equity upon the subject of mortgages arose principally from the harshness with which the common law treated the mortgagor. As is well known, a mortgage was a conveyance of an estate in land with a defeasance clause by which it was provided that in case a certain sum of money were paid by the mortgagor to the mortgagee at a time certain, the conveyance should be void, revest in the mortgagor or should entitle the mortgagor to call upon the mortgagee for a reconveyance.

On the other hand, if the money was not paid on or before a certain time stipulated, the estate pledged to the mortgagee became absolute and the mortgagor lost his land and no subsequent tender or payment could operate to revest the title in the mortgagor, or entitle him to relief in a court of law. The equity court, however, interfered for his relief. It was considered in equity that the mortgage was in fact a pledge for a debt, that the payment of the debt together with a penalty for delay ought to entitle the debtor to have his property back again; hence, arose the privilege on the part of the mortgagor to redeem. It was a right not recognized as common law but in equity only, therefore called an equity, and, since it was a right to buy back the land pledged, the term redemption was added.

The equity of redemption as created by the equity court was first regarded as a mere right, but since it could be granted or devised it was later during the early English jurisprudence declared an estate in land with all the incidents of an estate in fee simple. This view of the equity of redemption has been particularly observed in the United States, where a mortgage is looked upon as mere security for a debt and the title is considered for most purposes as remaining in the mortgagor. In some states the mortgage passes no legal title whatever to the mortgagee until a sale is had pursuant to foreclosure of the mortgage, while in others the common law doctrine that the legal title passes to the mortgagee is adhered to, but in such cases subject to the equitable doctrine that the passage of the legal title was merely for the security of a debt and that for all other purposes the mortgagor is regarded as the owner. A study of the decisions of most of the state courts shows that the interest held by the mortgagor before foreclosure is an estate known as the equity of redemption and distinguishes it from the right of redemption, which is regarded as a mere personal privilege given by statute to the mortgagor after the land has been sold pursuant to foreclosure of the mortgage.

The equity of redemption is an estate which exists wherever there is a mortgage on land, and has been the predominating estate bartered for and sold on the real estate market of the nation since its beginning. Why then do we pause when the parties to the transaction are mortgagor and mortgagee? The equity court not only created the equity of redemption to protect the mortgagor from the harsh rules of the law court and the unscrupulous money lenders, but it created rules of law to protect the mortgagor from himself when in stringent circumstances. At an early date the fundamental law was established that the mortgagor cannot by any stipulation or agreement made in the mortgage instrument, or at the date of its execution, waive or surrender his right to redeem. No matter how rigidly he may attempt to bind himself and no matter how stringent may be the contract by which the equity of redemption is to be given up and the estate is to become absolute in the mortgagee in event of default, a court of equity will utterly disregard such agreement and will hold the mortgagor capable of exercising his right to redeem.

That deep-rooted doctrine has given

rise to the maxim—"Once a mortgage, always a mortgage." The mortgagor may bargain away his equity of redemption instantaneously with the creation of the mortgage, or at any time to a third party for a consideration, but he cannot by any form of language or dignity of instrument part with it in favor of the mortgagee at the instant of creation of the mortgage, but he can convey it to the mortgagee after its creation for an adequate consideration. The adequacy of consideration is something that courts do not ordinarily inquire into. It has been the fundamental law that one has the right to bargain away anything he possesses for such consideration as he deems proper. This is a natural rule which eliminates restraint of trade, but the equity court further protected the money borrower from a forfeiture and from himself by usurping the prerogative of jealously inquiring into the adequacy of the consideration flowing to the mortgagor from the mortgagee for conveyance of his equity of redemption.

It has become a universal rule that courts of equity will set aside a conveyance of the equity of redemption to the mortgagee where there is inadequacy of consideration; fraud, actual or constructive; undue influence or any unconscionable advantage taken by the mortgagee. A court of equity will set aside any conveyance procured by fraud, undue influence or unconscionable advantage flowing from the grantee to the grantor of the estate conveyed, so in a conveyance from a mortgagor to a mortgagee the most essential incident as between the parties is the consideration.

The adequacy of consideration for a conveyance of the equity of redemption to the mortgagee depends upon its reasonableness as between the parties, which immediately raises the question as to what is reasonable in the light of all circumstances. Where a mortgage is not in default it may be the difference between the amount due and owing the mortgagee, plus amount of taxes and junior liens and the present value of the property. Where the mortgage is in default the value of the property may be determined by incidents of salability, which includes degree of default and the terms of the mortgage. A cancellation and discharge of the debt secured by the mortgage may, in the light of all the circumstances, be sufficient consideration. It is conceivable that a cancellation of the debt may be adequate consideration for the conveyance of the equity of redemption, plus the payment of additional funds by the mortgagor to the mortgagee. The adequacy of a consideration depends upon the fair, open, reasonable dealing between the parties at arms length with reference to arriving at a proper balance of values flowing between the parties. In justice to both parties the balance of values must be considered in the light of all the present circumstances. Future circumstances should not have to be considered, but in the light of the attitude of some of the equity courts and the social trend of the times, future circumstances must be considered. That which in fact may be a fair and adequate exchange of values at the time the transaction is made may be regarded as pitifully out of line by the mortgagor at an early future date, because of his own changed circumstances, enhanced land values, acute social demands that depositories of money be imposed upon, or possibly the mortgagor's own lack of character and moral stamina. Some courts of equity with mistaken conceptions of justice sometimes exert their powerful influence and prerogatives to revise or destroy fair and valid contracts between the parties.

The first phases of the situation before mentioned have led the best legal minds and officers of many splendid loaning institutions of character to search for a method of definitely binding a mortgagor to a valid statement of fact at the time of the transaction. These statements of fact have taken the form of recitals short and long and of varying degrees of dignity in the conveyance, others by way of sworn statements, affidavits and so-called estoppel certificates. In the last analysis these recitals and agreements as between the parties carry no greater weight than a bargain and sale deed under seal which is an instrument of greatest dignity. Such lengthy recitals and agreements between the parties in writing may in some jurisdictions have an adverse effect upon one who having relied on the recording acts, would otherwise have been a future bona fide purchaser without notice from the mortgagee. They may weaken the presumption of good faith and adequacy of consideration which attaches to all deeds of conveyance properly executed.

The difficulties which present themselves in transactions of this character may lead one to inquire—Why indulge in that practice, why not foreclose pursuant to law? The answer seems to lie in the consideration of a number of factors.

1—The great expanse of credit urged and thrust forcibly on the people for several decades by the resistless force of business expansion and fostered by all the forces of the nation, including local, state and national governments under all forms and ideals of administration.

2—The education of the masses to the proposition that every one should be a land owner. This was carried to such an extent that too many attempted to be just that when they lacked the earning power, security and sense of responsibility.

3—The recognition of the proposition that the most stable security is land because it is, if not immediate in all cases, the source of all wealth.

4—That the large percentage of funds loaned for the purchase and improvement of land were those of individuals or corporations such as life insurance companies, banks, trust companies, etc., who were not loaning their own funds but those which were committed to their care by the very masses who borrowed their funds.

These factors, particularly the latter makes it imperative that the debt secured by the mortgage be paid in a reasonable manner according to the terms of the mortgage for the purpose of protecting holders of policies of life, fire and other forms of insurance, depositors in banks and estates held by trust companies, etc. The individual or corporation responsible for the collection of such funds have found that their only recourse lies in the foreclosure and sale of the pledge. Long periods of redemption and moratorium laws permit many mortgagors to use, possess and enjoy the rents and profits of the property pledged during those long periods of trial in courts with crowded dockets, and, during those long redemption periods the property in too many cases is permitted to go to waste and in many instances subjected to wanton destruction by the mortgagor. Immediate possession, right to earning power and elimination of waste demands immediate action in many cases. The answer lies in a fair and equitable purchase by the mortgagee of the equity of redemption. How can such purchase be made with safety?

As previously stated, the mother of the estate known as the equity of redemption is the equity court. That court has jealously guarded the interests of that estate since childhood. It is equity in every phase of its nature and if lost it must be recovered by its creator, the equity court, in the absence of local legislative enactments to the contrary, and of these there are few, if any.

It is an elementary principle that an equity court will not set aside a conveyance executed in fraud of third parties; he who comes into equity must do so with clean hands. The transaction between the mortgagor and mortgagee should therefore involve a third party who will assume responsibility for adequacy of consideration, at the request of and pursuant to warranties made by the mortgagor. The third party should be placed in such a position by the mortgagor, at the mortgagor's request, that after relying upon statements and warranties of the mortgagor he would suffer the loss should the conveyance be set aside through the repudiation by the mortgagor of the statements and warranties made. This immediately suggests a reputable title insurance company as a third party because of the inherent nature and scope of its operation. The following procedure is suggested:

First—The mortgagor and mortgagee dealing at arms length enter into a fair and equitable agreement for the purchase and sale of the equity of redemption.

Second—The mortgagor apply to the title company for a policy of title

insurance stating on the application the nature of the transaction and ordering that the policy be issued insuring the title in fee in the mortgagee after recording of the closing instruments.

Third—The Title Company take in addition to a properly executed application describing the nature of the transaction, a written warranty by the mortgagor that the consideration is fair and adequate and that there was no undue influence brought to bear on him by the mortgagee. This may be termed an estoppel certificate but a better name would seem to be —Warranty as to State of Facts.

Fourth—The application should also be executed by the mortgagee because he is to be the beneficiary under the policy and the application should contain his statement of facts surrounding the transaction.

Fifth—Issuance of title commitment by the title company to the mortgagor and mortgagee showing the present condition of title.

Sixth—Closing the transaction by use of a deed of conveyance with or without warranty, so long as the instrument contains proper operative words of conveyance and specifically includes language to the effect that the intent is to convey the grantor's equity of redemption.

At the time of closing the debt should be cancelled, including the evidence thereof, and the mortgage discharged. The title policy when issued should be charged to and paid for by the mortgagor and a receipt should be secured showing delivery of the policy to him. Obviously, junior liens or intervening equities will not be affected by such conveyance. It is understood that such, if any, should be properly eliminated at the time of closing.

The nature and amount of consideration does not have to be set forth in the deed. Long recitals with too much detail in a deed of conveyance are more apt to cause a future examiner to raise questions and in fact may give notice of possible defects. It is best to rely upon the presumption of regularity and good faith which every deed carries. While the title company should not be put in the position of passing upon adequacy of consideration because that is a matter of negotiation between the parties to the conveyance, the title company should inquire into the nature and amount of consideration, and if the consideration is so far out of line that at first glance it would shock the conscience, obviously, the title company would not wish to be a party to the deal for two reasons. First: No reputable title company would care to be a party to a fraud even if it could be such a party without loss. Second: Where the consideration is so far out of line the danger of a suit to defend is most eminent.

A transaction of this nature closed in this manner would place the parties to the transaction in a position where, should the mortgagor later file a bill to set aside the conveyance alleging inadequacy of consideration, fraud, undue influence, etc., the beneficiaries under the policy would immediately refer the matter to the title company under the terms of the policy, and the title company would forthwith enter upon a defense of the proceedings in the name of the insured, placing in evidence the unrecorded statements and warranties and other documents executed by the mortgagor. The title company could then institute a separate proceeding by filing a bill to restrain the mortgagor from prosecuting a suit to set the deed aside, placing in evidence the documents showing that the title company would be liable for damage to the mortgagee if the mortgagor prevailed, because it had assumed the risk at the request of and pursuant to the statements and warranties of the mortgagor, and pray for a permanent injunction. In many jurisdictions both cases would be tried by the same chancellor and would result in the dismissal of the bill in the original suit or the granting of the injunction. A court of equity would have to repudiate one of its most sacred doctrines and place a premium on fraud to hold for the mortgagor.

It seems there could be no loss to the mortgagee or the title company through failure of title. It may be said that under the conditions and stipulations of all owner's policies the title company is not liable to loss occasioned by fraud of the party insured. This is a fundamental principle of insurance and no title company should be expected to assume such responsibility and no reputable beneficiary will expect such protection. This question will not arise in connection with our life and fire insurance companies and reputable banks and trust companies. It is not their practice to perpetrate a fraud upon their mortgagors and if the title company is dealing with a mortgagee of questionable character or business habits, they should refuse to accept him as a beneficiary in any kind of a transaction. It would be almost impossible to allege fraud and undue influence without affecting the adequacy of consideration. As previously stated, if the title company sees that the consideration is so pitifully out of line as to shock the conscience it should not insure. If this rule is followed a court of equity would not split hairs to attribute fraud to permit a mortgagor to recover to the detriment of the title company which relied upon his warranty.

As has been stated a deal closed pursuant to this method practically eliminates the possibility of loss through failure of title, but it does not stop a mortgagor from bringing suit. There is no such thing in our jurisprudence as a bona fide suitor. The title company should, therefore, make an added charge to cover this part of the risk which charge should be placed in reserve to help defray the expense of litigation in the cases which do arise. The amount of extra charge for this purpose depends upon the volume of the business of this nature which is apparently at hand.

This resume was meant to cover the general topic of deeds from mortgagor to mortgagee and the application of general principles involved. There may be isolated cases not covered by these general principles, if so it is by virtue of legislative enactments which have curtailed or destroyed the inherent power of the equity court and such are few in number.

Deductions Allowed to Insurance Companies for Income Tax Purposes

HENRY R. ROBINS

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Philadelphia, Pennsylvania

Originally, it was intended to include the subject of this address in the report of the Committee on Federal Legislation, but those who prepared the program for the Convention evidently considered it of sufficient importance to become the subject of a separate paper, and assigned to me the work of presenting the same to you.

What I am about to read is the result of a great amount of time and labor of other members of the Committee and those associated with them, and it is to them and not to me that any credit is due. My task has been merely to classify the result of the labor of others, and put it in written form.

The question to be considered is the hardship upon Insurance Companies, other than Life and Mutual Companies, as a result of the strict interpretation of the several Revenue Acts as at present in force, under which all the income is taxed in the same manner as that of all other corporations, while at the same time the deductions which other corporations may make are not permitted, but only those of a limited class.

In order to understand the situation, it is necessary to take up the several Revenue Acts in their order.

Section 204 (b) of the Revenue Act of 1928, and similar sections of prior Revenue Laws, define the gross income of an Insurance Company, other than Life or Mutual, to be the amount of income derived from:

1. Premiums.
2. Interest, rents and dividends.
3. Gains from the sale of property.

Section 204 (c) provides that such companies, in determining net income, shall be allowed as deductions:

1. Ordinary and necessary expenses.
2. Interest and taxes.
3. Losses from the sale of property.
4. Bad debts in the nature of agency balances and bills receivable as-

certained to be worthless and charged off within the taxable year.

The Revenue Act of 1932, in defining the gross income of Insurance Companies, other than Life or Mutual, Section 204 (b), contains the same definition of gross income as Section 204 of the Act of 1928, and in addition, provides that there shall be included in the gross income "all other items" constituting gross income under Section 22. Section 22 is the Section which defines gross income for individuals and all other corporations. The effect, therefore, of the Act of 1932, is to include all income, whether from premium, charges, interest, rents, dividends, profits on sales, or otherwise. In the case of Title Insurance and Trust Companies, such income will include conveyancing fees, escrow fees, trustees' fees, and any other income from several miscellaneous sources.

At the time that Section 204 (b) was amended by the Act of 1932, to require the inclusion in gross income of all items that would be subject to tax on an ordinary corporation, Section 204 (c) pertaining to deductions was not amended, and provides for the same deduction as the Act of 1928 and prior Acts.

Section 204 (b) of the Revenue Act of 1934, which pertains to Insurance Companies other than Life or Mutual, is substantially the same as Section 204 (b) of the Revenue Act of 1932.

If an Insurance Company, other than Life or Mutual, is to be taxed upon all its income the same as other corporations, then, in all fairness, it should be entitled to the same deductions as other corporations.

At the present time, other corporations are entitled to deductions for all bad debts, see Section 23 (k), while an Insurance Company other than Life or Mutual, is entitled to a deduction for bad debts which are only in the nature of agency balances and bills receivable ascertained to be worthless and charged off within the taxable year. If a bad debt arises out of an escrow conveyance or reconveyance charge, or a charge for trustees' fees, the Revenue Department takes the position that the same is not deductible even though the income from such items is required to be included in the gross income.

Other corporations are allowed to deduct losses on investments in stocks and bonds, when such investments become worthless; for example, a Title Insurance Company which has investments in bank stocks, or building and loan associations, or other corporations, which stock becomes worthless due to the institutions being closed or liquidated, and there is no recovery for the stockholders, would not be permitted to make a deduction for the loss. In this type of loss, an ordinary corporation would be entitled to deduct the amount of its investment due to the stock becoming worthless. Under the Rulings of the Internal Revenue Department, an Insurance Company other than Life or Mutual, would not be allowed to make such a deduction for the reason that the loss was not in connection with a sale or disposition of property.

This "bad debts" provision is of importance to all Title Companies for the reason that the Internal Revenue Department takes the position that where a mortgagee forecloses upon a mortgage given as security for a loan, the uncollectible portion represents a loss in the nature of a bad debt, and while this is deductible by an ordinary corporation, an Insurance Company other than Life or Mutual, will not be allowed to make the deduction for the reason that such a bad debt is not in the nature of an agency balance or bill receivable.

It has been suggested that Section 204 (c) of the Revenue Act of 1934 should be amended. Paragraph (6) of Sub-Section (c) of Section 204 now reads as follows:

"(6) Bad debts in the nature of agency balances and bills receivable ascertained to be worthless and charged off within the taxable year." The suggested change is that Paragraph (6) of Sub-Section (c) of Section 204 should be eliminated, and the following substituted therefor:

"(6) Bad debts, as provided in Section 23 (k)," and that a new paragraph should be added to Sub-Section (c) reading as follows:

"(10) Any other deduction allowed by Section 23."

The Bureau of Internal Revenue has been placing a strict interpretation upon the language of the Acts, and has been basing its actions upon tecnnicalities. Two Title Insurance Companies claimed certain deductions as losses resulting from worthlessness of securities and from foreclosure. The deductions were not allowed.

Since that time, this whole matter has been discussed with some of the attorneys representing the Department, and they seem to be inclined to give a more liberal interpretation to subdivision (c) of Section 204, but indicated that a clarifying change in the Law would be helpful. They are thoroughly familiar with the whole situation, and the reason for their liberality of thought is the Legislative history of the Revenue Act of 1932 in connection with Section 204. As has already been stated, it was the Act of 1932 which widened the definition of gross income, and the following is a quotation from the report of the Senate Finance Committee (Report No. 665, 72nd Congress, 1st Session, page 37):

"SECTION 204 (b) (1). DEFINITION OF GROSS INCOME—INSURANCE COMPANIES OTHER THAN LIFE OR MUTUAL.

"Some question has arisen as to the adequacy of the definition in prior acts of the gross income of insurance companies other than life or mutual. Under a recent decision of the Supreme Court, some of the title guaranty and mortgage guaranty companies are taxable as insurance companies, and since a substantial part of their income might not be classed as either underwriting or investment income, it might not come within the definition of gross income contained in this section. **As such companies are allowed the same deductions as are allowed to ordinary corporations, in addition to the purely insurance deductions provided in Section 204, they would be in the highly favored position of being taxed upon only part of their income while being allowed all of their expenses, loss, and other deductions.** Moreover, this definition, even in the case of the other type of insurance companies taxable under this section, may not include some miscellaneous forms of income which should be subject to tax. The bill accordingly requires the inclusion in gross income of insurance companies taxable under section 204 of all items constituting gross income under section 22 other than items of the character already specified in section 204."

It will be observed that the Committee acted under the assumption that such insurance companies were allowed the same deductions as ordinary corporations, and were escaping tax upon part of their income. Upon this assumption, Congress made no change in the provisions of subdivision (c) (4) and (6) of section 204 of the 1928 Act dealing with deductions.

It would be impossible to obtain from Congress the amendment necessary to clarify this situation, except at such a time as it is revising the Revenue Acts. The only amendment to Section 204 contained in the Revenue Act of 1935 was the one changing the rate of the tax. However, as the Act of 1935 was so carelessly drawn, it will probably have to be amended very shortly, and the whole matter is now being presented to the members of the Association with a request that all those connected with title insurance companies interest themselves in this matter and seriously consider the advisability of an attempt being made to procure an amendment. It will probably mean the employment of counsel in Washington, involving payment of counsel fees and costs.

The Committee on Federal Legislation is asking for an expression from the title insurance companies of their view on this subject, and is also asking the companies to state whether or not they would be willing to contribute to the fund necessary to pay the expenses.

The Nominating Committees of the three sections brought in their reports. All were adopted unanimously. For list of new officers see pages 1 and 2.