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Jurisdiction of Federal and State Courts Over National Bank Receivers in Relation to the Passage of Title to Real Estate and Memorandum of Law

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You were kind enough to flatter me by extending an invitation to me to speak at your Annual Convention upon the subject of the "Jurisdiction of Federal and State courts over National Bank receivers in relation to the passage of title to real estate."

The abysmal darkness in which I approached any question of title during the past twenty years of my practice in the legal profession, can be vouched for by such eminent authorities as Mr. Harry Jordan, Mr. Henry P. Robins, Mr. C. Barton Brewster, etc. In fact, Mr. Edward H. Bonsal, a courteous gentleman and scholar, whose memory I very greatly respect, must be smiling in his celestial abode upon the effrontery of an ordinary lawyer endeavoring to discuss the validity of titles, before men whose chief business it is to pass upon titles.

There were many occasions in the good old days (I am not referring to pre-prohibition or the prohibition era, but to the real estate boom days) on which I meekly asked Mr. Bonsal and Mr. Harry Jordan how I could have this or that objection in a settlement certificate removed, and after either of them had made the suggestion, I would say, "Yes, I understand." (I really did not understand) "Will you please do it for me?"

Having stated my general qualifications to discuss title subjects, you can discount anything I say, at as high a percent as you desire, and you will not be wrong.

I presume that the reason that you selected this subject must be that there are some doubts in your mind as to the ability of a receiver of a National Bank to transfer good and marketable title to a prospective purchaser, with or without the approval of a court of competent jurisdiction.

Receivers in Equity

This doubt undoubtedly arises by reason of two things. One—the spontaneous suggestion in your minds that receivers in equity cannot as a rule convey title, and that a National Bank receiver, to all appearances, is a species of equity receiver; and second—by a wonderment as to by virtue of what power do the courts obtain jurisdiction of a receiver of a National Bank, who is appointed under an Act of Congress, by the comptroller of the currency, and subject to him alone so as to enable him to pass title. This is especially significant because the receiver of a National Bank is not called upon to report to a court any of his acts, nor is he required to submit an account to any court; have the account audited and secure his discharge. He is solely and exclusively responsible to the comptroller.

The only way in which a court customarily obtains jurisdiction is by the issuance of a writ or the filing of a bill in equity or some similar process. In a National Bank receivership, no writs are issued, no bills in equity are filed, and consequently I presume the doubt arises in your mind as to the power of courts over sales of property of insolvent National Banks. Since the receiver is an appointee of the comptroller, the question naturally arises from what source does the comptroller derive his authority for the appointment of a receiver? This authority is contained in the National Banking Act, which provides in Section 191:

"That whenever the comptroller of the currency deems a National Bank insolvent, or whenever a National Bank defaults in its obligations or suspends payment, the comptroller may take possession of the assets of the bank for the purpose of administering them for the benefit of its creditors."

This is the basis for the comptroller assuming jurisdiction. As to what constitutes insolvency or default, the comptroller is the sole judge.

Since the comptroller cannot personally administer each bank, he is given authority to appoint deputies, who are defined as "receivers." (See Act of Congress June 30, 1876—c. 156, 19 Stat. 63.)

Section 192 of the Act of Congress provides:

" . . . Such receiver under the direction of the comptroller shall take possession of the books, records and assets of every description, of such association, collect all debts, dues and claims belonging to it and upon the order of a court of record of competent jurisdiction may sell or compound all bad or doubtful debts, and on a like order may sell all the real and personal property of such association on such terms as the court shall direct . . . "

I know of no Act of Congress which directly confers jurisdiction upon either the United States District Court or a State Court over the comptroller or his receiver. A National Bank receiver is not a court officer. At times he has been termed a mere instrumentality of the comptroller. Kennedy vs. Gibson, 8 Wall. 498. In any event the Supreme Court has directly ruled that the receiver of a National Bank is an officer of the Federal government. Mr. Chief Justice Fuller, in re Chetwood, 165, U. S. 443, 17 Sup. Ct. 385 (1897) states that:

"The receiver is not an officer of any court, but the agent and officer of the United States."

Mr Justice Brandeis in U. S. v Weitzel, 246 U. S. 533, 38 Sup. Ct. 381 (1917) held that the National Bank receiver is an officer of the United

States and not an agent or officer of the National Bank within the meaning of an embezzlement statute. It has also been held in Altman v McClintock, 20 F (2) 226, (D. Wyo. 1927) and Wilson v Awalt, 2 F. Supp. 465 (M. D. Pa. 1933) that a Federal Court cannot compel the receiver of a National Bank to render an accounting, inasmuch as the responsibility of a receiver runs only to the comptroller of the currency.

In Wilson v Awalt, the court felt compelled to answer the argument that the exempting of the receiver of a National Bank from liability to the Federal Court for an accounting places undue and unlimited powers in him and places him above the law, but says the following:

". . . Congress has seen fit in matters of this kind to delegate the necessary power and duties to the comptroller and not to the courts. In my opinion this court is without power to order an accounting in this case . . ."

Acts of the Congress

Are there any acts of Congress which make receivers of National Banks officers of the United States? The Act of December 23, 1913, 38 Stat. 261 makes the comptroller of the currency an officer of the United States. The Act of Congress gives him jurisdiction to liquidate National Banks, under certain conditions by the appointment of receivers. Therefore, by pure deduction, if the comptroller is an officer of the United States, his appointee is an officer of the United States.

We do know that in all cases where a receiver of a National Bank wishes to sell the assets of the bank, he does not do so unless and until he receives the consent of a court—and usually the Federal Court. But we have said that the Federal Court has no jurisdiction over the receiver or the comptroller. We know that even officers of the United States cannot walk into a court of record and say, "Here I am, please do X, Y or Z," unless and until they have first set in motion the machinery of court by the issuance of a summons, subpoena or writ or the filing of a complaint, or some similar process. And ordinarily, one does not start the machinery of a court by the filing of a petition alone. How then, may the court act?

The Act of Congress which I already called to your attention, says that a receiver may sell real estate with the approval of a court of competent jurisdiction. The actions of a court, pursuant to this Section, are not of a court acting in a normal judicail manner, but the action of a court in the performance of a purely administrative function. The action of the courts in approval is similar to the action of the President of the United States, in the approval of Codes of Fair Competition. In fact, the action of the court is so far administrative in character, that in Fifer v Williams, 5 F (2d) 286 (CCA 9, 1925) the order of a District Court permitting a sale, was held not to be subject to review by the Circuit Court of Appeals.

Limitation

You may have noted that the only limitation stated in the designation of the courts which are to act in approval or disapproval of sale is that they be courts of record of competent jurisdiction. This does not mean jurisdiction over the comptroller or the receiver, but the word jurisdiction is used in the sense of the courts willingness and ability to act in an administrative capacity in cases such as that here presented. Accordingly, if the powers of any state court permit it to so act, it is competent to act in approval or disapproval of a petition for leave to sell the assets of a National Bank. Thus, in Gamble v White, 56 F (2d) 814 (CCA 10, 1932) the court explicitly denied that a sale of assets, pursuant to the approval of a state court, was defective. Tacit approval of this same position was granted by the Supreme Court in Turner v Richardson, 180 U. S. 87, 21 Sup. Ct. 295 (1901). The great bulk of petitions for approval are presented to the Federal Court within whose district the National Bank functioned. In McCartney v Earle 115 Fed. 462 (CCA 3, 1902), it was said that the District Court could act in consideration of the petition by virtue of the authority granted in paragraph 16 of Section 24 of the Judicial Code, which permits the District Court to act in cases for the winding up of the affairs of a National Bank.

When the receiver of a National Bank, pursuant to the statute and the approval of the court, proceeds to sell real estate, you, gentlemen, know that he, as receiver executes the deed, and in your knowledge of the incapacity of an equity receiver to normally execute a valid deed, you are apprehensive of the validity of the title passed by the receiver. I strongly feel that your fears may be set at rest. The deed executed by a receiver of a National Bank is a good and valid conveyance. At times equity receivers acting under authority of the court, execute deeds—and they are valid for the courts say that the equity court which does have jurisdiction over the assets can order their sale by the receiver and the right to execute documents of title necessarily follow upon the right to sell. To those of you who say, "But in that case, the court has jurisdiction over the assets. In that case, the court is acting in a judicial manner, and there is due process of law, wereas the sale by a receiver of a National Bank is without any judicial decree." The answer is a simple one.—A National Banking Association is created pursuant to statute. That statute —the National Banking Act—is a complete Code governing the rights, powers and limitations of a National Banking Association. A bank created pursuant to that statute is subject to its provisions and since the statute permits the receiver to sell, he may sell; and inasmuch as the power to sell inevitably draws with it as a necessary adjunct, the power to do that which is necessary to fulfill the power to sell the receiver of a National Bank may execute those documents necessary to the passage of title.

MEMORANDUM OF LAW

Jurisdiction of Federal and State courts over National Bank receivers in relation to the Passage of Title to Real Estate

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1.—The National Banking Act is a complete Code governing the establishment, regulation and liquidation of National Banks.—Cook County National Bank v United States, 107 U. S. 448. 2 Sup. Ct. 561. Port Newark National Bank of Newark v Waldron, 46 F (2d) 296 (CCA 3, 1930).

2.—Comptroller of the Currency may appointment a Receiver for a National Bank upon its insolvency—National Banking Act, Section 191.

3.—The National Bank Receiver is is not a court officer. He is an agent and officer of the United States and subject to supervision only by the Comptroller of the Currency.—Kennedy v Gibson, 8 Wall. 498 in re. Chetwood, 165 U. S. 443, 17 Sup. Ct. 385 (1897). United States v Weitzel, 246 U. S. 533, 38 Sup. Ct. 381 (1918).

(a) Accordingly, a receiver of a National Bank cannot be compelled to render an accounting to a court.—Altman v McClintock, 20 F (2d) 226, (D. Wyo. 1927). Wilson v Awalt, 2 F. Supp. 465 (M. D. Pa. 1933).

4.—The Receiver of a National Bank may sell its assets, inclusive of real estate, upon the order of a court of competent jurisdiction. — National Banking Act, Section 192.

(a) The mere application to a court for leave to sell does not subject the assets or the receiver to the jurisdiction of the court.—In re. Chetwood, supra.

(b) The court acts in an administrative capacity only.—In re: First National Bank of Billings 39 F (2d) 663 (D. Mont. 1930).

1.—Accordingly, the courts action is not subject to review by appeal.—Fifer v William 5 F (2d) 558 (CCA 9, 1925).

(c) A state court is a court of record of competent jurisdiction.—Turner v Richardson, 180 U. S. 87, 21 Sup. Ct. 295 (1901). Gamble v White, 56 F (2d) 814 (CCA 10, 1932).

(d) A Federal Court may act because the petition for leave to sell is a case for the winding up of the affairs of a National Bank within paragraph 16 of Section 24 of the Judicial Code.—McCartney v Earle, 115 Fed. 462 (CCA 3, 1902).

JOSEPH K. WILLING, Esq (Philadelphia): I have here the studies that were made prior to the year 1935 and of course, if you desire, I might read from that paper. However, with your

permission, I thought that I might speak to you somewhat extemporaneously upon a very current problem here in Philadelphia, which is of much more importance now than the basic right of receivers of National Banks to convey title subject to the approval of the Comptroller of the Currency and the United States District Court where the receivership is situated or a "Court of competent jurisdiction" as the Act of Congress provides.

Now, that subject, I think, will be interesting because in line with the question asked by the Chairman a few moments ago, when my friend Mr. Umsted finished his speech—"Can anyone in the room," asked your Chairman, "tell us anything about actual losses as a result of the insurance of titles affected by foreign divorces." I don't think anyone volunteered any information on that question. I can tell you of actual loss of considerable business, in the nature of premiums earned to Philadelphia Title Insurance Companies, with the exception of one small company, by reason of a problem that I am about to precipitate for discussion and, therefore, my remarks have both an academic and a practical business consideration to those of you whose chief function is the passage of title and the earning of profits for the companies whom you represent.

Judgments and Receiverships

The problem is this—and I will use the first person, because it is a little easier to handle. When I was appointed receiver by the Comptroller of the Currency of a National Bank here in Philadelphia and I undertook to sell some real estate and I applied for title insurance, the particular company to which I made the application turned up a great string of judgments, and they were practically of all classes and descriptions. A great many of those judgments were judgments against the Bank as garnishee. Some of those judgments were judgments against the bank for street improvements or assessments; some of the judgments were judgments which were entered while the bank was a going institution, particularly the garnishee judgments and street improvements and assessments of that classification. Some judgments were entered during the conservatorship and one or two judgments were entered after the receiver was appointed. And, consequently, the title company refused to mark off that certificate unless all of these judgments were removed.

It involved hundreds of thousands of dollars of property in the city of Philadelphia, and a series of conferences with the various and leading title officers in the city of Philadelphia secured from those title officers the following agreement, or solution; and if the solution had no exception, my speech would be finished at this point, but in view of the fact that the solution has the exception, and it is about the exception that we will border on the law, I find justification in bringing it to your attention.

The solution in the agreement was this: that the title companies would remove all judgments entered against the bank prior to receivership, or prior to the appointment of a conservator; and they would remove all judgments entered against the bank subsequent to the appointment of a receiver. But there was only one judgment entered against the bank during the conservatorship and the title companies—all except one in the city—have refused to remove that one judgment against the conservator.

The circumstances under which that occurred are these. Now, may I ask you to please believe that this is not a lawyer's argument, or as a protagonist for accomplishing a result; it is the most interesting title problem in the city at this particular moment and it may affect those of you who come from other jurisdictions. The conservator was appointed for the particular bank on the 28th of February, 1933. Sometime before that conservator was appointed, a dispute was adjusted between the bank, which was an open institution, and an attorney here in the city, and they agreed, in accordance with our practice in such cases, a voluntary practice, that a verdict might be entered against the bank for a given sum of money. It was something like $3,000, whereas the claim had been about five thousand odd dollars. And in between the time that the verdict was entered by agreement and the possibility of entering a judgment on that verdict, namely between February 28th and, I think March 22, 1933 when the actual judgment was entered, a conservator had been appointed. So we have this situation: a verdict by agreement, sometime prior to February 28, 1933; a conservator appointed on March 2nd or 3rd,—I forgot the exact date—of 1933, and a judgment entered on the verdict on the 22nd of March, 1933. That bank continued under a conservatorship until May of 1934 when a receivership was appointed. The bank never opened for business purposes.

Title Policies and Judgments

Now consequently, I think it is interesting to ask yourselves the question as to why these title companies have removed all the judgments prior to the appointment of the conservator and all of the judgments subsequent to the appointment of the conservator but will not remove the judgment made against the conservator as it exists today, which has necessitated, of course, all persons who were buying real estate from the closed National Banks that I represent, necessitated their making application to the one title company which thinks that the judgment should be removed and will assume that risk in the writing of such insurance.

Now, personally, I think that the company which is accepting that risk is correct and that brings me to what I consider to be a real live subject. Now the basis for that reasoning is this: first of all, as against insolvent National Banks, judgments are not liens against real estate by reason of an Act of Congress, which states that "Where a judgment is rendered against a National Bank and a receiver is appointed for a National Bank, there shall be an equitable and rateable distribution among the creditors of the bank;" and if the judgment is a lien on real estate, usually the banks have sufficient real estate to pay a hundred cents on the dollar, and consequently, if it was a lien on real estate, the judgment creditor would secure a preference. And it is by reason of that Act of Congress which says that in the marshalling of assets in the distribution of assets of a National Bank, the creditor shall be paid ratedly; all liens of whatsoever nature the same may be against National bank assets and howsoever the estates have created those liens, are wiped off, according to one point of view, and they are all wiped off by this statute, according to my point of view, whether they have been entered prior to the receivership, prior to the conservatorship, during the conservatorship or subsequent thereto, provided the bank does not reopen for going business.

Now that is the basis. But let us look at the Act of Congress which gave the Comptroller of Currency the authority to appoint conservators. You will recall that when President Roosevelt was inaugurated, on March 4, 1932—and my dates here may not be exactly right but they are close to it —that he immediately declared a Bank Holiday. That was more or less in accordance with a resolution of Congress. And then, about the 9th of March, Congress had time to pass what they called the Bank Conservation Act of 1933. And if you will look at Section 203 of the Bank Conservation Act you will find there the authority for the appointment of conservators, and it says in that Act that " . . . the conservator shall have all the rights, powers and privileges possessed by or hereafter given receivers of insolvent National Banks, and that the rights of all parties shall be the same as if the receiver had been appointed therefor." Now, consequently, if the Bank Conservation Act empowers the Comptroller to appoint receivers, and the Act defines his duty as the same, and his status and his privileges in the same manner as if the Comptroller had appointed a receiver, and then it goes one step farther and says that "the rights of all parties shall be the same as if a receiver had been appointed therefor," then the rights of all parties can certainly only mean the rights of all parties who are creditors of the bank or debtors of the bank, whatever class you might have. And it therefore occurs to me that a judgment entered against a conservator should be, in my opinion, handled the same as a judg-

ment entered against a receiver or a judgment entered prior to a receivership.

Cases Cited

Now that is not only my point of view from a consideration of the statutes and substantive law, but I don't know of any better speech that anybody could write than,—if they want to take the time, for it is not a very long case,—than to read almost the entire opinion of *Steele vs. Randall,* which occurs in 19 Fed. 2nd, page 40, and I think I will spare you the endurance test of listening to me reading that decision, but I will outline what that decision holds and see whether or not you agree with this very live subject in Pennsylvania at the present time.

In that case a judgment was entered after a resolution had been passed by the Bank requesting that a National Bank examiner be appointed to examine into the assets and liabilities of the bank, and to determine whether or not the bank was solvent or insolvent. The resolution was passed on a certain day, the Comptroller appointed the examiner, and while the bank was being examined by the examiner, a short time afterward, a judgment was entered. The bank never opened, and the examiner turned into a receiver and the bank was liquidated, and the plaintiff in the case claimed that he had a preferred claim, or, at least, his claim was a lien against the real estate by reason of the fact that it was entered only when there was a bank examiner in the bank and not yet a receiver. And in *Steele vs. Randall,* you will find that the court states that that does not make any difference, that the statute to which we had referred before, the basic statute, sought to distribute the assets of a National Bank rateably and that whether you called a man an examiner or a receiver could not be a justification for making a difference between creditors of the same class; in fact, the language of that decision was that if you wanted to make any such distinction as that, the creditor who lived in San Francisco might have a hard time catching up with the creditor who happened to be in the particular jurisdiction where this was decided—I forget now where it was. It was a "race, then, of diligence," I think that was the language they used.

Now for the life of me I am unable to understand why, in the teeth of *Steele vs. Randall,* in the light of the Bank Conservation Act and in the light of the general law practically wiping out liens against the assets of National Banks in receivership, who our largest title companies have agreed among themselves to refuse to mark off this one judgment. I am not saying that they won't change their mind; the prospects are that they might. There may be men in this room who are very familiar with the things about which I am talking at this moment. I thought that that would be an interesting thing to tell you about.

Now, it is also very fair, because there is this distinction now, as far as this state is concerned. Up until the 1933 Banking Code and its subsequent amendments, referring now to state law, depositors of state banks were preferred creditors, and all other creditors were general creditors. In National Bank liquidation that isn't so and never was so; all creditors share rateably and equitably with the depositors, the depositors having no preference. Consequently, a judgment against a bank secures the same status as that of a depositor.

Someone handed me this letter and asked me whether or not I would, in the course of my remarks, endeavor to answer the question that is contained therein. The letter is addressed to the American Title Association, 3616 Union Guardian Building, Detroit, Michigan, and it is from the Lafayette County Abstract Company, Darlington, Wisconsin and is signed by a man whose name is Glen Smith. The inquiry is contained in the second paragraph and I will read that part of it:

Receiver and Foreclosure

"The assumed situation is this: the Comptroller of the Currency places a receiver in charge of a closed National Bank. Subsequent to the appointment of the receiver but before the receiver places on record in the office of the local Registrar of Deeds a certified copy of his appointment, an action is brought to foreclose a real estate mortgage which is prior in lien to a second mortgage held by the closed bank. Do you hold that in view of the fact that the receiver's appointment had not been locally recorded at the time of the commencement of the action, that the plaintiff would be relieved of the necessity of making the receiver a party to the action and of obtaining service upon him?" "It has been my contention that the receiver must be duly served upon anyway and that he does not file a copy of his appointment with the Registrar of Deeds for the purpose of furnishing notice to the public of the delinquency of the bank but, rather, as a convenient means of furnishing proof of his authority to act."

Now I take it that that question, boiled down a little bit, resolves itself on this set of facts. There is a piece of real estate upon which there is a first and second mortgage and the second mortgage is held by a receiver of a National Bank; the first mortgagee determines to foreclose upon his mortgage, and he begins an action to do so prior to the filing in the office of the Recorder of Deeds of the certificate of appointment as a National Bank receiver, issued by the Comptroller of the Currency. And the question is—should the attorney for the foreclosing mortgagee, or the mortgagee, or somebody, give the receiver notice or does he have to give him notice? Well, I think that such a question as that usually answers itself very practically. It answers itself practically because every second mortgagee, be he a receiver or not, must take a look at his property and ascertain whether or not there are any encumbrances that are ahead of him; but if he hasn't done that and is not aware of it, then my answer to the question is this: There is no duty, so far as Pennsylvania is concerned nor, so far as I know, any National law, on the part of a prior lienor to give notice to a junior lienor that he intends to exercise the rights that he has under his contract or mortgage. And it doesn't make any difference whether the junior lienor is a receiver of a National Bank or an ordinary second mortgagee, without any more to do about it.

Then there is anther implied statement which is correct, and which would throw us back into the original paper of 1935 somewhat, and if I haven't talked too long I will just take that up. That implied question is the recording of the appointment of a receiver. Why is that done, and what is the effect of doing it? You will recall that I stated to you, and the law is still in that shape, that it is very difficult for anybody to say just what kind of an animal a receiver of a National Bank is. The nearest thing to a definition is that he is an officer of the United States Government by virtue of the fact that he is an agent of the Comptroller of the Currency, who is specifically defined by statute as an officer of the United States Government, and it is only by virtue of the fact that the Comptroller of the Currency is an officer of the United States Government that the Federal Courts in the respective jurisdictions take jurisdiction of any of the problems which a National Bank receiver submits to them, because the receiver of a National Bank is not accountable to the Federal Court in any manner whatsoever.

Now, therefore, that being the case, the recording of the certificate of appointment of a receiver in a local recording office can only be for information purposes and to furnish the persons in charge of the recording office with a basis for permitting the receiver to act, namely, to satisfy mortgages, or assign mortgages or record other instruments or do all the things that might occur in the liquidation of a National Bank.

If there are any questions that do crop up in your minds, I hope I have been able to substitute a new and extemporaneous paper for something that the Bulletin said was two years old.

PRESIDENT GILL: Thank you. Is there any discussion?

MR. FRANK I. KENNEDY (Detroit): I would like to ask this of the speaker. It is not your assumption that the Act of Congress would attempt to divest any contractural liens, and mortgage liens or any liens created by the taxing authorities?

MR. WILLING: No; you are not correct about that. Only statutory liens or liens created by reducing contracts to

judgment which, per se, would not be a lien by contract.

PRESIDENT GILL: If there are no further questions I want to thank Mr. Willing. I am sure we have all enjoyed this very practical and learned address. I might add that it has been very reassuring to those of us who have been omitting judgments of all kinds from bank receivership titles to know that we have been doing so with the authority of the courts behind us because some of us at least, before this decision came out, weren't able to find any great authority except one of analogy. I might also add that you are quite fortunate in Pennsylvania if you do not have to bring in junior mortgagees and junior mortgagees' receivers. In many states that is precisely what you do have to do and that, for example, is one reason for the great timidity among title companies in regard to passing power of sale foreclosures at all until within a reasonable period after the date of foreclosure. Also those states where the foreclosure is by suit (with the requirement of the title companies that some statement on the question as to whether junior lien holders and equity holders are in receivership or bankruptcy), are in a very fine position from that standpoint.

The Standardization of Exceptions in Title Policies

BRYON CLAYTON

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I am afraid this topic is somewhat misleading. A better topic would be "The Need for the Standardization of Exceptions in Title Policies." However, I shall try to point out some of the situations which usually result in the insertion of some sort of an exception in mortgagee policies and try to indicate the type of exception which, I believe, would be generally acceptable to the lending company.

When I began examining titles for an insurance company's mortgage loans, which was about twenty-five years ago, abstracts of title were used almost exclusively. When the first title policies were submitted, each title company had one or more forms in use. Needless to say, all the forms used by each company differed from those used by all other companies. Most of these policies did not guarantee marketability and the conditions were very sweeping and complicated; moreover, all sorts of exceptions were inserted. As you all know, this situation has been largely cleared up by the approval by both the lending institutions and the title companies of the Life Insurance Company and the American Title Association standard forms. With the adoption of these forms, the work of the examining attorney has shifted from an examination of the form of policy to a careful scrutiny of the exceptions.

Limiting of Liability

The general tendency of title companies seems to be to do everything possible to limit their liability and shift every possible risk to the insured. Some companies have even suggested term policies running for 10 or 15 years. The idea seems to be to write a policy which will insure the record title only. If this is accomplished the policy will simply be a guarantee of the abstracter's work plus liability for frauds and forgeries in the chain of title. It seems to me that if the title insurance business is to grow and reach the point where the use of title insurance is the general rule, the title companies must take a more liberal view and must be willing to assume all the risks inherent in their business. This is particularly true in view of the fact that practically all the risks which a title policy insures against, except mechanics' liens and bankruptcies, are in existence at the time the policy is issued. In other words, the title is either good or bad at that time. The statute of limitations is a factor favorable to the title companies, since it runs in favor of the title company both before and after the date of issue of the policy. A careful search of the records, the identification of the parties, and an inspection of the property will disclose practically all the risks. The losses generally are caused by the errors of the employees or representatives of the title companies, not by defects in the title.

Moreover, it appears that the actual losses of title companies are very small. My attention was called by a director of one of the well known title companies to the following statement in an article in the Encyclopaedia Britannica referring to the title insurance business in the United States:

> "The expense of maintaining the staff of clerks and lawyers is great, amounting to half of the gross charges on titles guaranteed. Strictly speaking, the risks outstanding are also large, running up to $100,000,000 a year for a single company in New York City; but in well managed companies the losses are very small, not exceeding 2% of the gross charges on titles guaranteed, so that the outstanding obligations should scarcely be called risks."
>
> (Encyclopaedia Britannica Vol. 22 p. 256 14th Ed.)

In view of the fact that all title policies, so far as I am aware, contain a right of subrogation on the part of the title company, it seems to me that the title companies will sooner or later come to the conclusion that the title company in issuing the policy must assume practically all risks and that few, if any exceptions should appear in the title policy. In the event of a loss it is up to the title company to make good and, exercising its right of subrogation, to attempt to recoup its losses from the property.

The Marketable Title

When a lending institution advances money on a mortgage loan and accepts a title policy as evidence of title, it depends on this policy to insure the legality of the mortgage or security deed that the title is marketable. These are all of the utmost importance. However, some title companies are reluctant to guarantee that a title is marketable. The lending institutions of this Country hold title to thousands of properties acquired by foreclosure of mortgages or other first liens or by the acceptance of a deed in lieu of foreclosure, and the contracts for sale of these properties in practically all cases call for the delivery of marketable title.

You all know as well as I do what a marketable title is. The following definition appears in Corpus Juris:

> "'marketable title' generally means a title which consists of both the legal and equitable title, and is free from reasonable doubt in law or in fact; not merely a title valid in fact, but one which can be readily sold to a reasonably prudent purchaser, or mortgaged to a person of reasonable prudence as a security for the loan of money; a title which a reasonable purchaser, well informed as to the facts and their legal bearings, willing and anxious to perform his contract, would, in the exercise of that prudence which business men ordinarily bring to bear on such transactions, be willing and ought to accept; a title of such character as should assure to the purchaser a quiet and peaceful enjoyment of the property; an unencumbered title; a title that is not only good, but indubitable; a title which is clear, free, from litigation, free from material defects, or from palpable defects, and grave doubts; a title free and clear from material encroachments, easements, and of all valid claims, outstanding interests, liens, and encumbrances whatsoever; ordinarily nothing less than a legal estate in fee, an estate indefeasible. A title subject to restrictive covenants is generally unmarketable, regardless of whether the restrictions are beneficial or not, as where there is a possibility of a reverter under such a covenant, unless the contingencies on which the reverter is to take effect are so improbable or remote that they may be disregarded. Whether a title is marketable is a question for the court."
>
> (Corpus Juris 66, page 862)

From the standpoint of the lending institution, every property on which it

loans money must have a marketable title and if a title policy is accepted as evidence of title, this policy should insure marketability; therefore, any exceptions which the title company inserts under the schedule showing the various items which the insurer does not insure against should not be such as will make the title unmarketable. This, I believe, is a fundamental principle which must be kept in mind by all title companies. Many title companies in preparing their preliminary certificates seem to follow a different principle. Their principle seems to be to insert every possible exception, hoping that the examiner will either overlook them or misunderstand their purpose.

An example of this came to my attention a short time ago. A leading company owned a loan deed and held a mortgagee's title policy. It foreclosed the loan deed under power of sale and a title company issued an owner's policy to cover the foreclosure. To the surprise of the examiner the policy contained the following:

"Except the assignment of the loan deed and its foreclosure." The examiner was at a loss to understand exactly what liability the title company thought it was assuming under this policy.

Exceptions in Policy

We all recognize the fact that certain exceptions are proper and that the title company has a right to insert them in its policy. Suppose we discuss some of the most usual situations which call for exceptions in policies:

(1) If the survey of the property shows encroachments or overlaps of buildings, fences, eaves, etc., such condition would constitute a proper exception. However, I would not be inclined to accept a policy containing the sweeping exception which title companies are so fond of inserting, viz., "any state of facts which an accurate survey of said premises might disclose." I would expect the policy to specifically refer to the survey and to make an exception of the encroachments or overlaps as shown on the survey. I am assuming, of course, that the survey referred to was made by an engineer acceptable to the title company which, I believe, is practically always the case.

(2) If the examination of title shows any easements, reserved over or upon, or as an appurtenant to the property to be insured, I feel that these should be mentioned in the policy and copies of all documents establishing them should be furnished to the prospective mortgagee. If the premises to be insured constitute the serviant estate then, of course, an exception of the rights reserved is perfectly proper. This seems to be pretty generally understood among title companies and I think that there has been very little trouble on this score. The question of appurtenant easements, however, where the property under examination is the dominant estate, presents a slightly different situation. In such cases I understand that the title company will not insure the easement unless the title to the serviant estate or estates is examined, and, due to the expense of these examinations, this is seldom required. However, wherever the examination of the title discloses any such appurtenant estates, it seems to me that the title company should advise the proposed mortgagee of this existence of the easement and furnish copies of all documents pertaining thereto. In a great many cases the examining attorney is forced to write for these documents, but I believe we will all agree that they should accompany the preliminary certificate.

The abstract of title and the survey should together disclose any party walls, joint stairways, or any similar condition. All documents appearing of record which disclose any such condition should be submitted with the preliminary report on title. The title policy should not contain a clause making an exception of "all party walls, etc." but should rather contain a specific exception mentioning the party wall, stairway, or other boundary incumbrance and, if a matter of record, it should contain a reference to the book and page.

(3) The policy should disclose all restrictive covenants. It might be that the existence of covenants will at times make the title unmarketable. If there are covenants and they have been violated, the general rule of law seems to be that in such case the title is unmarketable. If this point needs any proof, I call your attention to the case of Chesebro v. Moers—233 N. Y. 75. In that case a certain tract of land was sub-divided and the map and restrictions were filed in the County Clerk's Office. Among other things the restrictions provided that "No building, nor any portion or projection thereof, shall be erected or permitted within 50 feet of any front street, nor within 10 feet of any boundary line on either side of any lot, nor within 5 feet of any rear lot."

The dwelling of this property was erected five feet nearer the front line than was permitted in the restrictions. The owner made a contract of sale and the title was refused by the vendee on the ground that the violation of this restriction rendered the title unmarketable. The vendor sued for specific performance. The Court held that the vendor could not give a marketable title and dismissed the suit. In his opinion Judge McLaughlin said:

> "To entitle a vendor to specific performance he must be able to tender a marketable title. A purchaser is not compelled to take the property, the possession of which he may be obliged to defend by litigation. (McPherson v. Schade, 149 N. Y. 16.) He should have a title that will enable him to hold the land purchased free from probable claim by another; a title which, if he wishes to sell, would be reasonably free from doubt. If it be not so, then specific performance should be refused. (Vought v. Williams, 120 N. Y. 253; Fleming v. Burnham, 100 N. Y. 1.) The title to the lot in question, by reason of the location of the dwelling thereon, does not measure up to this requirement."

Some title companies for various reasons are willing to insure a proposed mortgagee against loss in such cases. However, it is my opinion that such a title is not acceptable for a mortgage loan since the guarantee of the title company does not make the title marketable.

A different question is presented by restrictions in the chain of title which contain a reversionary or forfeiture clause. I think that there is no question that a title based on an instrument containing a forfeiture or reversionary clause is unmarketable. Moreover, you all undoubtedly know that such titles cannot be accepted by New York Life Insurance Companies owing to the fact that the New York Insurance Law provides that an insurance company may,

> "loan upon the security of improved unencumbered real property in any state worth fifty per centum more than the amount loaned thereon; but real property shall not be deemed to be encumbered within the meaning of this section, by reason of the existence of instruments reserving mineral, oil or timber rights, rights of way, sewer rights, rights in walls, nor by reason of building restrictions, or other restrictive covenants, nor when such real property is subject to lease under which rents or profits are reserved to the owner, provided that the security for such loan is a first lien upon such real property and that there is no condition or right of reentry or forfeiture, under which such lien can be cut off, subordinated or otherwise disturbed."
>
> (Paragraph 100, Insurance Law of New York)

I think everyone will agree that in cases where such reversionary or forfeiture clauses appear, even if the title company is willing to specifically guarantee against loss, this fact should be noted in the policy and a complete copy of the document or documents containing such clause should be furnished.

It was my experience some years ago to receive a great many titles from a certain section of the Country and containing no reference of any kind to restrictions. After the mortgagee in these cases acquired title by foreclosure, it appeared that these titles were subject to various restrictions affecting the ownership or occupation of the property by persons other than the Caucasian race and containing a reversionary clause in the event of violation. The title company defended its action in issuing these policies on the ground that it had guaranteed the mortgagee against any loss by reason of these restrictions. However, the title

to these properties is undoubtedly unmarketable and the mortgagee may yet experience considerable difficulty in selling the property, and may lose some sales in the event a prospective purchaser refuses to perform and cites these restrictions as an objection to the title.

(4) The title policy should contain an exception showing not only any taxes which are a lien on the property but any assessments of any kind which are a lien or charge on the property whether or not they are payable in installments and whether or not they are delinquent. If a proper search is made in the Collector's Office by the attorney who examines the record or if a proper official search is secured from the Collector's Office, it should disclose this information and it seems to me that it is the duty of the title company to pass it along to the mortgagee. The mortgagee should be able to reply on the title policy for this information.

(5) Both the Life Insurance Company and the American Title Association standard forms of mortgagee policy guarantee by their terms against mechanics' and materialmen's liens whether or not they are filed of record at the time the policy is issued. In spite of the fact that the title companies have adopted these forms which contain this guarantee, many of them, where a building has just been completed or is under construction, insert, or attempt to insert, in the policy a clause reading somewhat as follows:

"No liability is assumed for possible unfiled mechanics' or materialmen's liens."

I think I am familiar with all the arguments and reasons which the title companies give in justification of this kind of an exception in such cases. However, the fact remains that the title companies have adopted these forms of policy both of which insure against mechanics' liens whether or not they have been filed of record, and it is my opinion that it is up to the title company to guarantee against such liens. The title company is in a position to get at the facts. If the building has just been completed or is under construction, the attorney closing the transaction can do anything required by the law to safeguard the title company and to make sure that any right of lien is subject to the mortgage. He can also demand from the builder, owner, and architect sufficient evidence and proof to satisfy himself that all mechanics and materialmen have been paid or have released their right to file a legal lien against the property. I am familiar with the procedure of title companies in attempting to secure a surety bond in such cases. The objection to this is that the owner has agreed to pay for the abstract and title policy and that this fee is ample and sufficient to cover all the work and responsibility involved in such cases The cost of a surety bond in such cases is usually greater than the total cost of the title policy and attorney's fees; in fact, in most cases it is prohibitive. Moreover, the owner in many cases is unable to meet the requirements of the surety company for such a bond, and if he is able to qualify, he has such financial stability that he is able to finance his building operations otherwise, and does not need the bond. In all my experience, I have never had a case where such a bond has been furnished.

I feel that if title companies insist upon securing surety bonds in such cases that lending companies will be compelled to omit title insurance altogether and accept an abstract and attorney's certificate as sufficient evidence of title.

(6) Nearly all title companies attempt to insert in their title policies sweeping exceptions covering the possession of the property. A title policy came to my attention a short time ago which contained the following:

"This policy does not insure against such estates, interests, defects, liens, charges, incumbrances, or objections to title as set forth below in this Schedule, viz:

1. Tenancy of the present occupant or occupants.

2. Adverse possession by others than the insured, of the premises described in Schedule A hereof. or any part thereof, deficiency of land, or easements, licenses, encroachments, agreements, or other instruments, affecting said premises unless such adverse possession, easements, licenses, agreements, liens, encroachments, or other instruments, are evidenced by instruments of writing duly recorded in the Register's Office or other proper office in the country where such property lies."

Another common exception is "Rights of persons, or tenant, in possession," and another "Rights of parties in possession as tenants, or otherwise, if any."

Representing the lending institution I feel that the possession of the property is an important question to be inquired into by the title company, and that the policy should either make no exception as to the possession or in the event any exception is made, it should read somewhat as follows: "Subject to lease of said premises to John Doe under lease dated January 1, 1937 and expiring January 1, 1938." In this connection I quote again from CORPUS JURIS:

"Except insofar as the rule is, or at times has been, varied by statute in particular jurisdictions, possession of real estate by a person other than the vendor is constructive notice to the purchaser, of the right, title, interest, or claim of the possessor. Such notice is the same, in effect, as the notice which is imputed by the recording acts. It prevents a prospective purchaser from becoming a bona fide or innocent purchaser without notice where he fails to make due and reasonable inquiry of the occupant as to the ownership of the land. However, while possession by a third person puts the purchaser on inquiry as to the nature and extent of the right, title, interest, or claim under which the occupant is in possession and makes it his duty to pursue his inquiries with diligence, it is not absolutely conclusive on him; it is subject to rebuttal by proof showing that an inquiry, duly and reasonably made, failed to disclose any legal or equitable title in the occupant. Representations by the vendor as to the interests of the occupant in the premises do not relieve the purchaser from the necessity of making inquiry; but if an occupant, on inquiry, misleads the purchaser, the latter is not chargeable with notice of the occupant's claim to the land, unless such occupant is holding under a recorded deed."

(Corpus Juris 66, page 1164).

Since the possession of property by any person other than a mortgagor constitutes constructive notice to the mortgagee of the claim of the possessor, it seems to me strictly logical that it is the duty of the title company to make inquiry and find out all the facts pertaining to the possession and that the policy should, by containing no exception in this respect, definitely guarantee against the rights of any such possessor and that the only permissive exception be one which definitely sets forth a lease or tenancy, giving the name of the occupants and the term of the rental or lease.

(7) In the event that the title policy is being issued to secure a second mortgage, the policy should of course set forth the first mortgage giving the names of the parties, the amount of the lien, and the book and page of record. Likewise, if the property mortgaged consists in part or wholly of a lease-hold estate instead of a fee simple, the policy should set forth in some detail the terms of the lease giving the parties, expiration date, renewal privileges, and book and page of record. The policy in such cases should be accompanied by a copy of the lease thus referred to.

Moreover, if the property is subject to a long term lease which the mortgagee has required to be subordinated to its mortgage, the policy should contain a clause referring to the lease and affirmatively guaranteeing the subordination.

(8) In the event the mortgage insured is a first mortgage and at the time of the closing of the transaction the existing mortgage instead of being paid off is subordinated to the lien of the new mortgage, the title policy should contain a specific statement calling attention to the mortgage so subordinated and containing a specific guarantee of the subordination. In other words, such a condition calls for an affirmative guarantee rather than an exception.

I know very well that I have told you nothing new. You are probably all

more familiar with the exceptions in title policies than I am. It would be a fine thing if it were possible to fix a group of standardized exceptions which would be acceptable both to the title companies and the lending companies; this would undoubtedly expedite the closing of mortgage loan transactions materially but in view of the fact that the same situation does not often appear a second time in exactly the same form, the question of standardization becames very difficult. Probably the best way to accomplish this would be to have a small group representing both title companies and lending companies get together and try to establish a set of standard exceptions and decide on the data which should accompany a preliminary report and the title policy in each case.

CHAIRMAN GILL: Well, Mr. Clayton, let's see if anybody wants to tear your paper to pieces. Are there any remarks about Mr. Clayton's paper on the subject of exceptions to title policy?

MR. STEWART (Texas): I would like to get out of Mr. Clayton this. In Texas there are numerous counties where the records have been destroyed and we have our own method of finding out whether title is good, bad or indifferent, and whether we are willing to insure the title and, of course, we've got to assume that a company that does insure title is solvent and good for its assurance. It would be impossible in those counties to give what you desire, that is, a certificate that the title is marketable, because we know it is not marketable. Now then, what would be the attitude of your company with respect to making a loan on those properties, if we wrote you a letter and stated in the title policy that it was not marketable but the title was perfectly good. What would you do?

MR. CLAYTON: I think we would have to decline to loan in those counties, if you could not certify the marketability.

MR. STEWART: Well in Texas that would mean that you would make practically no loans.

MR. CLAYTON: But we are making loans in Texas.

MR. STEWART: I'm aware of that, and that is the reason I am asking you the question, and I am telling you that in Texas there are very very few titles that are marketable titles. Very very few.

MR. CLAYTON: Does that apply to Harris County?

MR. STEWART: Yes, sir, in the greater portion of Harris County the titles are not marketable, and I'll tell you why. The City of Houston, where you are making loans at this time, was started on a very small piece of land and then it grew to a city of 300,000 people, besides the suburbs, by addition. And each one of those additions has all manner of restrictions in it. Now, under the Texas decision, the title in order to be marketable must be a fee simple unrestricted title, and a restricted title in a restricted area is not under any circumstances a marketable title.

MR. CLAYTON: My particular company have made only a few loans in Texas, and they've all been on the principal street of Houston or Fort Worth, and the question of restrictions has never come up yet. If that comes up and the title is unmarketable, I think we would have to decline to loan.

MR E. T. SWEENEY (San Antonio): I believe our standard policy uses the words "Good and indefeasible." Would you accept policies with the words "good and indefeasible" in there, in lieu of marketability?

MR. CLAYTON: I don't think we would accept any policy unless certified as to marketability.

MR. SWEENEY: We have that as a standard form.

MR. STEWART: In Texas, the form of policy is prescribed by the Board of Insurance Commissioners and it is not a marketable title; it is not a life insurance form, nor is it the American Title form, it is a title prescribed by the Board of Insurance Commissioners, and we will lose our charter if we depart from our form. We have rigid rules, rigid law in fact, down there. Now, what can we do? I'm trying to find out what we can do.

MR. CLAYTON: Well, we are accepting abstracts and attorneys' opinions. We have accepted no title policies in Texas not certified. We are going to make a loan there in the next few months; in fact, it has already been authorized by our company for a million and three-quarters. We are going to accept the attorney's opinion and abstract in that case. We are not going to try to get any policies from your company, just because you don't issue the policies and because of these difficulties.

MR. SWEENEY: May I ask if you will take the title policy from another title insurance company, after you have taken the abstract and attorney's opinion?

MR. CLAYTON: Do we take one? No, sir.

MR. ROGERS (Ky.): How can the attorney certify that that is merchantable?

MR. CLAYTON: Well, they have been certified in the cases that we have taken. Now, they made a lot of exceptions. And when you get up against the question where we can't get a merchantable title, then I think we will refuse to make those loans.

Texas Titles

MR. STEWART (Texas): Three weeks ago I went to one of the insurance company offices, Mr. Clayton, because we were confronted with this situation. They had been doing business with the Stewart Title Guaranty Company for years. They wanted to continue to do business with us, but for instance, if they made a $10,000 loan, the charge for the premium would be approximately $80. Now they had severe competition, right in the City of Houston, with others lending money on monthly payment plans, at 4½ per cent, and the other companies would get an abstract brought up to date, which would cost about five dollars, get some lawyer's opinion, for $15, and make the loan. So they wrote to me, this insurance company did, and said that while they wanted to do business with us, they couldn't do business with us against that sort of competition. Well, I hopped a train and went to their home office, sat down and went over the thing with the General Counsel of the company, and when I got through with it and pointed out the difference between the hazards in Texas and other states—because we've got lawyers in our state that are wholly and utterly different from those in other states—the Board of Directors of that company passed a resolution, first, that they would make no loans in Texas except on a title policy. That was item No. 1. The next thing was would they take policies from these Casualty Companies that have got in the habit of writing title policies in Texas, and they concluded they would not do that either but that they would only take a title policy from a title company that owned an abstract plant in the county where it was issuing its policy. Otherwise, they were apt to lose more than the capital of the title company.

Now I might say this to you. My company has been in business for more than thirty years, and we have large capital and are a very substantial company. The very minute that soaring values came, or an oil field comes in, we withdrew, then and there. We will not insure a title anywhere in or about that oil field, except that we put a limitation of our liability in the policy of $100, and if we make an abstract, we put a limitation of liability of $100 on that.

Now, why do we do that? There are so many reasons by which you can lose the title to lands in Texas that it would take me a long time telling them to you, one after the other. Now, a one-thirty sixth outstanding interest in an ordinary piece of property would make no difference. But a one-thirty sixth outstanding interest in a piece of oil land makes a whale of a difference. It means receivership; means that they can't produce out of it.

Now I have this very interesting question about a title in Texas. I was going to discuss it with Mr. Allin, but he got away. I own an oil field myself and I have had ten lawsuits already in that field and I've won all the cases but I've got one yet to try, and here is my question. A league of land, and that is 4,428 acres, was patented by the Republic of Texas to a man named Al Stone, in the year 1846. Prior to that time man named Sellers had moved into Texas and what the deal was between the two nobody knows, but Mr. Sellers was a colonist there. In 1840, six years before the issuance of the patent, Sellers, who was not connected

with the patent, executed what we call a bond for title, a contract for sale for 50 acres of land. It was said to be 50 acres on Dickinson Creek, out of this league of land. Well of course that is a description, I presume, but that is not the question here. And in that bond for title, he bonded himself to make a deed to the purchaser Wilkins, when the patent was issued. Now that was in the year 1840, and that instrument was not recorded until the year 1933—nearly one hundred years went by before they recorded the paper. In 1842, four years before the issuance of the patent and two years after Sellers had executed this bond for title to Wilkins, the patentee in 1846 entered into an agreement with Sellers by which Sellers took one-half, the upper half or western half of that league. Now, mind you, that was in 1842. At that time Austin did not have the title, the title was in the Republic of Texas. Two years prior to that time Mr. Sellers had executed a bond for title to Wilkins. Thereafter, in 1840, the same Sellers who entered a partnership in 1842 and got half the league of land, conveyed all his interest—he didn't convey the land itself but his interest—to a man named Bennett, who recorded his deed, and probably 125 persons now claim title under Bennett. But that was a quitclaim deed.

Now then, in the year 1849 Wilkins made a deal with a man named Edgar and all he conveyed was 50 acres that he had bought from Sellers. In 1933 the Edgar heirs filed suit against everybody in that whole survey and that suit is now pending and now coming on for trial. Now that interest was 50 acres out of the total of 4,420 acres, or virtually one-ninetieth of the whole. It wouldn't be worth fooling with except for the fact they've got oil there and the land is worth probably $10,000 an acre.

Now what's the title company going to do? If you do business with a title company that doesn't do what I am suggesting, withdraw from liability assumed in and around these oil fields, you are doing business with a title company that is bound to go broke. For, had my title company insured that 50 acres or any other 50 acres, and lost it, we would lose probably $10,000 an acre.

Now those are questions that come up down there that you probably would not find anywhere else at all.

MR. CLAYTON: Isn't your policy, when you issue it, issued for a definite amount?

Oil Land Policies

MR. STEWART: Yes, but the minute we have any suspicion that there is oil around there we quit, and only issue a policy with a limited liability of $100. They fuss and kick about it, but that's our limit.

MR. CLAYTON: Aren't all your policies limited in liability?

MR. STEWART: Yes, they are limited but in the sum total of the liability. Now in and around an oil field a field probably takes in 10,000 acres now. Suppose there was an undivided one-hundredth interest out and it should be lost; the title company would be in a bad fix. An abstracter would be in a still worse fix if he made a mistake. In the case of Duncan against the Railroad, decided some thirty years ago, it was held that an abstracter who had made a mistake was liable—he died in the meantime and they sued his heirs who had inherited a substantial estate from old man Duncan—that the man that got the abstract could recover against the abstracter, not the cost of the abstract nor what the man paid for the property originally *but* the value of the property at the time he lost it. Thirty years had elapsed in the meantime and they held the statute of limitation didn't run because of the trust relation between the parties.

Now those are things you won't find in other states. I made a talk many years ago before the Texas Bar Association. Most of you are lawyers and perhaps it is worth the time to hear this. I called it the story of a land title. The Supreme Court judges, judges of the Court of Appeals were all there, probably 350 lawyers were present. I said: "Gentlemen, there is a hole in this title. The title is bad. I'll go over this thing, link by link and we'll see if we can find out where the defect is." I started with the grant, County of Wheeler, State of Texas, describing the property as fronting on Galveston Bay. I said, "Well, what about that?" "The grant is all right," they said; all agreed that the grant was all right. Then I took up the next link and the next until I had taken up 21 links and went over each one of them, with the whole Supeme Court and assembled Texas Bar Association and they said that everything was all right. Well, I said, "Gentlemen, that's the end of the story. That's the last link. But the title has a bad hole in it; where is the defect?" They got to studying over it and nobdy could guess where the defect was. I said: "All right, gentlemen, we'll take it up again, one by one, and I think you'll agree that not one of the links is good. The first one is bad because it is within a littaral league, and a grant within a littaral league is void unless confirmed by the Supreme Court in Mexico." And so it was with the next and the next link and finally we unanimously agreed there were 21 bad links in the title.

Now that is not a fairy tale. Every one of those things was based on a Texas decision. I have been litigating those cases there for nearly fifty years and I know those cases like I know the fingers on my hand. And if you make loans in Texas without some protection better than an abstract lawyer's opinion you are headed for trouble, it seems to me, and the matter of the form of policy that involves a state as big as Texas is something it seems to me a company should look into. The Board of Insurance Commissioners are lawyers, they are experienced men and they have, after conferring with title men, laid down a form of policy. I don't agree with the form of policy they use, I will say that frankly; they adopted it over my protest. I wrote a form whereby we guarantee this title is good and if it is bad and you sustain loss, we will pay you so much, and there wasn't a restriction or exception in the policy, but the Board of Insurance Commissioners wouldn't agree to that. But we do have the form prescribed by them and we can't get away from that.

Now, I do want to do business and I don't like to have you getting an abstract and lawyer's opinion. We are not going to be liable for these multitudinous hidden things. For illustration, take the case of Guffey against Hooks. Guffey was an oil company man. Hooks brought suit, claiming he owned one-fourth interest in a tract of oil land in Hardin County, Texas. Guffey had bought from the three heirs of Hooks, and Hooks died, leaving a widow and three children, but there's a fourth one who comes along. Did he say he was Hook's child? No, but he said, "I was adopted by Hooks." Guffey said, "Well, where's the adoption record?" "Well, we took it down to the court house and gave it to the clerk and he filed it." When we got down there, "Where is it?" "Well, it has been lost." And that child recovered a fourth interest in that oil land from the Guffey Company, though the adoption of the Hooks child had never been recorded in Hardin County at all. Now, can you head against that with an abstract? And you can't head against that with a lawyer's opinion either, and if the adoption had been off in some other county, you are still in the same predicament. There is a law in Texas that requires the recording of that adoption paper in every county where the man happens to own real estate. And that's just one of the many things that might give you trouble down there.

I wanted to talk to you before you got away, because we want business, but I don't want to issue the type of policy you want, because the law won't let us.

CHAIRMAN GILL: Are there any further remarks about exceptions to title policies that Mr. Clayton referred to in his talk?

MR. WM. BEARDALL (Fla.): Well, Mr. Clayton, you have always accepted an attorney's opinion?

MR. CLAYTON: Yes.

MR. BEARDALL: Now, the minute you begin to accept policies, your title company takes the liability as to the correctness of the survey and everything else about the title?

MR. CLAYTON: Yes.

Surveys

MR. BEARDALL: Which protection you do not get under an abstract and attorneys' opinion. Now you take a survey. It's just like lawyers—no two of them agree, or very seldom, and

that is putting a pretty big load on the title companies and asking them to accept all that liability.

MR. CLAYTON: We expect the attorney, whenever he examines the survey and abstract of title, to make an exception in his opinion of the same things we would expect the title company to do.

MR. BEARDALL: But is the attorney liable for that survey if the surveyor makes an error?

MR. CLAYTON: I don't suppose he is. He is not, in fact.

MR. BEARDALL: But you want the title company to accept that liability?

MR. CLAYTON: Well, the title company picks out the survey company, or approves the surveying company and has a chance to go over their case. And then, we feel the title insurance should be a little different than an attorney's opinion, or else there is no point in getting it.

MR. BEARDALL: Well, that's not correct because lots of times your loaning agent has some particular friend who is a surveyor and he wants him to do that job. And you issue instructions to those people that the title company pick that surveyor?

MR. CLAYTON: Well, we are willing, in issuing instructions at any time, to tell our correspondent that they must pick a surveyor satisfactory to the title company. We are willing to do that in any case.

MR. BEARDALL: I think that ought to be a general order.

MR. STEWART (Texas): Take the case where a man with divorce proceedings pending in some other county, with his wife, and in the Texas law you would just lose. How could you be protected under a lawyer's opinion in a case where——

MR. CLAYTON: Well, I am not here to discuss attorneys' opinions. Now we have a right under the rulings of the New York Insurance Department to accept an abstract of title, backed by an attorney's opinion. We pick the attorney in that county whom we feel is best qualified to render that opinion and we have a perfect legal right, in New York, to accept on that basis. Now, if we pick a title company we feel that if the title company has sufficient assets and will issue the type of policy we want and issue it in the form we want, we will accept that policy; otherwise, we have a perfect right not to take it, and we will take what we are allowed to under the laws of New York—that is, an abstract, backed by our attorney's opinion.

MR. STEWART: Does the New York law require you to take a policy that is a marketable title?

MR. CLAYTON: I read the clause to you this morning, which says it shall be a first lien on unencumbered real estate, and that is construed to mean a fee simple title.

MR. STEWART: But that doesn't mean a marketable title?

MR. CLAYTON: Well, I rather think that is what they mean by fee simple. It is technically good but can't be passed on to a purchaser.

MR. STEWART: Suppose I've been in possesion of a piece of property for 50 years. It is good in Texas but I may not have a marketable title at all because it is not reducible to record.

MR. CLAYTON: Well, then there is no reason why we should have to loan on it.

MR. STEWART: That would be a good fee-simple title.

MR. CLAYTON: But it would not be a marketable title, and if we had an attorney's opinion that would clearly show that there was no record title in that party, we would not issue a policy as a good title when there is not a marketable title in it and there is no record title.

Tax Titles

MR. KLINE (N. J.): Could I ask this question: Whether your company, which is probably representative of all insurance companies, has adopted a policy concerning titles predicated on tax title foreclosure proceedings?

MR. CLAYTON: We don't take such titles if we know it. It is only when they are covered by a title policy that we take them.

MR. KLINE: Well, it has been a broad policy up to now, but in the last year or so it has made a difference to us.

MR. CLAYTON: It hasn't made any difference to us and, so far as I know, none of the other insurance companies.

MR. KLINE: In the State of New Jersey, and I don't think they stand alone, we have had a great many of our titles deriving through tax title foreclosures, where the municipalities themselves have had to exercise the right to reduce their tax defaults to titles. And, while it is a broad policy, we never did feel it until the last year or so. You have communities where 15 per cent of your titles in the future, no doubt, will be predicated on tax title foreclosure proceedings.

MR. CLAYTON: That is, in New Jersey?

MR. KLINE: I, of course, can only speak of my own state.

MR. CLAYTON: You know, then, that on all contracts of sale in New Jersey there is a printed clause that says that the title will not be accepted if it is based on the Martin Act, or tax title proceedings? That is printed right on your forms.

MR. KLINE: That's true, and that happens to be always on there, but as I say, we are seemingly in a new day and with it, that policy has been changed, provided that tax title foreclosure proceedings are conducted under the full statute of the state and under the proper circumstances.

MR. CLAYTON: Well, I had some contracts of sale in New Jersey and those clauses were still in them in the printed form. So it is not the general policy in New Jersey at this time, I don't think, to accept any tax title or Martin Act proceedings.

MR. CLAYTON: Well, I had some contracts of sale in New Jersey and those clauses were still in them in the printed form. So it is not the general policy in New Jersey at this time, I don't think, to accept any tax title or Martin Act proceedings.

MR. KLINE: The reason I say that is this—and Mr. Wyckoff is here and will bear me out—that we as a broad policy would never accept them but we recognize now that what has transpired in the last two or three years and will transpire in the next five, if we simply lay down a broad rule that we won't insure tax titles, will get us into a lot of difficulty with our public and also, probably, with you; I don't know.

MR. CLAYTON: Well, our stand on that would be that our experience has shown that a large portion of our mortgage loans will become property owned in the case of another smash-up. So we must be protected by having marketable titles, in order that we can sell the properties we acquire. We acquire on this thing, as you know, a very large quantity of property, which we must sell. Now we are selling hundreds of properties every month. All the contracts of sale provide for marketable titles. Well, we certainly do not intend to go out and hold our heads out and be hit on the neck with poor titles that we cannot sell.

MR. KLINE: No, Mr. Clayton. That is true and that has been true up to the current times. That has been true of our New Jersey Title Association, at its last convention. We recognize the new order of the day now and the courts have ruled that a title derived from a tax title properly conducted will render a marketable title.

MR. CLAYTON: Well, then, you can guarantee us a marketable title policy?

MR. KLINE: Yes. Now, notwithstanding the fact that it is a marketable title, if it is a tax title would you decline it?

MR. CLAYTON: No, I would say if the company insuring would issue a policy insuring marketability, that we would take it. I didn't get your question right in the beginning.

CHAIRMAN GILL: Anybody else? If not, I am sure we appreciate very much, Mr. Clayton, your excellent talk and the very interesting discussions following, and we will now adjourn this meeting.

Home Owners Loan Corporation Tax Reports

PORTER BRUCK

First Vice-President, Title Insurance & Trust Co., Los Angeles, California.

I am not very familiar with practices in the other sections of the country except in a rather general way, but I am rather definitely of the opinion that we in California, perhaps, pioneered, or at least to some extent, pioneered in this so-called tax follow-up work. And I know of nothing better to tell you than the practice we have evolved in California. If there is anything in it that is of advantage to you, or can be used by you, I feel that something has been accomplished.

There are in our county some forty-four corporate municipalities; it is a county of considerable size, and there are upwards of a thousand independent taxing bodies or agencies which have the power to levy taxes or assessments. The records of these taxes and assessments are kept in more than a hundred different offices, scattered throughout the country, which makes it quite difficult, as well as quite expensive, for any title company to keep itself in position to give current accurate information about such taxes and assessments at all times. And I stress "at all times," meaning that our plan is such that we do know, from day to day, what has been paid and what has not been paid.

In 1928 the two major title insurance companies in the county joined forces as it were and formed a company, with a capital of $50,000, under the name Realty Tax and Service Company for the primary purpose of furnishing the two title insurance companies with current tax and municipal lien information. A plant was constructed whereon was posted the descriptions and original amounts of all liens of this nature, except current county taxes and current city taxes which were not collected with the county taxes; there are, I think, eight municipalities in the county which collect their own taxes independent of the county taxes.

Each day the information regarding the payment or non-payment of these liens is gathered from the various taxing offices throughout the county and forwarded to the main office and properly posted to the plant. And with up-to-date information available at all times in the plant, it was a logical step to develop a plant to keep owners of property advised at all times of the status of such liens as affected their respective properties and to keep those who loaned money on real property advised of all such liens as would affect the value of the security upon which they had loaned.

However, different owners and different lenders had rather different ideas about the service they wanted. Some wanted to know everything there was to know about such liens and were willing to pay for it; some only wanted to know when the liens became delinquent; some wanted a report once a year and some wanted it twice a year.

To meet the demands of the many we drew up a program composed of five different and definite plans of service, which we commonly refer to as Type A, B, C, D and H Services. The popularity of the services is indicated by the growth of the little company of eight persons and $50,000 in assets in 1928, to the present company of 168 persons and $250,000 in assets. The company has on its books at the present time 111,975 tax service contracts in Los Angeles County.

Los Angeles Reports

Early in 1933 the Home Owners Loan Corporation embarked on its active presidential program of lending money. It seemed rather evident to us that the Government might have as much difficulty in getting its borrowers to pay taxes and assessments as the average private lending institution had. But it was an extremely difficult task to convince the Home Loan Bank Board that such was the case. When we finally did succeed in convincing them of this fact it took us some six months more to convince it that private enterprise could do it as well, and more economically, than could the Government itself. In November, 1934, we started servicing Home Owners Loan contracts. The Corporation furnished us with legal descriptions of the properties upon which they had loans in the state, some 55,000 in number,—although only 30,000 were in Los Angeles County. We contracted with the Corporation to furnish it what we term our B Type Service, at fifty cents per loan per year. Under Type B. Service we agree to furnish notices of the following:

Future sales for delinquent city, county and special district taxes; delinquencies of city and county assessments not included in the tax levy; delinquent installments on street bonds, new street bonds issued—and the word "street bond" as used is all-inclusive, embodying all special assessments levied for the purpose of improving any particular area, whether it be street servicing, sewers, roads, lighting, drains, flood control and so forth. Since November of 1934 we have sent to the Home Owners Loan Corporation, from Los Angeles County, notices of 16,321 street bond delinquencies; 22,100 county and city tax sales; 3,053 delinquent assessments; 2,500 miscellaneous notices, or a total of 43,737 notices, which apparently, has been a rather convincing sign to the Corporation that, after all, tax service is well warranted.

We have billed the Corporation fifty cents per loan, payable in advance on the first day of the month succeeding the month in which the original notice of loan was received by us from the Corporation.

At the time the original contract was made the Corporation asked that we post bond guaranteeing proper performance. We were reluctant to do that but in lieu thereof, gave the Corporation a guarantee, executed by the two title insurance companies, who were stockholders of the Realty Tax and Service Company. I might add that a similar situation existed in northern California, where a similar contract at that time was made.

The contract appears to be very favorable to both sides. I doubt greatly if we made anything the first year, because of the substantial cost of setting all the contracts up on our books, printing the necessary notices, etc.; but at the present time it seems to be netting a reasonable profit. Both the regional office in San Francisco and the Washington office have seen fit to compliment us on numerous occasions for the type of service rendered.

I was speaking to your President, Mr. Gill, and told him that our original arrangements were made directly with the Washington office of the Home Owners Loan Corporation; the regional office in San Francisco were finally convinced of the necessity of our service but due very largely, I believe, to Mr. Kirkpatrick of the Washington office.

If any of you have questions, I would be glad to try to answer them, now or later.

Discussion of H. O. L. C. Tax Reports

PRESIDENT GILL: Are there any questions?

MR. CHAS. O. HON (Chattanooga, Tenn.): I would like to know what percentage of loss you've had according to the charges that you made.

MR. BRUCK: The percentage of loss is practically negligible. I imagine that we have had perhaps $3,000 of losses in the three years we've been operating—or four years we've been operating.

PRESIDENT GILL: What constituted the losses, missing the tax bills?

MR. BRUCK: That's right, missing them, or errors in the amounts.

PRESIDENT GILL: So you assume full liability for all mistakes?

MR. BRUCK: That's right, we have.

PRESIDENT GILL: Some places I understand are allowing the companies to exempt themselves from liability.

MR. BRUCK: Well, I don't see what value the service would be in that case. Our effort is to protect the lender, and if he suffers a loss—of course, in many instances we have attempted to

get the owner to pay them, but the average Home Owners Loan borrower is in no position to pay anything, nine-tenths of the time.

MR. H. LAURIE SMITH (Richmond): Is that a contract of guaranty or a contract of indemnification; in other words, unless H. O. L. C. sustains a loss, you do not sustain any?

MR. BRUCK: That's correct. But we have paid them in many instances because of our inability to get the original borrower to either pay it or reimburse the H. O. L. C. for paying it.

Cost of Service

MR. LAURIE SMITH: Well, one other question: is there any information available that you know of as to the cost of that service, the average cost of that service where the H. O. L. C. undertakes to furnish it itself? I mean, do you know whether there has been any compilation of costs where they furnish it themselves?

MR. BRUCK: No, I do not. I can tell you what it costs us to do it: thirty-five cents.

EVECUTIVE SECRETARY SHERIDAN: I can answer Mr. Smith's question. The Board has made an appropriation of a half a million dollars. That, in round figures, is fifty cents per description. That is to include the overhead within the organization; so their top figure would be fifty cents, less that amount of money which would be required to maintain that department in Washington and the regional and state offices.

MR. LAURIE SMITH: Well Jim, do you understand that they are actually getting those reports everywhere at fifty cents?

MR. SHERIDAN: Well, you know the picture as well as I do. They had expected to get them free from county treasurers and/or city treasurers; they sent out forms which in some cases were returned with the information put on the form, with no recourse, of course, against the treasurer who sent that in; many of the forms were promptly filed in the waste baskets of the treasurers who received them. It is comparable to their attempts to get services in the United States Court clerks' offices from the clerks without a fee, because the clerk was a wing of the Government. They didn't get them.

Now, Port, I would like to ask this: In your contract, are you privileged to buy the mortgage from H. O. L. C. before you make voluntary payment—we'll call it voluntary payment—of taxes now delinquent?

MR. BRUCK: I don't believe it is specified in the contract; that is my recollection, Jim.

MR. SHERIDAN: Have you tried to buy a mortgage?

MR. BRUCK: We have had no occasion to, so far.

MR. SHERIDAN: I assume that if the tax were large enough you would probably go through the formality of buying or trying to buy the mortgage, and then foreclose?

MR. BRUCK: Quite right, but of course all these loans upon which this service is given are for title insurance within the past three or four years, hence the possibility of a loss of any substantial size is rather remote.

MR. JOHN HENRY SMITH (Kansas City): Have you made many tax reports since foreclosures have been had in California, in Los Angeles County?

MR. BRUCK: Well I don't know what you mean by "many."

MR. J. H. SMITH: Well, I don't care whether there were many, but have you made reports since they have foreclosed on properties?

MR. BRUCK: Yes.

MR. J. H. SMITH: Now, suppose you would leave off the tax bill; would the Government want you to pay it, notwithstanding they owned the property?

MR. BRUCK: They probably would.

State Contracts

MR. CHARLTON HALL (Seattle): I just want to ask if any other State in the Union has a contract with the H. O. L. C. I know Port has been a good salesman and gotten a contract there. Now I've been trying to get one for the State of Washington ever since they started to make loans, but I've been unsuccessful.

PRESIDENT GILL: Can anyone answer Mr. Hall's question, whether any other State has a similar contract?

MR. L. B. CARDON (Salt Lake City): We operate under the San Francisco Office also and they have submitted a contract to us of a nature similar to the one in Los Angeles, but so far we have made no contract. Now we offered to make the service at fifty cents per card, but we were told that was too much, that they could get it done cheaper. So far, they haven't gotten it done.

MR. SHERIDAN: To get it on the record, may I ask a question? Mr. Cardon, was that a State-wide contract?

MR. CARDON: Yes.

MR. SHERIDAN: To get any part of it, would you have to cover the entire State?

MR. CARDON: Yes.

MR. SHERIDAN: Now, Port, are you asked to invoice descriptions separately and to recite those descriptions in invoices?

MR. BRUCK: No. We tie it all down to their loan number. We have to bill them separately by their loan number.

MR. SHERIDAN: In separate invoices?

MR. BRUCK: That's right.

MR. SHERIDAN: I take it you have tried to lump together five-thousand or six-thousand loans?

MR. BRUCK: That's right; but as a matter of fact, they fill out a good portion of the form, and their loan number, and when we bill them each month we list on separate sheets of paper the separate loan numbers at fifty cents per loan.

MR. SHERIDAN: Also on their vouchers plus your invoices?

MR. BRUCK: That's right.

MR. SHERIDAN: In triplicate?

MR. BRUCK: That's right.

MR. SHERIDAN: And that costs you, perhaps, five cents per description, at least?

MR. BRUCK: Well, you see Jim, these rotate. We have, roughly, three or four thousand a month, so we have a girl or two who do nothing but bill these things out each month. Now just exactly what the cost per invoice is, I don't know; I don't know how much it costs to bill three thousand items, all the same except for a few loan numbers.

MR. SHERIDAN: Well, if one's total take on the thing is fifty cents, it—

MR. BRUCK: That's right, there is not much to spare, except when you get considerable volume. I should say that anyone undertaking to give tax service with less than 10,000 loans probably would not have much profit, if any.

Seattle Reports

MR. CHARLTON HALL (Seattle): I would like to ask one thing. We were importuned by Mr. Ennis of the regional office in San Francisco to make a bid for tax service on 20,800 loans in the State of Washington, covering the whole State. And when we figured that up at fifty cents per description it would be a little more than $10,000, so we cut the price to $10,000, which makes it 48½ cents per description.

MR. JOHN HENRY SMITH (Kansas City): Just what did you mean when you said you required "cash in advance"? Just make that clear to us, will you?

MR. BRUCK: Our contract calls for notices, as I mentioned them, to be given on each particular lot for the period of a year. At the time the loans were made they would send us a notice of the loan—their terminology—which gave a description of the property and which we posted to our plant. As soon as that was done we billed them fifty cents the first of the following month. And we bill them that same first of the month each succeeding year. Do I make myself clear?

MR. SMITH: Yes.

MR. A. J. ARNOT (North Dakota): How much breaking down of that tax each year do you have to do, or do you just give the total sum for each year?

MR. BRUCK: No, we give separate items; in other words, if there is a street assessment against the property we report the item and the amount.

MR. ARNOT: For each assessment?

MR. BRUCK: For each assessment, right.

Liability for Errors

PRESIDENT GILL: Do I understand, Porter, that your company is liable for all mistakes and that you pay, even before the H. O. L. C. forecloses?

MR. BRUCK: We have, yes. Call it a payment or call it assessment, where we have had losses we have paid them. We feel that in many instances, just as Mr. Smith mentioned, we were really not liable but they expected us to pay and as long as it was a comparatively small amount involved, we did pay.

PRESIDENT GILL: And you take all that risk and do all that work for five or six thousand dollars a year profit on fifty thousand items?

MR. BRUCK: Thirty thousand items.

PRESIDENT GILL: Do you know of any place where they will let the contract for an area less than a state?

MR. BRUCK: Well, as Mr. Hall mentioned, I think the only contract in existence is the one in California, or two in California. Now I might say this; it may be of interest to you. At the time the contract was originally made there were two tax service companies in California, one in the north and one in the south. We were not particularly interested in the north, except that we felt we could not get the contract in the south unless we covered the state, unless we could offer state-wide service. We had a competitor who was proposing to offer such service, so when the contract was made there was formed in northern California this company, with the primary purpose of servicing H. O. L. C. contracts. So we work together. In other words, we took the southern counties and they took the northern counties.

MR. J. C. JENSEN: (Salt Lake City): In connection with what the gentleman here from the State of Washington says, we had an experience also with Mr. Ennis from the San Francisco office in 1935, when they came to us with a proposition. In fact, I've been contacting their office in Salt Lake City ever since 1933, asking them how they were going to get their tax information. They haven't had any tax information; they don't know whether there are one, two, three or four years of delinquent taxes against their mortgaged properties. In 1935 they asked us to submit a bid for checking the taxes for that state, the State of Utah, and we submitted a bid and apparently that was discussed, or perhaps not discussed, I don't know which, but in 1936 they asked for another bid. We submitted a bid, and they expected the work to start by July 1st. Nothing has been done so far as I know.

MR. A. W. HOOVER (Miami): What did you bid?

MR. JENSEN: Fifty cents.

MR. BRUCK: It seems to me rather significant, and if you gentlemen are interested in contacting with the H. O. L. C., perhaps our experience might be of help to you in these figures again. Out of 30,000 loans they have, in three years, received over 43,000 notices of delinquencies of one form or another.

MR. THOS. L. P. MATKINS (New Mexico): Well, you didn't establish that service for H. O. L. C.; you had that service established long before that, didn't you?

MR. BRUCK: That's quite correct.

MR. MATKINS: You had established it ten years before, hadn't you? You had been in service long before H. O. L. C.?

MR. BRUCK: Yes, that's correct.

MR. A W. HOOVER (Miami): Do you get anything out of the loans when the taxes are paid on them from the H. O. L. C. when there are no delinquencies? There are some cases where some of these fellows make a mistake and pay the taxes and you service the title; do you get anything for that?

MR. BRUCK: We get fifty cents where there aren't any delinquencies.

MR. A. P. SMITH (Florida): Have you made an average as to the amount you become liable for for fifty cents on each item of tax reports?

MR. BRUCK: No, but I could make a guess that the average tax, on whatever assessments, is probably in the neighborhood of $75.00 to $100.00. Does that answer your question?

MR. R. C. BECKER (St. Louis): I would like to ask, if Mr. Bruck knows, and cares to state, whether this gentleman named Kirkpatrick in Washington that you originally negotiated with still has jurisdiction over this subject, or has it been put back to the regional directors?

MR. BRUCK: Yes, he still has jurisdiction.

MR. BECKER: It seems that in St. Louis the thing was peddled around, and I think the ultimate object was that a couple of boys in the tax collector's office gave up their jobs and took a contract to give four years' service, at 20 cents, with no liability behind them at all. And I just wondered if each regional director was authorized to negotiate in his own way, regardless of any definite plan in Washington.

MR. BRUCK: Well, Ralph, I have found it dangerous to guess who has the authority in any governmental agency.

MR. CHARLTON HALL (Seattle): Mr. Bruck, on that matter, I was told that any contract we submitted would be submitted to the Federal Home Loan Bank Board for approval before it could be executed.

MR. J. C. JENSEN (Utah): And our contract in Utah is supposed to start the first of July but we haven't heard anything from them.

MR. S. H. McKEE (Pittsburgh): I would like to ask what is the measure of your liability. In case there is an indirect loss of $10,000 and you have fifty cents for reporting the tax, what is your measure of liability?

MR. BRUCK: Well, I don't know just what you mean by indirect loss, but I think I can answer by saying we would have just as much liability as under a $10,000 owners' policy for title insurance, for which we might have had a premius of $40.00.

MR. CHARLTON HALL (Seattle): Yes, but the tax itself couldn't be but one, or two, or three years' tax, plus whatever the assessments are. There couldn't be a $10,000 liability; there wouldn't be a $10,000 tax on a $2,000 mortgage.

MR. McKEE: Suppose there is a mortgage on it and prior to the mortgage you missed the tax and the mortgage is divested; suppose the mortgage of $10,000 is divested by reason of your missed report?

MR. BRUCK: We'd have a liability of $10,000.

MR. McKEE: At fifty cents?

MR. BRUCK: That's correct.

Time of Furnishing Reports

MR. JOHN HENRY SMITH (Mo.): I am interested in knowing just when you are required to make these reports, before tax-paying time or after?

MR. BRUCK: We report on taxes after the middle of the year delinquent. In other words, our payments are made in two installments, in December and April. If the second installment is not paid the property is sold for that term in June. We report on that in July, on the taxes. Otherwise, we report when any special assessment goes on the property. So we have at least one report a year, maybe we have two or three. In other words, if a lighting district is created today, involving a property upon which the H. O. L. C. has a loan, we must notify them within thirty days of the time the lien goes on the property, and we do notify them.

MR. SMITH: You couldn't do that unless you posted your taxes every day.

MR. E. M. WEAVER (New Jersey): I was wondering what protection you have against taxes shown paid and later the check is not cleared.

MR. BRUCK: None whatever, except that we are fortunate in having a tax collector in that county, and in most of the counties in fact, who has been very reasonable in not posting taxes until the check has cleared. Occasionally a tax collector makes a mistake and then we are just sunk.

MR. HIRAM BROWN (Indiana): Mr. Chairman, we have 46,000 examinations; no contracts of any kind signed yet. The four leading abstract companies formed a subsidiary company for the purpose of making these searches. We bid 85 cents. The contract is to be sublet at amounts arranging from about 20 to 50 cents. We tried to provide in the contract for an additional charge of 85 cents for any subsequent searches that we were called upon to make, undertaking to protect ourselves against the experience with the H. O. L. C. where they would ask for half a dozen searches on one original job. Then we tried—and the contract has not yet been signed—tried to protect ourselves against mistakes, holding ourselves only to the 10 per cent statutory penalty that would be exacted in case the man failed to pay his taxes. In other words, we reasoned

that the tax was due anyhow and the borrower would have to pay it, and if we failed to show that that we were chargable with the excess 10 per cent penalty.

PRESIDENT GILL: Did they allow you to put that into the contract?

MR. BROWN: Well, the contract hasn't been signed yet, but I think it is going in.

Quotation of Prices

MR. SHERIDAN: I would like to ask one question. I have called in Washington for three years on this thing, for a number of the State Associations and companies in states where there is no State Association or Regional Association. I have been in Washington with McCune Gill, Bill Gill, Jack Rattikin, and others. We have talked to Mr. Kirkpatrick, and I would like to mention this, before I ask this question. From various jurisdictions there have gone into Washington quotations, I assure you that the lowest quotation from any state immediately becomes the yardstick in the opinion of numerous Washington officials, for that entire state. So I plead with you: do not quote prices until you contact others of our industry in your own state, or your own district if you take in more than one state.

It is not unlikely that the Secretary will go back to Washington in the near future. I have talked to Mr. Russell about this. He is not opposed to our handling it. I think we can go places with Mr. Russell but we don't want to pursue it further unless you folks are interested in the business, and I wondered, Mr. President, if we might have a raise of hands as to whether our people are really interested in having this business.

Vote on Companies Interested

PRESIDENT GILL: Then, to handle this as best we may, first I will ask for hands showing how many of you, (from what you knew before you came here and what you have found out since you got here), are not interested in the Home Owners Loan Tax service at all, and here is the first hand. (Approximately 25 hands).

PRESIDENT GILL: How many among those who are interested would be interested at fifty cents? (About 18 hands). How many among those interested would be interested at less than fifty cents? (No response).

MR. CHARLTON HALL: Forty-eight and a half, because I bid it.

PRESIDENT GILL: Well, it seems that perhaps two-thirds of those here are not interested and one-third interested, and they all seem to hit on fifty cents, as a minimum; assuming that there will be full liability for all mistakes as well as incidental losses.

MR. P. R. ROBIN (Tampa, Fla.): Just as a matter of information, I do know that in the State of Florida the title men are getting the tax service. They select their own companies throughout the State, and recently a number of us have received orders for that work and it is not at fifty cents but at 75 cents.

MR. CHARLTON HALL: Doesn't it cover the entire state?

MR. ROBIN: No, it doesn't, just the particular county. We are going to check back since 1933 on all taxes and assessments.

PRESIDENT GILL: But with liability?

MR. ROBIN: Oh yes.

PRESIDENT GILL: Service to be spread out over the year, or at any definite time?

MR. ROBIN: Just as we have to in other cases in abstract work. Consistent with Mr. Sheridan's remark about checking back, we get a dollar.

MR. SHERIDAN: May I ask of Mr. Robin whether that contract was made by Mr. Crutchfield, who is State Counsel and/or did it have to go into Washington for approval?

MR. ROBIN: No, it was made direct by Mr. Crutchfield with each individual abstract company that he sent the business to.

MR. A. McDONALD (Deland, Fla.): We have already completed the service at 75 cents. We don't have anything like as many loans; however ,there has been no contract signed, it is a verbal agreement. We make one bill for the entire service. I O.K. the card which they send down, whether paid or not paid and the amount and assume no liability unless by inferred liability on an oral contract. And the mortgagee under our state law is liable for the taxes if the mortgagor does not pay it, and all we might be liable for is the interest between the time we became indebted to them and the time we had to pay it. That is my opinion of what we might be called upon to do. I don't know how much I might have missed, but they haven't had us to pay any yet. Now our items figure in the hundreds rather than in the thousands and at 75 cents—our county has less than a thousand loans—it comes to about $650 for about 35 hours work.

Priority of Tax Laws

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In California we have on the statute books nine state taxes, that is, taxes other than property taxes, which under one condition or another become a lien upon the real property of the taxpayer. Since 1872 we have had in our political code a general provision to the effect that all taxes shall have the effect of a judgment against the taxpayer and of an execution duly levied against all property of the taxpayer, and that the lien is not removed until the taxes are paid or the property sold for the nonpayment thereof.

In drafting most of the new state tax measures, and all of our state taxes with one exception are levied under statutes enacted since 1929, it has been customary to simply include that language appearing in the political code. That has caused us some trouble for the reason that in an early case, the Supreme Court of our state interpreted that section as applied to personal property taxes, as making the personal property tax superior or prior to existing encumbrances; despite the fact that in a later case the Supreme Court held that a tax would not be deemed prior to existing encumbrances unless declared to be so by the statute imposing it, we have been compelled to take the position that all of the taxes are prior to existing encumbrances unless declared to be so by the statute imposing it, we have been compelled to take the position that all of the taxes are prior to existing encumbrances unless the statute expressly provides to the contrary.

We have taken the position in our legislative work that no tax except a tax upon property, the amount of which is based upon the value of the property, should, in justice, be prior to existing encumbrances; and secondly, that no tax should be a lien upon the real property of the taxpayer unless some sort of notice, recorded notice, is proved.

With those two general policies in view we began, a few sessions ago, to amend or attempt to amend our various tax laws. The situation we now have is this: Under our Retail Sales Tax, no lien is imposed upon the property of the taxpayer unless a notice is recorded in the county in which the real property is located. The same is true of the Personal Income Tax, and of the Alcoholic Beverage Tax. Now, what we did was to work out this procedure which proved eventually to be acceptable to the state taxing authorities, and they advised me recently that it had worked out satisfactorily. The statute itself imposes no lien, but it provides that in the event that the taxpayer becomes delinquent in the payment of the tax, then the tax administration agency may file a certificate with the County Clerk of the county in which the State Capital is located, specifying the name of the taxpayer, the amount of the tax and the fact that it is delinquent. Upon filing that certificate, the clerk is required to enter a judgment against the taxpayer for the amount of the tax specified in the certificate. That does not, however, under the California law, become a lien. The statute then provides that the tax administrating agency may record, in any county in the state, an abstract of that judgment and upon recording that abstract of judgment the amount of the tax becomes a lien upon the real property of the taxpayer having the same force, effect and priority as a judgment lien.

Now the reason we worked out that procedure was that to have attempted to get an amendment in the act making the lien subject to the encumbrances was too much for them to

swallow, but the other language appealed to them much more and, as a matter of fact, has worked out quite satisfactorily. So, on the three taxes I have mentioned—the sales tax, the personal income tax and the alcoholic beverage tax, which were all blanket prior liens as originally enacted, no lien is now imposed unless a notice is recorded in the office of the county recorder of the county, and then the tax only has the force, effect and priority of a judgment lien, which means of course that it is subject to bona fide existing encumbrances, the same as any other judgment lien.

Franchise Tax

Now, in the case of the Bank and Corporation Franchise Tax, we did not secure a provision quite so satisfactory as that; but the bank and corporation franchise tax lien attaches automatically on all property of the taxpayer on the first day of the taxable year, and in that particular instance it is not so important for us to have a record notice of the lien for the reason that every corporation, with the exception of insurance companies and nonprofit corporations, are subject to the tax any way, so that we would gain little by a recorded notice. In other words, if we are passing the title of a corporation we know that in every case there is a lien for the bank and corporation franchise tax. We did, however, provide in the statute at this session of the Legislature that a release by the franchise tax commissioner who administers the tax, is conclusive upon all persons, so that we simply obtained from him a release or, rather, a statement to the effect that the tax is paid and a release of the lien.

In the case of the Inheritance Tax, we of course have no recorded notice but we also have a provision in that statute now providing that a release shall be conclusive in favor of all persons and, of course, in the case of inheritance tax there is no particular point in providing for a recorded notice, except as there might be in the case of transfers in revivals.

There are three other taxes, however, which are in very unsatisfactory shape. We have in California a Motor Vehicle Transportation Tax which is a 3 per cent gross receipts tax. That statute provides that the amount of the tax shall be a lien upon all property of the taxpayer used in producing the gross receipts which are the basis of the tax, attaching at the time of the receipt of the gross receipts. Which simply means that an automatic lien keeps attaching every time the truck goes down the highway. That statute also expressly provides that the tax shall be prior to all existing encumbrances. In the case of that tax we have no record notice of the tax. The tax is prior to all encumbrances and, frankly, we are just wide open on it and there is very little that we do about it.

Gasoline Tax

The other tax is our Gasoline Tax or our Motor Vehicle Fuel Tax. That tax, likewise, is made a lien upon all the property of the distributor and no notice of the tax is given. However, in 1933 the statute was amended so as to require all distributors to post a bond equal to twice the amount of their monthly tax, unless the tax is payable weekly, in which case the bond has to be twice the amount of the weekly tax. We do secure, however, from the State Board of Equalization administering the tax periodically a list of all companies licensed as distributors of motor vehicle fuel and those are posted by the title companies to the Corporate Index. That tax, while on paper appears to be dangerous, is not particularly dangerous for the reason that the number of distributors subject to the tax, which are the wholesale distributors, is comparatively small, I think approximately thirty or forty in the state; most of them are responsible, and in addition to that, they post a very substantial bond to secure the payment of the tax so that the likelihood of the state having recourse to the lien is now quite remote.

The third tax which is not in satisfactory shape is the Gross Premiums Tax upon insurance companies. That likewise is made a lien upon all property of the insurance company and no record notice of the lien is given. There again, however, the companies are required to post a bond to insure the payment of the tax and, generally speaking, the likelihood of the state having to enforce a lien against an insurance company is pretty remote.

That, in brief, covers the situation in California. Now, in our ordinary joint protection form of policy, we of course except, in Exception No. 1, all liens or encumbrances which do not appear of record in the offices of the county, city or Federal District in which the property is located. So that in our ordinary form of policy we do not insure, I presume, against liens of state taxes, of which there is no record in the county or the city or the Federal District. So that in the case of the last three taxes I mentioned, we probably do not cover them in our policy. However, we conduct our business on the theory that we do, and we make every possible effort to check the tax and, frankly, I don't believe that we would, in California, reject a claim if we should overlook one of those taxes.

However, in our American Title Association form of policy we of course do not include that exception, and in the case of that policy, as I construe it, we insure against loss by reason of any of the liens imposed by any of these state tax or statutes.

I suggest to you, those in the states troubled with similar provisions, that you might examine the provisions in either our Income Tax, our Sales Tax or our Alcoholic Beverage Tax, because the provision has worked eminently satisfactorily from the standpoint of the title companies and at least in the case of the Sales Tax and the Income Tax, it has worked with reasonable satisfaction to the state collecting agencies.

Old Age Pensions

In the case of our Old Age Pension liens we have had a considerable amount of difficulty. The Old Age Pension, as you know, was substantially increased in California two years ago. The age limit was reduced and at that time the Legislature provided that the amount of aid furnished to the applicant should become a lien upon the recording of a notice in the county recorder's office, which lien should have the force, effect and priority of the judgment lien but should secure all aid theretofore or thereafter furnished. Well, that proved quite satisfactory so far as finding the lien was concerned, but our Attorney General ruled that despite the fact that the Board of Supervisors might acquire a lien by recording a notice, they had no power to either release it or subordinate it, so we are immediately confronted with the obstacle in the case where property was sold or applicant came into money and wanted to pay off the lien. However, we had the statute amended, the first part of our bifurcated session, giving the supervisors authority to release or subordinate the lien and to those of you who are interested in legislation I may say that bill went through both Houses in a fraction under 10 minutes!

Later in the session, the Legislature became magnanimous and provided that all liens for Old Age Pensions should be released and made mandatory upon the Board of Supervisors to release every lien theretofore acquired and providing that never in the future should the state acquire a lien against the property of a recipient of Old Age Pensions.

Now that pretty well covers, I think, the problems which we face in California and the attempts we have made to meet the problem. Frankly, I feel that the title companies or the title business has a responsibility to do more than complain about this situation but has a responsibility to take the leadership in correcting it. In California we have found the tax collecting agencies most co-operative when once the problem is satisfactorily explained to them. The facts of the case are that the draftsmen of most of this legislation are not particularly interested in the lien, and they ordinarily include in the statute some of the language that they find in the books, or some language they find in another statute; and with a little patience it is usually possible to work out a procedure which will adequately protect the state in the collection of its revenues and, at the same time, make it possible for the title insurance companies to fully protect their clients against all liens of this char-

acter. And, if we are going to sell title insurance we've got either to take the risk ourselves eventually, or we've got to provide for or amend the statutes in such shape that we can insure without taking too great a risk. Thank you.

CHAIRMAN GILL: Thank you, Mr. Landels. I think it was particularly interesting to hear from Mr. Landels because, in California, they have built up a Legislature-watching system which is second to none. And particularly, toward the end of his talk, Mr. Landels referred to the fact that many of these pieces of legislation which have been referred to as pests, can be prevented.

Amending Legislative Bills

If I may interpolate some of our own experiences some years ago, the Missouri title companies and abstract companies began the building up of what is now an effective bill-killing organization. We started in killing Torrens Bills, and we have killed several of those, and then anti-title insurance bills and other bills. Then we found that we could extend that service to our friends and so we began killing or helping to kill anti-mortgage company bills and anti-real estate bills; so that now, the legislative season is a very busy one for us. We get every bill and read it, communicate with our customers, tell them the danger, and then assist them in doing away with the nuisances.

Some years ago we discovered that tax bills were of interest to us. Prior to that time we didn't think they were. So now one of our chief concerns is to watch these new tax bills, and we get dozens of them each legislature containing in some obscure place, a lien clause which as Mr. Landels says, is probably put there by the draftsman of the act without a definite idea as to its meaning. If, at the very outset of the tortuous career of a bill through the various processes it must pass through before it becomes an act, the proponents of the bill find that a very active and militant bloc is attacking their bill, they have been quite willing to modify their lien clause or, in most cases, eliminate it entirely, in order to save the rest of the bill. I remember that we had such an experience with the Income Tax Bill, with the Old Age Pension Bill, and with various taxing bills. It seems to me that one of the ways to eliminate these new pests is to eradicate them in the very drafting of the bill itself. This is comparatively easy, because these people, as I say, are completely taken by surprise at this unexpected onslaught and they usually, for the sake of peace, consent to the elimination of the lien clause entirely.

Benefits of Record Complications

In closing this discussion, I might add a note which could be classified under the "uses of adversity." While all of us, I am sure, wish to keep our statute books as free as possible from this new crop of strange liens, nevertheless if they get on the books they may prove to be a source of great profit to us. I have in mind that the first time I inspected the title plants in some of the large cities, as for example, New York, Chicago and, just recently, in the last few day, Philadelphia. I commenced to sympathize with them because of the tremendous difficulty they have in examining for liens. In New York, for example, the tax situation is extremely complicated and the building up of a tax plant is very expensive. In Chicago it is necessary, due to their antiquated judgment laws, or rather, lack of laws, that the minutes of every case be followed, every day, in a hundred courts. In Philadelphia the judgment indexes under the Russell System comprise some 125 books.

It would seem that these things were great burdens. As a matter of fact, they are great blessings, because you can see that once the indexes are compiled in these localities, it will be the surest way of eliminating the curbstone individual, and at the same time selling our product to the public upon the well-founded statement that we are the only people who can examine any of these liens of various kinds. I have in mind that in our own company it became necessary to spend a large sum for the compilation of a special tax index in about twenty-five of the outlying small municipalities. We groaned tremendously at having to spend that money, but we found it to be one of the greatest business getters we have because now nobody can tell what taxes are liens in any one of those twenty-five municipalities, except the title companies participating in that index.

Divorces as Affecting Titles to Real Estate

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Socrates, asked whether it was better to marry or not, answered, "Whichever you do, you will repent it." In this he undoubtedly gives us a reason for the considerable number of present day divorces. Maybe too, he tells us the answer to the question: Should a title affected by a divorce be passed or rejected? But since there are links of divorce in so many chains of title and since title insurance is a service rather than a business, all of these cannot arbitrarily be rejected. On the contrary, each must be studied carefully, and if possible, insured. In this, optimism should not be permitted to triumph over experience nor Samaritanism over judgment.

It is not my intention to point out here the numerous difficulties to which title companies and abstracters are subjected in their search for such divorce decrees as may affect a title to be insured. Nor will I enumerate the avenues of loss which are opened to the insurer by those decrees which no amount of reasonable investigation and inquiry would have brought to light before the issuance of the policy, but which nevertheless affect the title. Such contingencies are inevitable as long as there is no national divorce index and human beings remain fallible. These are risks which must necessarily be assumed and compensated for by rates adjusted to the law of averages.

Except occasionally, I will not refer directly to the decisions many of which I have cited in footnotes to support my views, but will confine myself to a limited discussion of the effect on land titles of divorce decrees—Domestic, of Other States and Foreign.

As to Domestic Divorces

A great number of states fix the property rights of the parted pair by the same decree which dissolves the marriage,[1] while others merely provide a means for partitioning community property or that held by the entireties.[2] The balance of the states, except South Carolina, where absolute divorces are constitutionally prohibited,[3] do not decree more than the severance of the marriage ties, occasionally with some restriction on future marriage of one or both parties.[4]

Where the property rights of the litigants are determined by the final decree of divorce, insurance of local titles does not present such a complex problem as where the title to the belongings of the divorced spouse is left to the application of the law as it may be applied by the courts at some future time. Although in both cases, before relying on a so-called final decree it must be determined to be actually final, in the latter case its effect on local titles must also be ascertained.

The case law in those states which do not provide by statute for the fixing of property rights by the divorce decree, varies very little from that of Pennsylvania. And there are just about as many slips between the cup of decision in the court of first instance and the lip of the highest tribunal of one state as of another. Consequently, Pennsylvania is used here as a typical example.

Where a final decree of divorce from the bonds of matrimony is granted by a Pennsylvania Court, neither the husband nor the wife, if the other die, has any right to claim anything from the estate, either by dower, courtesy or survivorship, or under the Interstate Laws.[5] Each party then retains his or her separate estate, free from any claim or interest of the other, except that where property is held by the entireties, after a divorce it retains the incidents which pertained to it at its inception,[6] although under act of Assembly it is subject to partition.[7] The majority rule elsewhere, however, is that a decree of divorce, although not mentioning community property or property held by the entireties, nevertheless is construed to have changed it, as the case may be, into a tenancy in

common.[8] Thus when a local decree of divorce is turned up in the chain of title, its effect is quite capable of definite ascertainment.

If this were as far as the title man had to look, domestic divorces would be far from simple matters. But he is still confronted with the fact that the final decree is not all its name implies. From it (still using Pennsylvania as an example)there can be taken an appeal to the Superior Court by either party[9] within three months after its entry[10] which until it is disposed of, suspends for all purposes the operation of the decree.[11] Even if the appeal is dismissed, or the judgment of the lower court affirmed by the Superior Court, the aggrieved party still has an opportunity, within ten days, of applying for a re-argument before that court[12] or within forty-five days of asking the State Supreme Court to allow an appeal.[13] In the event of the allowance of such an appeal the decree of divorce remains inoperative until it is passed upon by that court and the ten day period for review has expired. From this decision of Pennsylvania's highest tribunal, or its refusal to hear an appeal, the Supreme Court of the United States may be asked within three months to pass on the matter.[14] Obviously then, a final decree of divorce is not final until the time has elapsed for ascending the rungs in the ladder of appellate procedure.

The lapse of three months after the entry of a final decree of divorce, no appeal having been taken, does not of itself obviate further worry. A final decree can be opened long after the date of its entry, if there has been extrinsic or collateral fraud in obtaining that judgment;[15] collateral fraud being defined by the Court as "conduct of the prevailing party preventing fair submission of the controversy." As a matter of fact, in one case the Court set aside a decree of divorce upon the application of a respondent made thirty years after the entry of the decree, and even after the death of the libellant;[16] and in another case, eleven years after its entry on the ground of lack of original jurisdiction in the court;[17] and in still another case, the Pennsylvania Superior Court held that a decree of divorce being void for want of jurisdiction could be subsequently vacated on the petition of a son of the respondent.[18] Nor can we pass the case of Buckley vs. Buckley [19] where the vacation of a decree was obtained by a wife on the ground of fraud. As she was leaving New York on a boat trip, with the consent of her husband, he gave her a sealed package, not to be opened until after departure. It contained the summons in divorce.

There is nothing unusual about setting aside a decree or judgment a considerable time after its entry for lack of original jurisdiction. This has been done time and again on the theory that the court never having had the right to pass on the matter in controversy, could not acquire it by consent of the litigants. Jurisdiction, however, is to be distinguished from venue. And it has been held that where a libellant is resident of a state, its courts have jurisdiction of his person although he may have brought his suit in a county in which he does not live; that being only a matter of venue which may be waived by the other party to the suit.[20]

Be not without hope however. The setting aside of a decree of divorce is a proceeding in equity, and the one making such an application must come with clean hands. No spouse tainted in any degree with the fraud by which the decree was obtained, can thereafter move to set it aside.[21] Nor will the divorce be opened where the respondent has been guilty of gross laches[22] even though it was obtained without notice.[23] And though the divorce may be invalid, if the respondent does any act in recognition of it, this party is bound by the decree, which he or she may not thereafter attack.[24] This is under the Doctrine of Estoppel.

Furthermore, it is with great reluctance that the courts will set aside their own decrees, since courts, as well as title men, realize that only by writing finis on litigation can property rights **requescent in pace.**

As to Divorces of Other States

If a state recognizes the validity of a final decree of divorce granted in another state or country, the effect on the property rights of the parties and others is as if the decree had been handed down where presented.[25] Of course, it is not such a judgment as may be enforced by execution until reduced to judgment in the state where presented,[26] but it is conclusive as to the matters passed upon.[27] Consequently, the title man's problem is more with the validity than with the effect of other state and foreign divorces.

Article IV of the Constitution of the United States provides: "Section 1. Full Faith and Credit shall be given in each state to the public acts, Records and Judicial Proceedings of every other State. And the Congress may by General Law prescribe the manner in which such Acts, Records and Proceedings shall be proved and the effect thereof."

This, however, has been construed by the United States Supreme Court to mean that full faith and credit must be given only where the court rendering the decree had jurisdiction of the parties and the subject matter and that if one of these incidents be absent, a decree of divorce granted in one state need not be recognized or held binding in another.[28] The right to attack a decree of a sister state on jurisdictional grounds is therefore permissive rather than mandatory, which has given rise to three general rules for the treatment of such decrees, each with a substantial following:

RULE 1

On the theory that a proceeding for divorce is solely an action in rem, decrees of sister states will be recognized as valid if the laws of the divorcing state were complied with. This rule is followed in Alabama,[29] Connecticut,[30] Indiana,[31] Iowa[32] and Rhode Island.[33]

RULE 2

Treating a divorce proceeding as one quasi in rem, decrees of other states will be recognized as valid if the laws of the divorcing state were complied with and the cause would have justified a decree in the state which is asked to pass upon its extra-territorial effect. This is the rule which has been adopted by those states not heretofore indicated as following Rule 1, or hereafter as following Rule 3. Although Delaware,[34] Massachusetts,[35] New Jersey[36] and Wisconsin,[37] having adopted a Uniform Divorce act or similar legislation, qualify this general principle by requiring that in ex-party cases there must have been "the best practicable service made on the respondent."

RULE 3

A final decree of divorce granted by any sister state will not be given full faith and credit unless in that state there was jurisdiction of parties and subject matter. This is the rule in the District of Columbia,[38] North Carolina,[39] New York,[40] Pennsylvania[41] and South Carolina.[42]

But these rules only apply to the recognition of a decree in divorce as such, and not the disposition of the foreign-owned property which the parties possessed at the time of the entry of the decree, or the award of alimony. For real estate in one state cannot be transferred by a decree of another state. One of the parties may be directed to convey, but it is only the conveyance itself which changes the title. Such a decree may be enforced by contempt or sequestration proceedings in the court of original jurisdiction,[43] but the court which is the situs of the res can only render a judgment in rem.[44] And, except in those states which follow Rule 1, the decree, insafar as it relates to the disposition of personal property owned outside of the divorcing state, or alimony, will not be observed by other states, unless the requirements of Rule 3 have been met.[45]

If the foreign decree contains no reference to property or alimony, it requires therefore in the states which follow Rule 1, only the same scrutiny that should be given to it to determine its local effect. If on the other hand it is presented in a state which follows Rule 2, in addition to determining its finality in the locality where issued, it must also be determined that it was for a cause which would have justified a divorce in the state in which it was presented.[46] And in those states which have adopted uniform or similar legislation, as above indicated, it must be concluded that the best practical method of service was employed to notify the ex-party respondent[47].

However, if the decree awards alimony or attempts to dispose of personal property outside of its own jurisdictional limitations, then, unless it is presented for full faith and credit in one of the states which follow Rule 1, it must be subjected to all of the search-

ing examination to which all divorce decrees are subjected in the states following Rule 3.[48] Here again Pennsylvania furnishes our example, since its decisions, are in accord with those of its sister states employing the same rule. If being measured by the criterion of Pennsylvania decisions we determine that the decree is valid then we have determined that it is good everywhere.

As to the first step, we must find out whether the state in which the divorce was granted, the disposition of personalty made or alimony awarded, had the requisite jurisdiction. This depends upon marriage domicile, i. e., where the parties last lived together in the marital relationship; upon the residence of the parties at the institution of proceedings, i. e., bona fide residence [49]—domicile—as defined by the laws of the lex fori; upon the method of service of process on the party respondent, i. e., by publication of notice or actual service; and upon the authority of the court to grant a divorce for the cause proved.

Bona fide residence of the libellant in Pennsylvania for at least one year prior to the institution of proceedings for divorce is a jurisdictional qualification imposed by law [50] but it has no application to Pennsylvania's recognition of divorces granted elsewhere. It is within the sovereign power of each state to adjudicate the marital rights of its citizens and to enact laws, not constitutionally in conflict with those of other states,[51] which will furnish the criterion for determining citizenship.[52] Thus the length of residence requisite for the institution of a divorce action is variously fixed at from six weeks in Nevada to three to five years in Massachusetts. And where its own statutory domiciliary qualifications have been met in any state, its decree will not be questioned on that ground elsewhere unless, as I have heretofore indicated, the residence was not bona fide.[53] An exception to this rule was for a time to be found in New Jersey, but now that state has again come in line.[54]

What is or is not considered a bona fide residence has been the subject of many decisions.[55] Perhaps a definition as good as any is that of Mr. Chief Justice Sterrett. He says, "As generally defined, a person's domicile is the place where he has a true, fixed and permanent home and principal establishment; to which, whenever he is absent, he has the intention of returning—if the intention of permanently residing in a particular place exists, a residence in pursuance of that intention, however short, will establish a domicile.[56]

Yet even this definition may not be applied generally. For the law allows a wife far less latitude in the selection of an individual domicile that it does a husband. He may fix his bona fide residence at will, regardless of whether or not he has been guilty of desertion, but his wife is circumscribed by the ancient rule that the husband, as head of the family, is the one who must determine where the family shall live.[57] It is only where the wife leaves the husband without being guilty of desertion under the laws of the state of the marriage domicile, or, with just cause refuses to follow him to a new residence, that she is permitted to establish her own domicile. In all other cases it follows that of the husband.[58] But in order to institute divorce proceedings in the state where the husband has thus acquired a domicile for her the wife must actually live for the required statutory period.[59]

With these definitions in mind and the essential elements of fact ascertained, we need only apply them to the test of five precepts to determine whether a final decree of divorce of another state will be held valid in the states following Rule 3 or its award of personalty or alimony held binding in the states following Rule 2.

I. If in any particular state a decree is granted for a cause which under its laws is not a ground for divorce, then that decree is invalid. And no amount of jurisdiction of the person will make it valid.[60]

II. When a service of process of a court in one state is by publication to a respondent resident in another state, and he or she does not appear and submit to the jurisdiction, then the decree is recognized only if the state granting the divorce was the marriage domicile, and at the institution of proceedings the domicile of the libellant.[61]

III. Where service of process of a court in one state is by publication to a respondent in another state and he or she causes an appearance to be entered or otherwise submits to the jurisdiction, the divorce will be recognized regardless of marriage domicile if the libellant is a bona fide resident in the state granting it.[62]

IV. If the libellant is not a resident of the state where the divorce is granted, even though the respondent received constructive service of process, marriage domicile alone in that state will not suffice to make the decree valid.[63]

V. Where both parties are bona fide residents of the state granting the divorce, regardless of marriage domicile. the decree will be recognized, if such method of notification was employed as may be calculated reasonably to give the respondent notice of the proceedings.[64] (This latter proposition is stated in the way which Radinovitz's Estate would indicate. A far more liberal view is taken by the American Law Institute in its Restatement of Conflict of Laws. Supported by ample authority outside of Pennsylvania the rule is given; "A state can exercise through its courts, jurisdiction to dissolve the marriage of spouses both domiciles in the state.")[65]

It follows now, if a decree of divorce entered in another state turns up in a title search in any state except those which follow Rule 1, the first thing to do is consult the laws of the state from which the divorce emanated. Having determined that the decree is actually final and in the states following Rule 2 that there was the requisite jurisdiction over the subject matter, the next step, in states following Rule 3, and those following Rule 2 if the decree disposes of personal property or awards alimony, is to inquire into the matter of jurisdiction of the person. Only if this then meets all the requirements which the Pennsylvania Courts impose, is it safe to take the decree at its face value.

If a sister state decree of divorce is not recognized in the state where it is presented, then obviously neither the marriage status nor the property status of the parties is affected in that state. But even if the decree of divorce itself is recognized as having extra-territorial effect, its award of alimony and disposition of personalty may still be measured by the yardstick of Rule 3, and found wanting. In which event an action brought to determine those issues then will only be influenced by the fact that the parties are no longer man and wife.[66]

So it may be seen that in most cases the extra-territorial validity of a decree must be determined from the application of a rule which creates for the title man many vexing problems. Problems which could have been obviated by the general adoption of the more liberal view that all final decrees of sister states must be taken at face value. Today, for instance, North Carolina, when it is not the marital domicile, will grant a divorce upon service on the respondent by publication, but will not recognize a similar divorce granted in another state.[67] Then, too, judicial decisions which make it possible for a man to be legally married at the same time to one woman in Ohio and another in New York do not support the ideology that law is founded on reason. Rather they indicate the need of a uniformally adopted divorce code, making it obligatory for each state to recognize decrees granted under it by any other state. This should do much to stabilize a situation which today is fraught with uncertainty.

As to Foreign Divorces

In recent years we have met with an increasing number of Mexican, Russian and French divorces, all of which present just about the same perplexing problems in all states as divorces granted in sister states present to the Rule 3 group. It is true, in the consideration of foreign decrees, the Full Faith and Credit Clause of the Constitution is not binding, but on the other hand International Law and the comity which exists between nations has much the same influence.[68] All states are bound, moreover, by the treaty obligations of the United States.

These foreign decrees are scrutinized with little more severity than are decrees of sister states.[69] This means if there are present the requisite jurisdictional qualifications which the courts of Group 2 and Group 3 states impose

on other state decrees, the foreign decrees will be held valid, otherwise not. However, if the validity of a title to real estate depends upon the validity of a foreign decree it behooves the insurer to apply the spotlight of thorough investigation to the question of residence before venturing to assume the risk.

Common sense warns us that seldom will an American citizen, having established a foreign residence and having obtained a foreign divorce, return almost immediately afterwards to his native country unless his foreign sojourn was primarily for the purpose of obtaining the divorce. And, of course, the divorce so obtained will be given no effect where a bona fide foreign residence or domicile is a prerequisite to its unimpeachability,[70] unless the doctrine of estoppel will prevent both parties from questioning its extra-territorial validity.[71] But here we run into difficulty that innocent third parties, affected by the decree, may still have it declared a nullity, on the theory that the Commonwealth will not recognize a foreign decree which offends its morality or public policy.[72]

Regardless of the many plausible pamphlets of foreign attorneys on the validity of foreign divorces and notwithstanding a number of New York State and other decisions which give some comfort to their arguments, the game of insuring titles on foreign divorces, except in rare instances, does not seem to be worth the premium candle.

The treatment in a limited time of a subject upon which countless decisions have been rendered throughout the country has necessarily left many holidays in my work. Perhaps gazed upon as a whole rather than scrutinized too closely, it may prove constructive. For the general picture which I have tried to paint is of the crying need for a National Divorce Index and Uniformally Adopted Divorce Laws. If this motif is apparent, I need say no more.

[1] Arizona, Arkansas, California, Delaware, District of Columbia, Georgia, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington and Wyoming.

[2] California, Kentucky, Massachusetts, Nevada, Texas.

[3] S. C. Const. Art. 7. Sec. 3.

[4] Louisiana, New York, Pennsylvania, Tennessee and Wisconsin, in addition to some of those in F. N. 1 and 2.

[5] Hecht's Estate, 28 (Pa.) W. N. C. 183.

[6] O'Malley vs. O'Malley, 272, Pa. 528.

[7] Pa. Act May 10, 1927, P. L. 884, Sec. 1.

[8] 19 C. J. 182 and cases cited.

[9] English vs. English, 19 Pa. Super. 586.

[10] Pa. Act of May 2, 1929, P. L. 1237, Sec. 60.

[11] Upperman vs. Upperman, 119 Pa. Super. 341.

[12] Rule 84 Pa. Supreme Court.

[13] Pa. Act May 11, 1937, P. L. 972, Sec. 1.

[14] United States Code Title 28, Sec. 347.

[15] McFadden vs. McFadden, 91 Pa. Super. 301.

[16] Gambe vs. Gambe, 22 (Pa.) C. C. 23.

[17] Kellow vs. Kellow, 1 (Pa.) Leh. V. 202.

[18] Mintz vs. Mintz, 83 Pa. Super. 85.

[19] 6 App. Pr. (N. Y.) 307.

[20] Nagle vs. Nagle, 3 (Pa.) Grant 155. Geis vs. Gallus, 130 Ore. 619.

[21] Field vs. Field, 67 Pa. Super. 335.

[22] Catts vs. Catts, 35 Pa. Super. 293.

[23] Potts vs. Potts, 10 (Pa.) W. N. C. 102.

[24] Baily vs. Baily, 44 Pa. 274; Richardson's Est. 132 Pa. 292.

[25] Fall vs. Eastin, 215 U. S. 1.

[26] Lynde vs. Lynde, 181 U. S. 183.

[27] Driver vs. Driver, 24 (Pa.) Dist. 250 and others.

[28] Haddock vs. Haddock, 201 U. S. 562.

[29] Thompson vs. Thompson, 91 Ala. 591.

[30] Pettis vs. Pettis, 91 Conn. 608.

[31] Hood vs. State, 56 Ind. 263.

[32] Wakefield vs. Ives, 35 Iowa 288.

[33] Ditson vs. Ditson, 4 R. I. 87.

[34] Dil Laros.

[35] Harding vs. Townsend, 280 Mass. 256.

[36] N. J. Comp. St. 1910, P. 2029, 32, 41, 42.

[37] Wisc. Laws 1915. Chap. 86, Sec. 29.

[38] Barney vs. DeKraft, 6 D. C. 361.

[39] Harris vs. Harris, 115 N. C. 587.

[40] Ball vs. Cross, 231 N. Y. 329.

[41] Elder vs. Elder, 62 Pa. 308.

[42] State vs. Duncan, 93 S. E. 294.

[43] Bates vs. Bodie, 245, U. S. 520.

[44] Bullock vs. Bullock, 52 N. J. Eq. 561.

[45] Gould vs. Crow, 57 Mo. 200; Hawkins vs. Ragsdale, 80 Ky. 353.

[46] Smith vs. Smith, 43 LaAnn 1140; Eldred vs. Eldred, 62 Nebr. 613; King vs. Thomas, 95 Tenn. 60; Vernier on Family Laws, 1931. Ch. I.

[47] Ballentine vs. Ballentine, 112 N. J. Eq. 222.

[48] Cases cited in F. N. 46.

[49] Price vs. Price, 156 Pa. 617.

[50] Pa. Act. May 2, 1929, P. L. 1237. Sec. 16.

[51] Hood vs. State, 56, Ind. 263.

[52] Cheeley vs. Clayton, 110 U. S. 701.

[53] Platt's Appeal, 80 Pa. 501.

[54] Thompson vs. Thompson, N. J. Ct. 103 A. 856; Schneider vs. Schneider, N. J. Ct. 142 A. 417.

[55] Auerbach vs. Auerbach, 98 Pa. Super 369 and others.

[56] Price vs. Price, 156 Pa. 617.

[57] Jones vs. Jones, 14 (Pa.) D. & C. 415.

[58] Cheeley vs. Clayton, 110 U. S. 701.

[59] Starr vs. Starr, 78 Pa. Super. 579.

[60] Mintz vs. Mintz, 83 Pa. Super. 85.

[61] Atherton vs. Atherton, 181 U. S. 155; Crossman's Est. (No. 1), 262 Pa. 139.

[62] Com. vs. Parker, 59 Pa. Super. 74.

[63] Bell vs. Bell, 181 U. S. 175.

[64] Radinovitz's Est. 299, Pa. 264; Comm. vs. Schuler, 2 (Pa.) Dist. 552.

[65] A. L. I. Restatement Conflict of Laws, Sec. 110.

[66] Buckley vs. Buckley, 50 Wash. 213.

[67] Pridgen vs. Pridgen, 203 N. C. 533.

[68] Gould vs. Gould, 235 N. Y. 14.

[69] Webber vs. Webber, 238 N. Y. Super. 333.

[70] Andrews vs. Andrews, 186 U. S. 14; Comm. vs. Manzi, 120 Pa. Super. 360.

[71] Richardson's Est., 132 Pa. 292.

[72] Grossman's Est. (No. 1), 263 Pa. 139.

PRESIDENT GILL: Thank you, Mr. Umstead, for that very interesting dissertation upon this subject. I wonder if there is any discussion?

MR. SAUL FROMKES (New York): I wonder whether, in the course of Mr. Umsted's research, he ever came across a case where property or title was insured through a receiver in sequestration proceedings?

MR. RALPH UMSTED: I don't think I ran across such a case but I know there are various decisions that hold that sequestration proceedings are only valid in the state where issued; and I think it runs right into the principle that the title to real estate can only be affected by decrees or orders entered in the state where the real estate is located.

MR. FROMKES: Well, that's true. But I was just curious to learn whether any such title had ever been insured. We were presented with two such cases and we could find nothing on the subject at all and, consequently, refused to handle the application.

PRESIDENT McCUNE GILL: The General Session of the Association will now convene. The next business in order is the report of the Judiciary Committee, and an explanation of its new activity by our good friend, Edward C. Wyckoff, former President of this Association.

Report of Judiciary Committee

EDWARD J. WYCKOFF

Chairman

Insurance Corp., Richmond., Va.,

MR. EDWARD C. WYCKOFF: It is a real pleasure for me to appear once more before the American Title Association and renew old acquaintances, and I want to express my appreciation of the honor done me in appointing me to what has usually turned out to be an honorary committee, rather than an active one. Last year I was appointed chairman of this committee. I con-

sulted with the members of my committee and with others whom I thought might be interested, and I found that the committee, apparently, had no job to do. Everyone had a different idea of what its job was, and I was rather busy at the time, keeping the wolf and the sheriff away from the door and so I didn't do anything. So I was rather surprised when, this year, they asked me to repeat last year's job. I decided I wouldn't repeat it but I was going to do something—I didn't quite know what it was going to be—but I was going to do something and so I asked our President what he thought the job of the Judiciary Committee was and he gave me his suggestion, which I have followed. I think that if a committee with sufficient funds to handle the work is appointed, a very effective instrument for the benefit of our Association members can be had in the gathering together of the current decisions of our states, tabulating them under recognized headings and forwarding those tabulations to our membership.

These are the answers that came in, and I have been asked to digest them and report them to you. I am not going to do that at great length, however. I am going to make believe we are in Congress now and ask leave to present a full report later for the record, so that the results of the Committee's work during the year may be a matter of information to all of you, without my giving it to you here.

Does it pay to be presumpuous? Not always. But this time it did.

Willis A. Estrich, editor in chief of the Lawyers Co-op. Publishing Co., has furnished me with a list of cases dealing with title matters which have been selected as the important cases of the past year.

In the main the cases are confined to the decisions which have been selected for the American Law Reports and the important title cases decided by the United States Supreme Court. There are a few cases dealing with the registration of land titles under the so-called Torrens Law which seemed to be worthy of consideration.

They have grouped these cases under the matter which they affected, or under the character of question which they involved, since they have no general subject in their works entitled, "Land Titles."

I feel that the care they have exercised in selecting cases and classifying same for our use warrants them being given a vote of thanks by this Convention.

Your committee was so slow in thinking of this source of title that it has not had the time to digest the cases, but feel that the headings furnished are concise digest of subject matter of the cases.

Registration of Title to Land

Our friends, the New York Life Insurance Co., in its litigation with Embassy Realty Co., Inc., 200 N. E. 3, had an interesting question before the Land Court of Massachusetts.

They had a mortgage noted on Certificate 23,682. The mortgage covered lot A and the certificate covered additional lots B and C 1.

Subsequent to the mortgage B and C 1 were conveyed and certificate, after further transfer, No. 28,327, was issued to Embassy Realty Co.

In conveying the lot A, equity was subjected to an easement for the fire escape located on lots B and C 1, to which New York Life Insurance Co. never consented. The certificate for lots B and C 1 contained a memorandum that the lots had the benefit of rights, easements and agreements over lot A.

The New York Life Insurance Co. felt that this statement was mislead ng as no notice is given that upon foreclosure of its mortgage the easement to maintain the fire escape will be destroyed.

The suit was brought because the Embassy Realty Co. maintained that the memorandum on the certificate showing the easement was a decision by the Land Court that it had the right against New York Life Insurance Co. to maintain the fire escape.

The result was that the Court held that the grantee of an easement on property previously recorded had constructive notice of the mortgage and title conveyed therein so as not to be a purchaser for value holding certificate of title in good faith, and not entitled to maintain easement against mortgagee, and have this Land Court hold inherent.

For the real purpose of this report however will be fulfilled by stating the Court's conclusion, viz:

"Under the actual terms of the decision the only specific reservations material were try-yards, liberties of try-yards, whaling houses and ways leading to and from their house. An earlier vote, directed against strangers coming on Sandy Neck for purposes of whaling, also shows that it was the whaling industry rather than the fishing industry in general which the proprietor sought to regulate and secure to themselves. The documents, the votes and the actions of the town through 1731 support the finding of the Land Court as to the purpose of the reservation, and this finding does not appear to be clearly wrong. The record considered as a whole, supports the Land Court's finding that the land reserved was not dedicated to public uses because the scheme was essentially local in character."

Easements reserved in strips of land for use in connection with the whale fishing industry was held to have been extinguished by the disappearance of whale fishing industry from vicinity.

Power to amend grantees certificate of title so as to show easement subject to the superior right of mortgagee.

The Supreme Judicial Court of Massachusetts in 1935 dealt with a question arising out of a division of common lands along the shore of Sandwich and Barustable which was some seven miles long. The case arose out of a petition seeking registration of title to a tract of over 700 acres with a frontage of about two miles on Cape Cod Bay. It illustrates the effect upon modern decisions of historic records reaching as far back as 1714, when it was voted that there should be a "skeem for the Division of the Common Land of this Town."

The "skeem" voted was

"That all the Common Land of the Town be layed out in two divitions to wit: The land on this side is one and Sandie Neck is one other division and into such lots as may best accommodate the whole, allowing all suitable and convenient waies in such divitions; & some other spots or small parcels for publique uses; & that there be a comtee chosen to draw some general directions for ye men that shall be chosen to lay out said lots to proseed by against an other meeting."

The facts set out in this case will be interesting to those who enjoy records of how people of bygone generations dealt with the local problem.

Torrens Act, Registration Generally

Another of our old friends, the Chicago Title & Trust Co., in its action against Darley, reported in 1 N. E., 2d 846, has established that the general designation of "all whom it may concern," under the Torrens Act of Illinois, does not embrace a person having or claiming any interest in the land, whose name and address is known, or can be ascertained upon diligent inquiry. What is adverse possession is also a substantial element in this case. The conclusion was:

"The trial court correctly held that complainant's predecessors in title were not properly made parties to the registration suit under the heading, 'all whom it may concern,' and it necessarily follows, . . . the registration was a nullity and to be ignored."

It is to be noted that the suit in this case was not one to set aside a former decree, but a suit by the complainant to establish its own title, and the result is reached by ignoring the former decree to which the complainant and its predecessors in title were not parties.

It was argued that the complainant and its predecessors in title were charged with notice of the land registration proceedings, "but the point is overlooked that that proceeding was notice only to subsequent purchasers, and not to those who were in actual possession at the time of the proceedings.

The Supreme Court, in Newcomb vs. City of Newport Beach, 60 P. (2d) 825, dealt with problems of Navigable Waters, Public Lands, Commerce, Records and Taxation as those problems relate to California.

The Torrens law of California provides that when "land borders on a navigable stream or on an arm of the sea, or if it otherwise appears from the application or the proceedings that the state may have a claim adverse to

that of the applicant, notice shall be given in the same manner to the attorney general."

Harbore was the owner of a fee simple estate subject to registration and he failed to allege in his petition filed in 1923 that the lots were tidelands. The state was not named as a party, nor was notice served on the attorney general. The state did not appear, and the decree made no adjudication with reference to its rights. The Court said:

"Although a Torrens title registration decree is in rem (Section 16), and conclusive against private persons, whether named in the judgment or not, it will not conclude the state or other public agencies or mandatories unless they are brought in by appropriate pleadings and service of process. It has been so held with reference to proceedings to quiet title under the McEnerny Act, where the decree is also in rem."

And in this case we have a demonstration of a decree the true status of which cannot be understood by a simple reading of the decree, but find that knowledge of the law itself is needed to fully interpret the decree.

"Section 34, subd. 2, provides that a certificate of title is subject to

'All land embraced in the description contained in the certificate which has theretofore been legally dedicated or declared by a competent court to be a public highway.'

"It has been held that navigable waters are public highways."

The Court held that the city was not barred from asserting the public easement and its right to make improvements and changes in the administration of this easement without the exercise of eminent domain, by reason of registration of title thereto under the Torrens Title Law.

The city of Newport Beach was named as a party in the registration proceedings as owner of the adjoining land. At that time it had not succeeded to the state's interest in these tidelands, and the decree can not bind it as to its interest acquired subsequent to the decree of registration by grant from the state in 1927.

The purchaser at a tax sale in California, when the land is registered must file a notice within five days with the Registrar and the penalty is rather severe for the act provides that

"Unless such notice is filed as herein provided, the land shall be forever released from the effect of such sale, and no deed shall be issued in pursuance thereof."

The requirements of this section are held to be mandatory.

American First Trust Company Oklahoma

This company furnished me with a memorandum of three cases which came under consideration in this course of business.

The first case presented an excellent example of the need of careful scruting of record facts with the ability to recognize the danger signal when it exists. With rights of partnership, and infant interests of a deceased partner, involved a foreclosure took place and immediately upon completion of title to the mortgagee he conveyed title to one of the surviving partners and the life tenant of the deceased partner. Upon the face of the record, especially with infants rights involved, a collusive sale was indicated which would make the title unmarketable.

Upon investigation resulting in full discovery of facts I can conceive that the situation might well be found not to have been collusive and the title to have in fact been a marketable one, which could have been safely insured if the evidence of the true facts could be with certainty have been preserved for are in case of need, when the infant reached its majority.

The next case submitted dealt with a deed to a person by name followed by the word "trustee" which in no other way indicated a trust. This of course was a flag requiring inquiry as to the terms of the trust and this inquiry resulted in declaring an instrument by the grantee, and five others, of record, which declared that the grantee, held title for himself and five other persons. The facts as given to me show that R acquired a conveyance through deeds of all sin beneficiaries, individually, but in no instance by a deed from the original grantee, "trustee." The original grantee having died, and the statute of Oklahoma having made no provisions for the succession of trustees in such cases, and keeping in mind that in the absence of such statutory provision the death of a sole trustee before the appointment of a successor paires legal title to the heirs of the deceased trustees or in his devisees subject to the trust. The examiner having found that the legal title had never been divested by the heir or deviseer of the deceased trustee, held the title unmarketable and therefore not insurable until the legal appointment of a successor trustee and conveyance by him; or until the title had been quieted by proper decree.

In the common law state in which I am located it would have been my conclusion that all the beneficiaries having conveyed their interest in the property, their spouses joining, with title in a stranger, the only title which could have remained in the original trustee was a rushed legal title, under a passive trust, and therefore a deed, if needed would be presumed. There being no one who could assert the trust the title would have been marketable.

The third case was one where the widow and two minor children acquired title through the intestacy of the father; following which the widow, and guardian of her minor children, became the purchaser at a guardianship sale of the land, and then, upon the basis of a higher valuation procured a loan. Insurance in this instance was refused upon the ground that the record and known facts described a legal parent, which could not be cured until the statutory period within which the minor children on reaching maturity could dispute the title, had expired.

There can be no doubt that the jealous care with which the statutes and the courts guard the rights of infants makes it necessary to give heed to any condition which indicates improper disposition of infant interests.

Commerce Title Guaranty Company Memphis, Tennesee

Responded to your committee request with a case in which the property was owned by a local church and when under organic law of that denomination it is provided that if the church property shall cease to be used for church purposes, title shall pass to the general or parent organization. The query was —assuming that this provision can be considered as being read into the deed, what is its effect as bearing upon the right of the church to execute a valid mortgage?

The right to mortgage was upheld by the opinion of counsel upon the ground that title vested in the local church without reservation of any interest in the grantor and that the conditional limitation fails, for remoteness.

It might be suggested also that until the event happened upon which title would go over to the parent church the local church had full title and thereof as an incident these of the right to mortgage for church purposes and that if subsequently title did pass to the parent church its title would be burdened with the mortgage lien.

Title Guaranty Company of Wisconsin Milwaukee

The contribution by this company was twofold. Homestead Determination in Bankruptcy Cases and Service of Process by publication.

It seems that the case of Roche vs. Du Bois, 271 N. W. 84, 87 has changed the establish practice in Wisconsin. Where formerly the Federal Courts determination of homestead exemption in bankruptcy cases was deemed a sufficient basis for disregarding judgment this Supreme court decision holds that the determination of homestead exemption is a matter solely for the state courts, and that the decision of the bankruptcy court upon the matter is not even admissable in evidence, much less is it controlling.

What unexpected jars the court can give us. Nevertheless we must continue to have the courage of a well considered judgment at the time of insuring if we are to serve the true purpose of title insurance. This is just another answer to that familiar inquiry, "what do you insure against anyway?"

Service by publication—

In this example a divorce in Washington where service was by publication upon the wife in Wisconsin, was, after the death of the husband, declared void, for failure to varify the complaint, which rendered the publication of the summons a nullity. Result—

the wife was entitled to the entire estate.

It has always seemed to me that title which depends upon substituted service upon defendants beyond the jurisdiction of the court can not be too carefully investigated. And of course we must always bear in mind that it is only in proceedings in rem that substituted service can properly be had.

In New Jersey, even if the service and proceedings of a divorce in a foreign state are in every respect regular the divorce can not be recognized, in these instances in which the cause of action arose in New Jersey and residents of that state go into the courts of a sister state for the divorce.

Is it any wonder that a title examiner goes "nutty" if he takes the risks of the business too seriously to heart.

Phoenix Title and Trust Company
Phoenix, Arizona

Mr. Taylor has called my attention to an article appearing in the May 15, 1937 publication of the "Financial Chronicle," page 3371. In an article headed Herkimer, N. Y., it was noted that the right of that town to tax county owned lands situated within its limits had been upheld by the Appellate Division, Fourth Department. He comments that this is a very unusual decision and may depend upon some special provision of N. Y. Law but that it occurs to him that if there is no special provision, such a decision if upheld might have far reaching consequences and that the same would be of sufficient interest to justify the Judiciary Committee to cause an investigation to be made concerning the matter for the benefit of members of the Association.

It is a matter of regret to me that the necessity of keeping the wolf and the sheriff from my door has not afforded me opportunity to check up in this tax situation.

I would suggest, however, that if equal taxation is to be accomplished it would seem to be proper that our tax laws permit exaction of taxes from manufacturer as well as from individuals.

Title Guarantee and Trust Company
Los Angeles, California

This company indicates that a treaty has been arrived at between the title companies in California and the Bar Association as a result of a joint committee comprised of representatives from each association having held numerous conferences.

Some states now have laws defining the practice of law which limits and handicaps the activities of corporations duly authorized by the same state to perform a public service which can only be rendered by skilled lawyers who have suffered as much and whose education has cost them as much mental anguish and hard dollar as the practicing lawyer.

This subject is important to both abstracter and title companies and the appendix of this report should be consulted if you are interested.

The second offering of this company is with respect to the situation resultting from liens intervening between the time a mortgage is signed and the time when payment is made upon the mortgage.

It has always seemed to be a bit unfair for a Life Insurance Company to require recording of a mortgage and the certification of its being a first lien before disbursement of funds. May we express the hope that A. T. A. or other forms of guaranty will not be required to be issued until the funds have been disbursed upon the basis of a continual search made at time of disbursement and show intervening liens. A preliminary certificate that the mortgage is a first lien as to monies actually disbursed, to be followed by a guaranty when funds have been fully advanced without intervening liens would seem to protect a lender without asking the insuring company to assume liability for what might happen. The seriousness of the situation depends upon what the laws of a given state may be.

A third and interesting contribution is the submission of two memorandums reaching opposite conclusions on the problem which arises where the assets of a corporation are in the hands of a trustee appointed pursuant to section 77-B of the bankruptcy act.

Query—Does such trustee have the power to sell, lease and otherwise deal with the real property prior to the time that either an order of liquidation is entered or a plan of reorganization adopted?

This problem of course presents itself to all of us as the law is national in scope and it may be hoped that any doubt on this important question may be eliminated through decisions of the U. S. Supreme Court. All the states should be in accord on this type of title.

Kansas City Title & Trust Company
Kansas City, Mo.

Our old friend "Lien of Federal Judgments." The opinion furnished is one requested upon the point—

"When, if ever, a lien of a Federal Judgment, in favor of the United States, expires."

This is an exceedingly well considered opinion and together with the open forum report of your convention ought to prove of value to those who will avail themselves of the chance to read it.

It brings to mind Charlie White and his extensive memorandum on Federal lien which has found a permanent resting place in my opinion files.

Title Insurance and Guaranty Company
San Francisco, California

From this old A. T. A. standby comes a memorandum on mining law, which strange as it may seem, embraces a subject of law which in some form applies to a large number of our states. There may be some states where it might not be of interest. In his opinion Mr. Rouleau covered nearly all of the ground on mining law and then summarized his conclusions. It is this summary which will be shown in the appendix and I am sure that any one who wishes to read this opinion can get its full text from the California "Golden West Gang" all of whom are always willing to share their good fortune with others of the fraternity.

Stewart Title Guaranty Company
Houston, Texas

W. C. Morris "Active Vice-President-Secretary and Treasurer." Can he beat Maco Stewart for activity? These questions are merely foolish reactions to the letter head.

Bill's contribution to our committee has to do with the Helsus case against H.O.L.C. This case deals with the question whether the act of the officer of a corporation in making the appointment of a trustee was a corporate act being performed by him for the corporation, or a power delegated by him for the corporation. And the conclusion reached so far as Texas law is concerned, is that if the power to appoint be vested in the corporation, and the act of appointment, by whomsoever made, the act of the corporation, then it was immaterial whether the Board passed any resolution giving him such authority or not, because under the well established doctrine in Texas, where an officer purports to act for the corporation, his authority to do so act is presumed and his authority goes with a repetition of similar acts.

This Supreme Court of Texas case is a very important one affecting authority of General Manager of Corporation in absence of any resolution of the Board of Directors, to mature indebtedness evidenced by notes and to appoint substitute trustee under deed of trust to foreclose lien under powers contained therein.

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

Opinions submitted by our President have to do with Validity of Special Terms of Probate Court, Lien of fees in foreclosure suit and Foreign Corporations doing business.

The case of Carter vs. Carter is discussed and the opinion of counsel was that the only effect of that case upon the question is to deny the Probate Judge acting by an order entered in vacation the power to convene and hold a special term by the Probate Court for any other purpose than the two purposes provided for in the Statute.

It was opinion of counsel that a foreign corporation should be held to be doing business in the State of Missouri by reason of the fact that it has owned and held title to ten or fifteen pieces of vacant real estate in St. Louis, and that therefore a deed purporting to convey title should not be relied on until and unless said company has pro-

cured a license to do business in Missouri.

Lawyers Title Insurance Corporation Richmond, Virginia

Mr. Weaver of this company has referred to the case of Sullivan vs. Stout, found in the New Jersey Law Journal issue of December 17, 1936.

The first court in this case alleged that the attorney at law employed to examine and certify the title did so negligently in that he certified that plaintiff predecessor in title had a fee simple estate where as the estate was merely one for life. It was held this court was barred by the statute of limitation since the cause of action begins to run from the time of the breach of duty and not from the time of the discovery of actual damage as result of such breach (91-NH 266).

The second court was that the defendant certified and warranted the title to be a fee simple. Same result.

MEMORANDUM OF CASES FURNISHED BY LAWYERS CO-OPERATIVE PUBLISHING COMPANY of Rochester, N. Y., June 16, 1937.

Adverse Possession

Thomas Deregibus v. Silberman Furniture Co. 121 Conn. 633, 186 A. 553, 105 A. L. R. 1183;

Annotation: 105 A. L. R. 1187.

Assignments, Oil Rights, Effect

Callahan v. Martin, 3 Cal. (2d) 110, 43 P. (2d) 788, 101 A. L. R. 871;

Annotation: 101 A. L. R. 884.

Community Property

Bergman v. State—Wash.—60 P. (2d) 699, 106 A. L. R. 1007;

Annotation: 106 A. L. R. 1011.

Deeds, Effect of Habendum Clause, for State Courts

Noble v. Oklahoma City, 297 U. S. 481, 56 S. Ct. 562, 80 L. ed. 816.

Deeds, Covenants Running with the Land

Epling v. Lexington, etc., Co. 177 S. C. 308, 181 S. E. 66, 102 A. L. R. 773;

Annotation: 102 A. L. R. 773.

Deeds, Reformation, Rights of Intervening Third Parties

Federal Land Bank of Berkeley v. Pace (Utah) 48 P. (2d) 480, 102 A. L. R. 819;

Annotation: 102 A. L. R. 826.

Descent and Distribution

Ostrander v. Preece, 129 O. S. 625, 196 N. E. 670, 103 A. L. R. 219.

Annotation: 103 A. L. R. 223.

Dower

Re Estate of Wilson (Mont.) 56 P. (2d) 733, 105 A. L. R. 367.

Annotation: 105 A. L. R. 380.

Dower, Eminent Domain

Re Cropsey Ave. 238 N. Y. 183, 197 N. E. 189, 101 A. L. R. 694.

Annotation: 101 A. L. R. 697.

Easements

Wauburn Beach Asso. v. Wilson (Mich.) 265 N. W. 474, 103 A. L. R. 993.

Annotation: 103 A. L. R. 993.

Easements by Necessity

Beckley Nat. Exch. Bank v. Lilly (W. Va.) 182 S. E. 767, 102 A. L. R. 472.

Annotation: 102 A. L. R. 472.

Ejectment

Shapleigh v. Mier (U. S.) 81 L. ed. 237 (Adv.)—S. Ct.

Estoppel of Married Woman to Assert Title in Herself by Joining in Mortgage Given by Husband

Stearns v. Thompson (Me.) 186 A. 800, 107 A. L. R. 305.

Annotation: 107 A. L. R. 309.

Homesteader's Rights

Bordieu v. Pacific Western Oil Co. —U. S.—81 L. ed. (adv.) 3—S. Ct.

Insurance of Titles

M. R .M. Realty Co. v. Title Guarantee & T. Co. 270 N. Y. 120, 200 N. E. 666.

Judicial Sales, Limitations

Wooton v. Pollock—N. J.—181 A. 172, 101 A. L. R. 1345.

Annotation: 101 A. L. R. 1348.

Levy and Execution, Homestead

Holterman v. Poynter, 361 Ill. 617, 198 N. E. 723, 101 A. L. R. 842.

Annotation: 101 A. L. R. 851.

Liens, Priority of Judgments

Milwaukee County v. White Co. 296 U. S. 268, 80 L. ed. 220, 56 S. Ct. 229.

Liens, Encumbrances, Limitations

Krebs v. Bezler—Mo.—89 S. W. (2d) 935, 103 A. L. R. 1177.

Annotation: 103 A. L. R. 1182.

Mechanics' Liens, Waiver

Baker Sand & Gravel Co. v. Rogers Plumbing, etc., Co. 228 Ala. 612, 154 So. 591, 102 A. L. R. 346.

Annotation: 102 A. L. R. 356.

Mortgages, Exercise of Power of Sale During Pendency of Foreclosure Suit

Commercial Centre Realty Co. v. Superior Court—Cal. (2nd)—, 59 Pac. (2d) 978, 107 A.L.R. 714.

Annotation: 107 A.L.R. 721.

Mortgages, Right of Redemption

First Trust Joint Stock Land Bank of Chicago v. Armstrong—Iowa—269 N. W. 502, 107 A. L. R. 873.

Annotation: 107 A. L. R. 879.

Mortgages, Foreclosures

Bovay v. Townsend (C. C. A. 8th) 78 F. (2d) 343, 105 A. L. R. 360.

Mortgages

Scott v. Hewett—Tex.—90 S. W. (2d) 816, 103 A. L. R. 977.

Annotation: 103 A. L. R. 981.

Foreclosure—Moratorium

Kansas City L. Ins. Co. v. Anthony, 142 Kan. 670, 52 P. (2d) 1208, 104 A. L. R. 364.

Annotation: 104 A. L. R. 375.

Mortgages, Assumption Thereof

Perkins v. Brown, 179 Wash. 597, 38 P. (2d) 253, 101 A. L. R. 275.

Annotation: 101 A. L. R. 281.

Mortgages

Seale v. Berryman—Ariz.—49 P. (2d) 997, 101 A. L. R. 618.

Annotation: 101 A. L. R. 618.

Richmond Mtg. & L. Co. v. Wachovic Bank Co.—U. S.—S. Ct.—81 L. ed. 361 (Adv.).

Mortgages, Usury as Affecting Validity of Voluntary Conveyance

Palmetto Lumber Co. v. Gibbs, 124 Tex. 615, 80 S. W. (2d) 742, 102 A. L. R. 474.

Annotation: 102 A. L. R. 483.

Mortgages, Moratorium under Frazier-Lemke Bill

Wright v. Vinton Branch of Mountin Trust Bank—U. S.—S. Ct.—81 L. ed. 487 (Adv.).

Mortgages, State Income Tax on Mortgages on Lands in Other State, Conflicts

People ex rel. Cohn v. Graves—U. S.—S. Ct.—81 L. ed. 409 (Adv.).

Notice by Possession of Prior Grantor

Chandler v. Georgia Chemical Work—Ga.—185, S. E. 787, 105 A. L. R. 837.

Annotation: 105 A. L. R. 845.

Constructive Notice from Possession

Mishawake-St. Joseph L. & T. Co. v. New—Ind.—196 N. E. 85, 105 A. L. R. 892.

Recording of Assignment of Mortgages

Dyer v. Prudential Ins. Co. 121 Conn. 263, 184 A. 386, 104 A. L. R. 1295.

Annotation: 104 A. L. R. 1301.

Registration of Title to Land

N. Y. Life Ins. Co. v. Embassy Realty Co.—Mass.—200 N. E. 3.

Makepeace Bros. v. Town of Barnstable—Mass,—198 N. E. 922.

Torrens Act, Requisites Generally

Newcomb v. Newport Beach—Cal. —60 P. (2d) 825.

Chicago Title & Trust Co. v. Dorley, 363 Ill. 197, 1 N. E. (2d) 846.

Remainders as Vested or Contingent

Grace v. Continental Trust Co.—Md.—182 A. 573, 103 A. L. R. 589.

Annotation: 103 A. L. R. 598.

Taxation, Liability of Realty to Payment of Federal Succession Taxes

Hepburn v. Winthrop, 65 App. D. C. 309, 83 F. (2d) 566, 105 A. L. R. 310.

Taxation, Redemption of Lands Where Sold under Tax Sale

Violet Trapping Co. v. Grace—U. S.—S. Ct.—80 L. ed. 518.

Tax Sales

Taylor v. Chase, 275 Mich. 53, 265 N. W. 763, 104 A. L. R. 813.

Annotation: 104 A. L. R. 823.

Glymph v. Smith, 180 S. C. 382, 185 S. E. 911, 105 A. L. R. 631.

Annotation: 105 A. L. R. 635.

Hadlock v. Benjamin Drainage Dist.—Utah—53 P. (2d) 1156, 106 A. L. R. 876.

Annotation: 106 A. L. R. 887.

Taxes; Land Sales for Delinquent Taxes

Ingraham v. Hanson, 297 U. S. 378, 80 L. ed. 728, 56 S. Ct. 511.

Federal Tax Liens

Re Rosenberg, 269 N. Y. 247, 199 N. E. 206, 105 A. L. R. 1238.

Annotation: 105 A. L. R. 1250.

Tax Lien, Subrogation Thereto

Central Wisconsin Trust Co. v. Swenson—Wis.—267 N. W. 307, 106 A. L. R. 1207.

Annotation: 106 A. L. R. 1212.

Publication Necessary in Foreclosure of Tax Lien

Re Petition of Auditor General, 275 Mich. 462, 266 N. W. 464, 107 A. L. R. 279.

Annotation: 107 A. L. R. 285.

Title to Real Property not Concluded on Persons not Parties to Suit
Washington v. Oregon, 297 U. S. 517, 80 L. ed. 837, 56 S. Ct. 540.

Vendor and Purchaser, Oral Land Contract, Past Performance
Walter v. Hoffman, 267 N. Y. 365, 196 N. E. 291, 101 A. L. R. 919.
Annotation: 101 A. L. R. 923.

Priority of Liens Between Vendor and Mechanics' Liens for Labor Furnished Purchaser
Braden Co. v. Lancaster Lumber Co. 170 Okla. 30, 38 P. (2d) 575. 102 A. L. R. 230.
Annotation: 102 A. L. R. 233.

Options, Vendor and Purchaser
Northern Illinois Coal Corp. v. Cryder, 361 Ill. 274, 197 N. E. 750, 101 A. L. R. 1420.
Annotation: 101 A. L. R. 1432.

Waters, Title to Lands, High and Low Water Marks
Borax Consolidated v. Los Angeles, 296 296 U. S. 10, 80 L. ed. 9, 56 S. Ct. 25.

Waters, Title to Water, Reclamation Project
Ickes v. Fox—U. S.—S. Ct.—81 L. ed. 284 (Adv.).

Wills, Contract to Will Real Property, Effect of
Holsz v. Stephen, 362 Ill. 527, 200 N. E. 601, 106 A. L. R. 737.
Annotation: 106 A. L. R. 746.

Wills
Morton v. Flanagan, 143 Kan. 413, 55 P. (2d) 373, 104 A. L. R. 111.
Annotation: 104 A. L. R. 114.

Wills, Reacquisition of Property as Passing Thereunder
Strong v. Day, 362 Ill. 110, 199 N. E. 263, 103 A. L. R. 1217.
Annotation: 103 A. L. R. 1217.

Wills, Liability of Purchaser from Devisee for Debts of Testator
Baker v. Baker—Iowa—264 N. W. 116, 103 A. L. R. 1004.
Annotation: 103 A. L. R. 1004.

Open Forum

PRESIDENT GILL: Now we come to the point on the program where an hour has been set aside to fill a very definite need. This need is expressed by members frequently after a convention is over when they say that they had something to discuss but didn't have opportunity to discuss it; they feel that some period should be allotted for a full and free and frank discussion of whatever they might have in mind. We are to have an open forum on general questions today, and another one tomorrow on particularly legal subjects, conducted by Mr. Allin. Today there are numerous subjects which you can refer to; you might talk about the attitute of the Bar Association, or you might talk about commissions, competition, charges, costs, you might talk about rate of dividends that should be realized on a certain plant valuation, how the plant should be valued; you might talk about our old friend Mr. Torrens and how to get around him. In order than spontaneity may be the keynote of this meeting, the Chairman will not call on anybody, nor suggest any topic; this is going to be a free will offering, or none at all, so that none of you may ever say that at this convention you didn't have a chance to talk on any subject that is near to your heart.

Plant Valuation

MR. FRANK KENNEDY (Detroit): Mr. Chairman, I would like to get some information; I would like to know how some of the title companies arrive at a plant valuation and how do they carry that on from year to year? Do they depreciate their plant value, and if so on what basis?

CHAIRMAN GILL: Does anyone want to volunteer information as to how your plant is valued? I believe in the book which we recently received three possible plans are set forth: one, an assumed valuation due to merger, which might be inflated in some way, another is actual cost, which is usually very large with reference to earning power, and a third is as to the valuation based upon earning power which of course will fluctuate in accordance with your zeal in attaining economy in operation. Does anyone want to tell us how their plant is valued? Let us ask this, then: how many of you depreciate the value of your plant, either for taxation purposes or for purposes of your own statement? Does anybody depreciate the value of his plant? (Four) And do you get that depreciation from your tax returns or not? . . . Mr. Southwick, of Cincinnati, indicates that he does . . . Mr. Kirkpatrick of Tulsa also says he does . . . There are two gentlemen who are successful in doing the supposedly impossible, that is, to get taxation authorities to agree that plants do depreciate; most of them insist that plants appreciate or at least take the same figure.

MR. H. LAURIE SMITH (Richmond): I think there are a number of men here, Mr. Chairman, who have some information that would be of great interest to all of us, but for some reason they are a little bit shy about getting up. I for one am very much interested because of the attitude evidenced by certain Insurance Commissioners that, sooner or later, title companies in some states are going to be met with compulsory writing down of the plant. In other words, they will no longer be permitted to continue to carry plants at valuations at which they were carried. Now that ties in with the rulings of the Internal Revenue Department, on the right to treat as an expense such depreciation. At this time I would ask the Chair to call upon Mr. McKillop, who has had an actual case of that sort, and I believe Mr. McKillop's discussion here of his problem will lead other members of the Association to speak up, so that we may get the information for which we all come to Philadelphia.

Depreciation and Income Tax

MR. HART McKILLOP (Winter Haven, Fla.): Well, Mr. Chairman, anything that I may say about this subject will be entirely impromptu because I didn't come here prepared to give a discourse on this subject.

However, in the last few weeks we have had two hearings in Florida, before the board created there by the Department of Internal Revenue, to hear and determine questions of depreciation. We have a title plant down there that has an initial capitalized investment, in initial records, at roughly $100,000. That plant started operations in 1925. Since 1925 and under rulings of the Internal Revenue Department we have been permitted to charge our daily take-off—perhaps some of you call it by a different name but you know what I mean—we have been permitted to charge our daily take-off to operating expense; but we have not been permitted to depreciate the records which composed our original plant in which, in this instance, there is roughly $100,000 invested, set up on our books for the last ten or twelve years and carried in that amount.

Most of the boys down there in Florida who have wanted to do this have, in their income tax returns, requested depreciation in some years past on their capitalized records, and such depreciation has been declined by the Government, and nothing further has been done about it. Three years ago I protested the refusal of the Government to permit depreciation on the records of this particular plant, and went to the mat with them. The sum and substance of our hearing was that the Internal Revenue agents in charge and conducting this hearing admitted that depreciation was evident; we submitted to them our actual files and records, showing them that those records were wearing out, year by year, and unless we were allowed depreciation we had no way in which we could replace them. Now we can't go in those original capitalized records, if the Government catches us doing it, and repair them and charge that to operating expense; the only operating expense which we are entitled to charge is against the daily take-off end of our records, which started at the time we opened our doors for business. Now the Internal Revenue agents in charge down there frankly admitted to us that we had the best end of the argument and they went this far; they said that "down there in Florida we can do nothing except follow the original regulations and rulings put out by the Department, and we admit that the rulings are not comprehensive, we admit that they do not cover such a case as you submit to us and that those rulings have originated from cases involving a special set of facts. Yet they are all that we have to be governed by, and they all lead to the conclusion that an abstract plant or a title plant is something that appre-

ciates in value, rather than depreciates in value and, therefore, we are bound by the prior rulings and can do nothing."

The agent down there suggested to me that they hold this file in Jacksonville until some effort could be made, "organized effort" is the way he put it, could be made by the title industry in having the Commissioner of Internal Revenue issue some new bulletin or new ruling that would take care of the particular situation that our case involves. I wrote to Mr. Smith about the matter at the time, telling him that if there were other members of the American Title Association who were similarly affected, that I would be very happy if some action could be taken at this convention, in an organized form, so that we might go to Washington and present our case to the Commissioner of Internal Revenue and ascertain whether or not we might get a ruling that is comprehensive on the subject.

Frankly, I do feel that we have a very good chance of getting a favorable ruling if the case is properly presented up there and we all get behind the matter.

Percentage Allowed

MR. S. A. MAYO (La.): May I ask the gentleman a question: what percentage of depreciation did you ask for, and when did you start?

MR. McKILLOP: We asked for three per cent, which would run us over a period of approximately thirty years; an annual 3 per cent.

MR. MAYO: Well, I have been charging off 3 per cent for ten years or more on our Internal Revenue report, and nobody ever raised a question yet.

MR. McKILLOP: Well, your agent in charge just hasn't caught you yet. Do you charge your take off to current expense, or do you capitalize that?

MR. MAYO: No, sir, we charge it off in current expense.

CHAIRMAN GILL: Mr. McKillop, with reference to your suggestion, I think the proper procedure would be for the President to appoint a committee to look into this matter and perhaps make a trip to Washington, where all your interests, I am sure, will be taken care of properly, along with the trip of the Executive Secretary, so that that will answer your suggestion in that matter.

MR. McKILLOP: Well, that will be fine, Mr. President, on that, because it is a matter of considerable importance to a lot of the title companies; I know it is to the company that I am interested in. We have gone along for the past ten years with a new set of records and those records, during this ten year period have not required any material repairs—I am speaking of the capitalized records, the records we had when we began business—but today those records are beginning to show signs of wear and tear. And there is no argument against the fact that there is actual depreciation there; it is not a matter of theory at all, it is a matter of fact and the records themselves are the best evidence of that.

SECRETARY SHERIDAN: May I ask what, in your judgment, will be the probable effect on the point of fact that virtually every one of the companies charge take-off to current expense; if we depreciate, can we blow hot and cold on that?

MR. McKILLOP: Well, if I understand your question—

MR. SHERIDAN: Well, I asked that because I discussed this question this morning with some people who are not in the room and I know that is one of the things that is bothering them: will we, to put it as one man said this morning, stir up a hornets' nest by getting a depreciation allowance from the Revenue Department and lose out in setting off our take-off to current expense?

MR. McKILLOP: I argued that question before the Board on this basis, that the taking off of the current records did not materially increase the value of our title plant. To the lay man, yes; to the title man and the Government, no. The only purpose of making that daily take-off is to maintain the value of your original capitalized investment and for no other purpose! I can show you hundreds of plants in the United States today that you can buy for the same money today that you could ten years ago; the fact that you have added ten years' more records to them appreciates their value little or none.

I was very much interested in the discussion a few moments ago regarding plant values. I think there are two ways, if I may just touch upon that subject, that you might value a plant: one, according to your books and one according to its actual value. Quite naturally, your book value must show your capitalized investment, but a title plant is worth only what it produces; I don't care whether it is printed on sheets of gold or on the cheapest paper, I don't care what form its setup, you may have the most complete set of records in the world or you may have the scantiest set of records in the world, it is worth exactly what it produces and earns by way of dollars and cents.

MR. JOHN HENRY SMITH (Mo.): What is the difference between charging the expenses to operation or whether you get depreciation? We are constantly having a man, on salary, just making over our pages where they have been scuffed up or worn out. Now, we charge his salary to operation. Is that what you are talking about. That's what we are doing all the time, so we have no depreciation.

Repair of Plants

MR. McKILLOP: Well, Mr. Smith, if I get the theory of the Government correctly, you would be entitled to charge the repair of your capitalized records to operating expenses.

MR. JOHN HENRY SMITH: We don't say anything about it; we simply charge the salary to operation on our salary list every month. We pay this man a salary all the time just to keep going over these pages, making new pages, very carefully compared, and inserted in the record. Now, there has been nothing said about it but it is charged to operation. And I think that is the solution of your problem; I think if you do that you will never have a word from the Government, about anything. We have done that for years.

MR. McKILLOP: Well, no, it isn't the solution to the problem in a great many plants because it would be a very uneconomical thing in many plants to attempt to repair your records by a one- or two-man crew. We have given consideration to that, too, and we have determined when the time comes for us to work those records over, that we can do it for almost a third less money by turning a crew in there and blowing that money all at one time and getting the job over with, than it would cost to have some one or two employees peddling through those records over a period of one or two years.

MR. JOHN HENRY SMITH: Well, I don't see any difference whether you spend your money all at once or over a period of years. We spend our money every month and we don't have a bit of trouble with the Government in that regard.

MR. McKILLOP: Well, if I get the correct interpretation of the Government on such matters, they will not permit you, if they catch you, charging expense of the repair of capitalized records as an overhead item.

MR. JOHN HENRY SMITH: We don't feel that we are beating the Government out of a nickel.

MR. S. O. RHEA (Seattle): I would like to ask what you would do if you rebuilt a section of your plant? For instance, you had built this original plant to cover one section. That section builds up, we'll say, and there are a lot of transfers in there and you need to cut that down or break it down into different sections; your old part is rebuilt and replaced by a new one. Where would you charge the cost of rebuilding or replacing that, what we call a segregation?

MR. McKILLOP: Well, if I were doing it, I think it would be capitalized.

MR. RHEA: Well, you said many times they considered a plant worth no more today than ten years ago; but you have changed, in this one particular section where you had all this activity, you had perhaps ten times as much in the way of records; to make it workable, then, you divide it up into ten sections or subdivisions and when you replace that would you capitalize that, would you add to the capital investment in your plant?

MR. McKILLOP: I think if that added to your original investment of the general layout of your plant and

made a more usable plant out of it I would capitalize that, yes.

MR. RHEA: Well, instead of carrying your plant at $100,000 you've got to carry it at $120,000 and it costs you an additional thousand to do that job.

MR. McKILLOP: Well, wouldn't that be the same thing? You could have stopped short of your expenditure of $100,000 when you built your original plant or you could have gone on and broken those records down at that time and made a more elaborate layout at that time. And wouldn't that be a capitalized expense.

MR. RHEA: Well, if you are going to change the capital investment, why, O. K.; but if you consider that your plant is worth just as much later on as when you started it—

MR. McKILLOP: Well, I made that statement by trying to make myself clear that there were two ways of figuring the value of your plant, one on the books and the other, to determine its actual value.

Valuation in New York

MR. SAUL FROMKES (N. Y.): Well, I can tell you how they handle the valuation of a plant by the Insurance Department of our State. And before I can discuss that I would say that we must classify plants in two groups. One is an accumulation of abstracts, which we do not call a plant, and the other is a plant which is taken in at the time of a formation of a title company. The Insurance Department permits you to invest up to one-third of your capital in plant. Generally, the attorney, or the group forming this company, will buy 20, 40 or 60 thousand abstracts and call that their plant and practically charge $50,000 or $100,000 or $150,000. That, in actuality, is the cost of incorporating the company. The Insurance Department permits you to carry that money on your initial statement. Each year they demand that you deduct 10 per cent of that initial cost. In other words, if they were to invest $100,000 in the plant on their initial statement, they would carry it at $90,000 the following year, and deduct $10,000 each year so that at the end of ten years you have no plant value whatsoever.

Now, getting back to the daily take-off, the Insurance Department does not permit you to capitalize your daily take-off. So much for that. An accumulation of abstracts is not permitted to be capitalized so that at the end of ten years you carry no capital plant at all.

Now let us take the problem where a company will purchase another company's plant during its course of operation. They will do the same thing. If you buy it for $20,000 and it is a bona fide purchase, they will permit you to carry that for the full value the first year and deduct 10 per cent each year. And so far as determining the cost of plant, they have had the matter in our state where the Aetna Life Insurance Company tried to take over two other title companies and the presidents and officers of those companies tried to testify as to how they arrived at the value of these plants and, needless to say, their testimony consisted merely of shaking their heads; there was no way to determine exactly how the plant was valued.

Special Hazard Policies

CHAIRMAN GILL: I remember that at the Chicago Mid-winter meeting we started, but did not have time to finish, a very interesting subject and that was to what extent title insurance companies could go in the issuance of special hazard policies, including such matters as debts of decedents during administration, the existence of encroachments, improvements, easements and the whole great subject of Mechanics Liens under the various laws of the states, and how safe it was, particularly in the more dangerous states. The meeting is again open for volunteer questions or remarks on those subjects mentioned or any other topic.

MR. ALBERT SMITH (Fla.): The trouble we have on title insurance is the fact that we say to the customer: "We are not gambling with our money and we are not gambling with your title. When we tell you that your title is good, it is good." And that is all done on a uniform basis and at an additional premium. We are making the best examination we can, standing on it and backing it up.

CHAIRMAN GILL: What about the special hazards that these large lenders are always importuning us to assume?

MR. ALBERT SMITH: Well, all right, if you want to go on into the indemnity business you can go into it, but our slogan is that we have the best title security because we have the best facilities for making these investigations. Now, if you want to go out and get a bonding company, or somebody that wants to do a little gambling that's all right; but just keep the title insurance business on a sound basis, keep gambling out of it; do the best investigation you can make and try to keep your clients' interests safe.

MR. EDW. J. EISENMAN (Kansas City): I think that Mr. Smith's argument may be answered very easily by adopting the practice that our company has adopted. As you put it, Mr. Chairman, we are always being importuned by someone to guarantee a title that might be in some respects an extra hazard. Take the matter of an unadministered estate. Missouri has a statute of ten years' limitation. Now, it's too long; everybody agrees to that. We have an average, I guess, of four or five jobs a month where there is an unadministered estate involved. If we insure such a title we say to the person to whom the policy is issued, we make sure that he knows that that feature is present there, that we are insuring him against it, that it will become good by limitation within a certain length of time and that he is wholly safe in the meantime. We charge an extra premium, all of which goes into our reserve fund to pay the loss that some day we will take on those things. Right now we are doing business in St. Louis for the reason that Mr. McCune Gill's and Mr. Jim Rohan's company did not want to take on an extra hazardous risk. We are properly protected on it; right in the policy goes the recital that we are insuring against those risks. And the purchaser who gets that policy cannot transfer it without giving to his assignee knowledge of the fact that his policy insures against that risk.

We will not insure against a hidden risk; but it has developed into a very good business, and we have done some very nice business down in your town, Mr. Gill, since you and Jim turned that business down. But we are properly protected; those titles are going to be good in a few years, as soon as those appeals are disposed of.

MR. CHARLTON HALL (Seattle): Well, Mr. Chairman, I think that people insure title if they can be protected so that the title may be transferred. For instance, if an estate is being administered and the amount of the inheritance tax has not yet been determined—and even if the amount can be determined—you are not sure of everything until after six months, in our state, as I recall it. In any event, if there is an inheritance tax and the estate wants to sell the property, if they will deposit with us the amount of the inheritance tax we will cover that title on that sale and then when the actual amount of the inheritance tax is learned, we will pay it on behalf of the estate.

Recital of Special Hazard

CHAIRMAN GILL: Are you in favor, in the special hazard policies, of describing the special hazard and then specifically assuming it?

MR. HALL: No, sir, our policy says nothing about it; but we have the money to pay for it. We know what we are assuming. It is the seller's money that we take. It is our duty, as I see it, to facilitate the transfer of real estate.

CHAIRMAN GILL: So that you are in favor of making the policy look like a title without any encumbrances on it, because of the fact that you are indemnified against loss. And Mr. Eisenman is in favor of setting out the hazard and then specifically insuring against it; and Mr. Smith is not in favor of either one of those ideas.

MR. SMITH: Mr. Hall, do you make an extra charge on those?

MR. HALL: No, sir.

MR. RHEA (Seattle): One more question on the remarks by the man who insures in St. Louis who mentioned showing in that policy what the risk was that was insured against in that title and that he can inform his subsequent purchaser of that defect. Does that mean that that subsequent purchaser has any rights under the policy issued to the first purchaser?

CHAIRMAN GILL: Does your policy, Mr. Eisenman, run automatically to assignees of the assured, or will you recognize an assignment without charge?

MR. EISENMAN: Yes, these policies that are written on St. Louis business are written to John Doe, his heirs, or any person to whom the policy may be transferred. The consent of the company is not required, but over in the policy itself the fact of these objections is stated, that we expressly insure against them, and that no transfer of the policy is good until we are furnished with evidence of the assignment and of the fact that the purchaser was made acquainted with those provisions in the policy. That is stated right in the policy, and the purchaser or the assignee of that policy, who buys the property, becomes the insured by virtue of the assignment and can come right back to our company under that policy, without going through his grantor.

MR. RHEA: Well, do you charge anything for that assignment to the subsequent purchaser?

MR. EISENMAN: On those policies? No. Our deal on that was that the policy should be written in the first instance so that they would insure by assignment under those conditions to the benefit of any assignee, without extra charge. Now that is not true of our ordinary owners' policies. No assignments there are permitted; they are written so that if the insured is a corporation, its successors, and if an individual, his heirs, and no assignments of owners' policies are permitted any more but reissues only.

CHAIRMAN GILL: I might add, as a matter of interest, or footnote to the gentleman's statement that because of the fact that he refers to the hazard, although he insures against it, and because of the fact that he will not raise his insurance to an amount to cover properties or buildings or repairs in amount greater than the original sale price of the property, his titles are just about as unmerchantable among the people of St. Louis as they were before he insured them. I am glad he got the fee, but it isn't doing the title much good.

MR. EISENMAN: But every policy holder has been made definitely acquainted with that situation before he took it.

CHAIRMAN GILL: You may be entirely correct in that but I am just stating, within my own personal knowledge, the effect of that situation on merchantability.

Rate for Special Hazard

MR. P. R. ROBIN (Tampa): I would like to ask Mr. Eisenman, if he doesn't mind telling us, what is the proportion of your extra hazard premiums in cases of that kind compared to your regular rate cases.

MR. EISENMAN: We have a few instances where we have established a definite rate. One of them is the matter of an unadministered estate. If we are able to satisfy ourselves by investigation that the possibility of existing debts is practically nil, that the estate is not subject to state inheritance tax or not large enough to be subject to Federal estate tax, for that service and under those conditions we would charge a flat fee, regardless of size, of $50.00 and it all goes in the reserve and we get it.

MR. SMITH (Fla.): On an unadministered estate, where the time has not yet run in which debts against the estate will be barred by limitation, without requiring them to administer the estate, if we can satisfy ourselves that the risk is small or practically nothing, we will insure that title for a flat fee of $50.00 on top of the regular premium. Now, the only thing we have ever run into on unadministered estates has been the claim of creditors and the dangers of inheritance tax. Now, if you determine there is no inheritance tax there, and the period in which creditors can file claims against the estate has run, we have only lost one policy by reason of an unadministered estate. Now, if you go down to Maryland Casualty Company here, or a flock of others, they can furnish you, and will furnish you with a bond, for a whole lot less than fifty dollars.

MR. EISENMAN: Well, our theory, Mr. Smith, is that title insurance of that kind is the business of a title company. In 99 per cent of the cases where estates are unadministered, the situation is this, and you will see that it is very easy to satisfy yourself. The deceased left probably this one piece of property, valued at $2500, or $3,000 or $3,500, and he left a son and a wife, or a wife and two or three children. It is easy to determine that that estate is not subject to a Missouri inheritance tax under those circumstances for the reason that each child has a five thousand dollar exemption and the widow fifteen. If a man died and left two or three children and a piece of property worth $3,000, there can't possibly be any Missouri inheritance tax; the estate is not large enough to be subject to Federal estate taxes so it leaves you with the matter of satisfying yourself of the fact that the debts of the deceased have been paid—funeral expenses and so on. Now, where we can satisfy ourselves in that respect, we take that job on and the fee is fifty dollars.

MR. SMITH: And what do you base that fee of $50.00 on? There's the whole point?

MR. EISENMAN: That's an arbitrarily set price which we have made for handling that sort of situation.

MR. SMITH: And that's one of the things we get kicked in the face with every time; they think we are making an arbitrary charge. Now we avoid that by having a premium.

MR. EISENMAN: Well, the cost of administering an estate in Missouri, where there is just one piece of property, where an administrator is appointed and the notice is published and inventory filed and, later on, the notice of final settlement at the end of the year published, and the court costs paid and an attorney's fees paid, costs in excess of $50.00 and they are glad to pay the $50 fee because after ten years, if a man left no will, the reason for administering an estate in Missouri is wholly gone. Now we have a much simpler proposition in Kansas, where one year and fifty days bars the creditors and no administration is necessary.

MR. S. O. RHEA (Seattle): Since we have this unadministered estate proposition up, I would like to tell a little about how we handle it in Washington. We will insure against an unadministered estate on certain conditions, those conditions being satisfactory to us; we inquire into the conditions of the deceased, whether it is intestate or testate. Of course we only take the intestate estate, with proper conveyances from all the heirs, etc. Now we make an extra charge for that, but it is figured on an insurance proposition: we charge a prorated charge. If the decedent died within three years, or if we issued the policy within three years of his death, we charge an extra premium of 150 per cent of the original premium rate. In other words, a $5,000 policy rate would be $40.00, so we charge an additional premium in such a case of $60.00. If the title is issued and insured between three and six years of the decedent's death, we charge 100 per cent additional, and if from six to ten years, an additional premium of only 50 per cent. Now this policy is not assignable to a subsequent purchaser. The only way the subsequent purchaser could reach us on that policy would be to recover under the covenants supporting the deed that he might take from the insured, and then let the insured recover against us. In other words, the policy does not run directly in favor of the subsequent purchaser, he must get a new policy, and for that policy we charge our regular or re-issue rates and do not impose an extra hazard rate.

MR. E. M. WEAVER: I would like to ask Mr. Eisenman this question: in making the exception in your policy as to the unadministered estate and guaranteeing against loss by reason of it, do you except as to marketability?

MR. EISENMAN: Well, we don't insure as to marketability of title in our ordinary form of owners' policy. Marketability of title insurance in owners' policies is not required in our locality one time in a dozen.

MR. WEAVER: How about a mortgage policy?

MR. EISENMAN: In mortgage policies we insure marketability of title there because we figure if we have to take the mortgage over, the title will become good in ten years, and we will pay it off in ten years.

Reversionary Clauses

MR. R. C. BECKER (St. Louis): I don't know whether this particular

thing should be discussed at this meeting or Mr. Allin's, but I think we'll be more crowed for time tomorrow and if I have your permission, Mr. Chairman, I will exploit my dream that I spoke to you about. It seems in St. Louis with our life insurance lending companies, due to a peculiarity of our sub-dividers invariably putting these reversion clauses in their restrictions, about one loan out of five is lost to what we consider a very profitable market, as title insurance people, due to these reverters. I don't believe that these suggestions I have are an absolute cure for the thing but it is something like eating your cake and having it too. My idea is as follows: I wrote it out for fear I might say something that I didn't mean if I tried to give it extemporaneously, so I will read it:

RALPH C. BECKER

Pres. Ralph C. Becker, Inc.,
St. Louis, Mo.

The question of reversion of title for violation of restrictive covenants and the legal effect of an enforcement of the reversion against the title of subsequent grantees and mortgagees, is a national problem to Title Insurance Companies, the lending departments of Life Insurance Companies and Mortgage Bankers generally. On old subdivisions platted forty or fifty years ago, the possibility of securing a waiver from the heirs or successors of the original subdivider or grantor, is equally as remote as the probability of an enforcement of the right by the reverter. On recent subdivisions, waivers or subordination agreements are equally difficulty to obtain for the reason that in many instances the Subdivider, particularly a Corporation, seeks to control the financing of building developments as well as the sale of lots. In any event, the threat of "Reversions" hangs heavily over the head of property owners, lenders and Title Insurance Companies, like the proverbial "Sword of Damocles."

It is generally agreed by members of the bar that "Reversions" can usually be sustained, and that legislation tending to prohibit this "ancient right" would be impossible of enactment.

Is there, therefore, any way that loans can be made with reasonable safety where reversions exist and cannot be waived? It is believed that there is, and a very simple way.

Loans Where Reversion Exists

A Deed of Trust or Mortgage in its most simple or elaborate form, is merely a contact or conveyance in trust composed of the necessary covenants to obtain the desired safety the lender requires to guarantee the safe return of the money loaned with the interest charged for its use. Why, then, cannot an additional covenant be incorporated in the Deed of Trust or Mortgage, that would bind the Mortgagor and his successors in title against any future violation of the specific restrictions containing the reversionary right, and that such a violation, as soon as it became apparent, should constitute default, and cause the unpaid balance of the principal amount secured, plus accrued interest to become immediately due and payable on demand. If the loan was not immediately paid, foreclosure could be instituted, and the subsequent sale of the property would divest the party violating the restricts of his title, which would immediately bar the theoretical right of the "Reverter" to re-enter and obtain possession. Of course, if the loan were paid in full, to avoid foreclosure, the lenders' worry as to the enforcement of the reversion would be over.

In as much as in every community there are in existance printed forms of mortgages and deeds of trust, it is believed that the following covenant could be incorporated immediately after the property description.

(For Missouri Deed of Trust form with Power of Sale in Trustee.)

"The party of the first part hereby warrants to the parties of the second part and third part, and to their successors or assigns, that the restrictions recorded in Book page , affecting the property above described and which restrictions contain a reversionary clause, have not been violated at the date of this deed of trust, and said party of the first part further binds himself, his heirs, legal representatives and assigns, that said restrictions will not be violated during the life of this Deed of Trust, and the party of the first part, his heirs, legal representatives and assigns, further covenants and agrees with the parties of the second and third part, and their successors and assigns, that the attempted violation of any said restrictions, or any unauthorized use of the premises above described, shall constitute a default, and the note or notes hereinafter described, shall on demand of the legal holder thereof, become immediately due and payable, whether due on their face or not and failure to pay the unpaid balance of principal with accrued interest to the date of demand, shall operate to establish a default in exactly the same manner as the violation of any and all other covenants and terms of payment hereinafter set forth, and the party of the second part shall at the request of the legal holder of said notes, proceed to foreclose said Deed of Trust in the manner hereinafter provided."

It is belived that the foregoing recital can be revamped to fit any particular mortgage contract.

While the author of this suggested method has never had an actual experience with a case wherin a "reversionary right" was attempted to be enforced, it seems obvious, that such re-entry would always present such an involved legal problem, that, long before the reversion was sustained, the lender would either have collected his loan or, by acquisition of the property under foreclosure, abated the violation so quickly, that any court would be reluctant to deprive him of his title.

CHAIRMAN GILL: While we are on that subject, I might add an experience of my own some years ago. I approached this problem, not from the standpoint of a covenant but from the standpoint of a lease, and I proposed to some of the counsel of the eastern life in surance companies that the trustee, either in a deed of trust, or mortgage where they had a trustee, should be given the title and should lease it to the borrower at a nominal rate, and that that lease should contain a covenant that the property should be used only for the purposes which were not restricted against and that if any attempted misuse occurred, the lease should immediately be forfeited. I based that upon decisions to the effect that such a lease is valid in a deed of trust mortgage, and another line of decisions that, in an ordinary leasing situation, the landlord is not bound by unauthorized acts of the tenants. I had that printed into a booklet, circulated among the counsel of the eastern life insurance companies, arguing that it was not in any way subversive to the famous Section 100 of the New York Life Insurance law, and that they did in fact have a first lien, notwithstanding the prior restrictions and revisions. I will say that I got nowhere with any of them. They said, "It is a beautiful plan and ought to work but we just can't be bothered to think about it," so we still have the reversion problem. But Mr. Becker's suggestion of approaching the reversion problem by means of a covenant in the mortgage, and my previous suggestion of approaching it by means of a lease with the covenant against misuse, certainly form two bases of approach to a problem which must be very distracting to eastern lenders, who lose good loans because of that very foolish provision in their insurance laws, and certainly will be of great interest to title insurance companies, if you can get their counsel to agree to it.

MR. LIONEL ADAMS: Mr. Chairman, I just wanted to say to Mr. Becker that in the State of Louisiana the problem presents itself only in the case of prohibition against sales to negroes or occupancy by negroes. The very solution that he offers has been in vogue, so far as our company is concerned in Louisiana, for the past several years. We have had no actual case of a sale to negroes necessitating foreclosure, and we don't know just how it would work out, but we are giving life insurance companies protection.

CHAIRMAN GILL: Do the counsel of the New York and other Eastern life insurance companies agree that that gives them a first lien?

MR. ADAMS: Well, they are looking entirely to us and not raising that question.

CHAIRMAN GILL: I understand that some of them say that makes no difference, that even though we offered to insure against reversion, that wouldn't enable them to certify to the Insurance Commissioner of New York that they had a first lien; the fact that we insured it to be a first lien wouldn't make it so.

MR. ADMAS: Well, I don't know why they are favoring us but they are accepting our policy with that protection.

CHAIRMAN GILL: So there is no trouble about making loans on properties with reversions because you have satisfied yourself—

MR. ADAMS: Well really, Mr. Gill, in Louisiana ours is not a true reversion. A true reversion is not known to the Louisiana law at all; we call it a resolutary condition. It gives a right to any prior owner in the chain of titles—the title having been passed on from one to another—to step in in the event of a sale to a negro and bring action to set aside the sale to the offending owner.

MR. E. B. SOUTHWICK (Cincinnati): I can't understand that, Mr. Gill, and I'm wondering at what time the reversion takes place.

CHAIRMAN GILL: We hope, Mr. Becker and I, to get, by our two schemes, a protection which will oust the malfeasant just about a minute before the reversion takes place. Of course, if it reverts before our covenant is violated, then we are not on the right track but if it is reverted after our covenant is violated, then we are on the right track.

Theory of Avoidance of Reversion

MR. SOUTHWICK: Mr. Chairman, how does the breach of covenant in the mortgage antedate the operation of the reversionary effect of the restrictions? I can't understand how the covenant coming due gives you any title protection.

CHAIRMAN GILL: Well, Mr. Becker's theory is that immediately upon the breach of the covenant, the mortgagee has rights which cannot be affected by any subsequent action of the mortgagor. Isn't that it, Mr. Becker?

MR. BECKER: Yes.

CHAIRMAN GILL: And that, consequently if violation of the restrictions is given as the cause of default and foreclosure, that the action of the mortgagor owner in so violating the restrictions is not the action of any one interested in the property but the action of a stranger, just as in my plan, having the trustee lease the property to the owner would constitute the owner, immediately upon default, as a trespasser, without authority from the trustee lessor to commit any act, any more than if an entire outsider would violate the restriction; just as a trespasser, for example, moving in and commencing to sell liquor would not forfeit title. Anything else anyone cares to express?

MR. HOOVER (Miama): Mr. President, on your theory, they knock that out by saying that while the mortgagee took title, it was only a mortgagee after all, and that lease proposition was only a sham.

CHAIRMAN GILL: On the lease theory, we have a line of decisions that the lease is a valid lease. Heretofore, it has been used only for the purpose of getting quick possession. We also of course have many decisions to the effect that a real lease, unconnected with the mortgage, may be conditioned upon use according to restrictions and it has been held many times that unauthorized use is that of a trespasser and does not bind the landlord. We are rather combining those two theories in order to get ahead of the reversion.

MR. HOOVER: Yes, but you have a mortgagor and a mortgagee and then a lessor and a lessee. After all, this transaction is a loan.

CHAIRMAN GILL: Of course the courts might say that, but we are trying to work up something that the insurance company counsel will pass or that we will be willing to pass, as Mr. Adams does, feeling that it will be safe and they will take our policy.

MR. WM. H. McNEAL (N. Y.): Mr. President, I've never seen a reversionary clause in a deed yet which provided the method of reversion, that is to say, that certain conditions precedent must be taken in connection with the proposed reversion before the reversion becomes effective. In other words, the reversion says that in case the restrictions are violated with respect to a certain act the premises revert to the original grantor. Now let us put it down in up-to-date modern language and say, speaking of the New Orleans situation, that Joe Louis buys a property in New Orleans. Well, that act would have been committed, that reversionary clause would have matured, that reversion would be in effect. Now what in the world could the subsequent mortgagee do to eradicate or eliminate the effect of Joe's buying this property in New Orleans, against the peace and prosperity of the public down there? I think it is a matter of when your reversionary clause takes effect, and there is no provision, as I say, in any reversionary clause that I ever saw which provides that it shall not revert until a court or somebody else says that the reversion has matured.

MR. C. O. HON (Chattanooga): I would like to ask you this question: in your plan of a lease, do you have the trustee to sign the deed of trust?

CHAIRMAN GILL: Yes sir, the trustee signs the deed of trust in order to make the lease valid.

MR. LAURIE SMITH (Richmond): Mr. Chairman, are you trying to get discussion from the abstracters, or—

CHAIRMAN GILL: Well, I invited them into the discussion.

MR. SMITH: Well, we don't want to usurp the time by asking questions about title insurance, but some of us still have a lot of questions to bring up.

CHAIRMAN GILL: All right, let's make a final appeal to the abstracters. Can't we do something for you by settling some of your business problems? Speak now; these title insurance boys are going right on if you don't. Well Mr. Smith, it seems there are none, so your remarks are in order.

Construction Loans

MR. LAURIE SMITH: Some of us would like to know the present practices with respect to the handling of construction loans by title insurance companies. In my part of the country the old responsible contracting firms, in many cases, did not survive the depression. We have a lot of construction work going on and a great deal of it is being done by what we call shoe-string operators. They finance one job out of the credit that they have with their material men and sub-contractors on the previous job. There seems to be a growing demand for construction loans, and a growing inability to obtain from surety companies bonds for completion and delivery free and clear of liens. It would appear that under proper circumstances, in certain states at least, the title insurance companies can devise methods for handling those construction loans for proper compensation, and render a service to their clients and increase their revenue.

MR. E. T. SWEENEY (Texas): May I make one suggestion? If you have any responsible lumber yards in town who sell a good deal of material, or brick yards or rock men, you may be able to get a letter from them guaranteeing completion of that job for you, because they sell material on the job and make a little money on it. Have you ever had that experience? You have, for instance, a responsible lumber yard in your town, one of a chain or even a single responsible yard that the contractor deals with and buys a good deal of material from.

MR. LAURIE SMITH: No, it is not a practice in my community. I knew that there was such a practice in certain towns in Texas.

MR. SWEENEY: Well, our problem is similar to yours. We are handling possibly a hundred construction loans a month. We would like to send our policy over there, when we are dealing with a lending agency and exception is made subject to the completion of the improvements, and let them pay out the money. But in some cases we can't do that. In those cases we ask some responsible person to sign a letter guaranteeing completion of the job in accordance with the agreed plans and specifications free of any liens for labor and lumber and material. That's about the only hope you have. Find somebody who furnishes a good deal of material on that job for that contractor and see if they will guarantee completion.

MR. LAURIE SMITH: May I ask, in San Antonio, when you handle the construction loan on that basis do you get any additional compensation by virtue of the fact that you are taking

a risk which the surety company will not take or, if they did take it, for which they would charge $15.00 a thousand?

MR. SWEENEY: No, we charge an escrow fee for paying our money, which is inadequate. Now the situation there is this: there are six title companies there, in a city of 250,000 population and we haven't been able to get any adequate fees for that service.

MR. HOOVER: We have ten companies down in Miami but we always get paid for what we do.

CHAIRMAN GILL: This is a very interesting and timely subject, it seems to me: how to handle the repeated demands of lenders of all kinds for title insurance, which include mechanics liens and completion risks. How do you do it; how do you protect yourself; how do you charge, and how are you going to avoid losing more than you get?

Inspection Companies

MR. BECKER (St. Louis): Mr. Gill, as you probably know, in St. Louis about ten months ago, a company was organized there, not by the title companies but as a part of the Real Estate Analyst. Now that particular part of the Real Estate Analyst was founded for supervision and quality construction control on new buildings. As soon as I saw their layout I recognized that that might be the answer to title insurance. We never at any time tried to depend on the service to guarantee completion; in other words, the only thing we would do if a lender and owner would employ this service company to supervise and regulate the disbursement of funds during construction, we would, on the date of completion of the building and prior to the time that the mechanics lien limitation would obtain, issue a policy without exception as to mechanics lien. We found that the service assisted us very materially in getting what we used to call the waiver form signed or supposed to be signed by all subcontractors. We merely gave the service organization the waiver form at the time the building started and when the job was done our waiver was completely filled out. In addition to that the service company, before they delivered the bills for the job, the individual bills for items of material, submitted them to us, together with an affidavit of certification of both the contractor and the owner that the list of people who had signed off on our waiver form were all the persons who had performed any item of material or labor on that property.

They have supervised some seventy-five loans in that ten-months' period, several of which I had close contact with, due to the fact that I had agreed to issue this policy on completion. Their charge for that service, of which I didn't get any part, was one and a half per cent of the amount of the improvement; in other words, it was about the same charge as a bonding company made for a lien and completion bond, but in addition to that the owner and lender was relieved of the actual necessity of inspecting that property during construction. I remember one $12,000 loan that was put in the Federal Housing Administration plan of insured mortgage. There were thirty-two inspections made during the term of that construction. In two instances the contractor deviated from the specifications and attempted to substitute a roof of lesser quality that the specification provided for, and immediately upon the commencement of that this company stopped paying the contractor until it was corrected. They always hold twenty per cent of the volume of the contract back to insure them that if the builder does get tired of the contract they can go ahead and finish the building. They don't guarantee the completion of the building to the lender or the owner, but they do guarantee to give what is probably the most modern service ever inaugurated in the country, and I agree with them.

The interesting thing to me is that we expected that unfavorable reaction would come from the contractors who were being more rigidly supervised than they would be by an ordinary lending office or owner. Much to our surprise they liked the idea of getting this medallion of quality put into the building when they get through. There are a great many speculative builders, those who build for their own account and sell the property, without an owner contract being involved, who are putting themselves under the jurisdiction of that company and paying one and a half per cent to have their own buildings supervised. It is a very unique practice, and I think it makes it really a hundred per cent safe to take care of that hazard between the date of completion and the time that the lien period would expire.

CHAIRMAN GILL: Thank you. Any further observations? This will not be your last opportunity, however, because in the various sessions to meet tomorrow and next day there will be afforded a chance for your discussions.

Arguments Against Coverage

MR. SMITH (Fla.): What is the purpose of the title company's protection on a construction loan when the prospective builder goes out to his architect and his contractor, makes a deal with them to build that house, goes over to the mortgage company and arranges to borrow the money and gets a commitment from the mortgage company that when the house is completed on the plans and specifications that are attached to the application, they will loan you $10,000. Now in connection with that building the owner and contractor go around and arrange for their construction loan. Now then, as I see it, if I'm building a house I've got to go to the First National here and get a $7,000 or $8,000 loan here. Now then, an—I was going to say Preliminary Certificate but nearly choked on it—an Architect's Certificate is given to show that the title is good up to that point. Now then it is up to that bank, that contractor, that architect and that prospective builder, to satisfy and protect the bank on that construction. Now, why should we underwrite the completion of that building? And that comes right back to the argument I had awhile ago with Mr. Eisenman. If the builder can't go out and say to Mr. Jones, "Here is a $40,000 bond that I'll give you at the First National that I will complete that work," then why should the title company come along and assume that liability and underwrite the construction of that house?

CHAIRMAN GILL: Before I call for a serious answer to your query I would like to make a reply which is not so serious, although it might have a practical application. We are trying to lose some money; we have been running these title businesses of ours so carefully that we just can't lose anything, and now we are wandering farther into the forest in the hope that a tree will fall on us, and we want to know whether that is good business or not. But Mr. Laurie Smith, will you talk more directly to the point?

MR. LAURIE SMITH: Well, Al, in bringing this subject up for discussion I was not attempting to assert that in my opinion title insurance companies should undertake to do this, but I was trying to bring out discussion as to whether they should or not. In other words I think it is a fact that prior to the depression title insurance companies in many cities did undertake to make disbursements of construction loans for compensation. They did not attempt to cover completion of the buildings, but they did undertake to make those disbursements. You say that it is up to the contractor, when he has a commitment for his permanent loan, to get his construction money or arrange for credit at the bank. The point is that at the present time in many communities contractors do not have a line of credit with the banks and they've got to get construction loans or they can't function.

Now the point upon which some of us seek enlightenment is this: is it not a fact that a title insurance company is better equipped to make those disbursements, as the work progresses upon the architect's certificate that the building has progressed to the stage of completion where the first payment or the second payment or the third payment is due, I say is not the title insurance company or the local title company in better position to make those disbursements? And, if so, is it a worthwhile service to our customers? And my third question is can they do it with safety to themselves, and the fourth question is can they get paid for it? I should have said that the fourth question was the first because if you are getting paid a dollar for doing it, then I think we can eliminate the other questions

MR. SMITH: Well, suppose you

start out with a certain amount—now, I'm talking with blood sweating out under my skin because I just finished building a house myself. It cost two or three thousand more than I expected to put into the house. Now suppose we had carried that down to a title company and we had had a construction loan down there and ran out of money; you get the house two-thirds completed and haven't money to finish it, and where does that leave you? Now, that's the whole point. Then, if I've gone down to U. S. F. & G. and had this contractor to give me a bond to build this house for this price, and that bond was good, and then I found it was going to cost a couple of thousand dollars additional, what would I have done? I would say, "I have your bond to build this house at this price." Now why should the title company undertake that liability?

Mechanics Lien Coverage in Cities

CHAIRMAN GILL: I can answer some of your questions in a way that might facilitate matters by referring to a questionnaire that was sent out last year. There is nothing secret about it; this questionnaire was as to mechanics lien coverage, and I found that a good many companies have been doing it for some time; Chicago does it for $5 per $1,000. Philadelphia for $10 per $1,000; Toledo for $50, Kansas City for $50; California for $35 to $50, and other places are doing it and they report—and it was some surprise to me that they did report—that if they watch their contractors fairly well and check up just a little bit, they have very few losses, and they are making money on it and they are glad to do it. So that answers some of your questions.

MR. BECKER: But none of them guarantee completion.

CHAIRMAN GILL: Well, they do guarantee completion because they guarantee against any liens, and the liens that come in on completion are liens, just the same.

MR. JOHN B. WALTZ (Vice-President, Integrity Trust Co., Phila.): We have been financing building operations for a good many years, running into the millions. We have had one job where we financed a hotel, where the loan was $1,300,000. I would say the number of houses that we have financed run into the thousands. We feel that it is a profitable business if it is handled properly and the people that you are working with are honest and if they have money in their business. We feel it is a good business and our losses have been very very small.

CHAIRMAN GILL: Would you care to estimate what your loss percentage is with reference to your extra premiums?

MR. WALTZ: Well, it wouldn't amount to much.

CHAIRMAN GILL: That is, the special premium or the whole premium?

MR. WALTZ: Of the special premium. Yes, and it wouldn't amount to much. We have an organization that handles these matters and we find the proposition runs two ways. We have the speculative builder, who has the land and has the money—and by the way, he can either borrow money from us or he brrows money from someone else and deposits the money with us. Now are laws here so far as mechanics liens are concerned are favorable, and of course we take the precaution to avoid the pitfalls that we might get into if we didn't comply with the laws. For instance, when a job is started we have an agreement between the builder and the trust company where the builder agrees to build and the trust company agrees to advance him money. We have what we call an advance money mortgage. That mortgage is recorded before any work is done. We send an inspector to view the ground, take photographs of the ground and, if it is a general contract, or he takes an affidavit, or if it is a speculative builder and he gives out sub-contracts we have the excavator and carpenter and plumber view the ground the day our mortgage is before them and they make an affidavit to the effect that there is no construction.

But we don't have any losses of any account; we think it is a good business. Of course, you have to have an organization to check the cost, check the contractor, check the builder; and I just want to say that in twenty years' of experience I don't think that we have had a dozen bonding companies' bonds to protect us.

CHAIRMAN GILL: Isn't it a fact that in Pennsylvania you have a very faovrable mechanics lien law, that is favorable to lenders so that if an advance money mortgage is put on before the builder started, you are ahead of the lien; that is, if the mortgage is recorded and it is an advance money mortgage, it takes priority to any lien. Of course, in many states that is not a fact and the hazard is much greater in those states.

MR. E. M. WEAVER (Newark, N. J.): Would it facilitate matters if the lender would agree to withhold say 20 per cent of the amount of the loan until the expiration of the period of filing the lien?

CHAIRMAN GILL: They need all the money, usually, to construct the building.

MR. WEAVER: Then let him borrow that 20 per cent through his bank.

CHAIRMAN GILL: He usually does that, too. Does anyone want to answer his question, whether it would be practicable to withhold 20 per cent of the mortgage money?

MR. BECKER: I think with reference to the small contractor, where the greatest market is now, he couldn't stand it. Then, usually, the lender who makes the small mortgage, five or six thousand dollars, wants to sell his loan to the ultimate holder on the date of completion and not wait, as he has to in Missouri, for six months. That's the impracticability of that. They want the loan to move right out as soon as the building is done. Particularly with the discounting of F. H. A. mortgages with the Reconstruction Finance Corporation, they want to lay it right down on the counter and get the money and build five more buildings.

CHAIRMAN GILL: It seems that our time is about up. I think you will agree that this has been an enjoyable and profitable experience, and I wish to thank you for your suggestion of the topics and for carrying them to a conclusion.

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Legal

GEORGE L. ALLIN

of the New York Bar, Presiding

MR. ALLIN: Of course, ladies and gentlemen, this forum at which I am presiding is not to be a monologue if it is to be successful but it is to be just what a forum should be, to wit: discussion from the floor upon subjects which will be suggested from the platform, led perhaps by the speaker on the platform but not monopolized by him. A great many questions have been sent in to me from various members of the Association, out of which I have picked out six or seven which I thought would be of general interest. I think that we will have an interesting time, especially if those who asked the questions are here present to enter into the discussion.

The first question is a rather composite one. I want to present it to you in a composite form because the question came to me from half a dozen different sources in half a dozen different ways. It can be summed up in this one general topic: How far back should abstracts start and what periods should be searched against during the title examination for the individual owners; what effect on the title has the recordation of instruments which are recorded before the maker of the instrument has come into the record title, and how far are the restrictions which appear in instruments not in your chain of title effective against the property being examined?

The law on that rather abstruse question so put is very interesting. There is no statutory requirement, so far as I have been able to find, in any state definitely fixing the time at which an abstract would start or must start. The law is very well stated in Corpus Juris by saying that an abstract company is responsible legally only for the time during which it states that it has made the abstract and thereafter, that the time is a matter of contract between the abstract company and its client. But it is curious that in many of the states a deed or a mortgage may affect a piece of property in the hands of an innocent purchaser who has been in ignorance of that deed or mortgage, even if it was put on record prior to the date that the grantor or mortgagor came into the chain of title.

Mortgage Before Deed

The leading case on that subject in my own state is the case of Taft against Munson, 57 N. Y. 97. In that case a man, who probably, although that is not certain, had a contract to purchase the property (the contract was not of record and the record on appeal does not definitely state that), but anyhow, a man who had no record interest in the property whatsoever mortgaged the property with covenants of warranty in the usual statutory form. That mortgage was promptly recorded by the mortgagee. Thereafter, and sometime thereafter, that mortgagor came into the chain of title by being the grantee of a recorded deed; he thereafter conveyed, without reference to the mortgage, to a purchaser who in innocence took the title, searching the title against that grantor only from the day before the grantor came into the title by the record of his deed, thereby not turning up this mortgage. And the Court of Appeals distinctly stated that by reason of the covenant of warranty in that mortgage, the moment that the mortgagor acquired the title the mortgage attached thereto, and was constructive notice, or rather, the prior record of it was constructive notice to the subsequent purchaser and they held that the subsequent innocent purchaser took subject to the mortgage and not free from it.

Can anybody here tell us whether that is the rule of adjudicated cases in other states? Corpus Juris says that "Where one gives a mortgage on property to which he has not yet acquired title, the record of it is not constructive notice to a purchaser of other encumbrances in good faith, since the mortgage in this case will not appear in the chain of title, but would appear to have been made by a stranger, at least if the mortgage contains no covenants of warranty." In our state the case of Donovan against Twist, 84 Appellate Division, also laid down the rule that without a covenant of warranty the record of a mortgage by an apparent stranger was a nullity. Does anyone know what the rule is in other states?

MR. LIONEL ADAMS: The New York rule applies in Louisiana.

Mr. C. M. LYMAN (Conn.): The New York rule does not apply in Connecticut. Weaver against Young, 76 Conn., I think is the case.

MR. JOHN C. ADAMS (Tenn.): The New York rule is that if the mortgage contains covenants of warranty the mortgagor subsequently acquiring the title, the purchaser would take subject to the mortgage and not free of it?

MR. ALLIN: Yes, sir.

MR. ADAMS (Tenn.).: I intended to say that in Tennessee the doctrine is well established that if one executes a mortgage which contains covenants of warranty, after acquiring title, that the purchaser would take it subject to mortgage, that is——

MR. ALLIN: That is, the New York rule then applies.

MR. SAUL FROMKES (N. Y.): Mr. Allin, would you say then, in preparing an abstract of title in New York State, if such mortgage were omitted, the abstract company was liable for the loss?

MR. ALLIN: I would, yes, sir.

MR. FROMKES: Well, where can we draw the line then, when to start the period of searching?

MR. ALLIN: You cannot draw the line where to start the period of searching unless you go back to the original grant from the sovereign. Now, of course, practically, in the state of New York, a nominal search is no protection to the abstracter in my opinion. A locality search is the only ample protection because the locality search of course is made without time, and will turn up this mortgage. Now, as you gentlemen of New York know, in some of the counties of New York the registrars in recent years have gone back to the beginning and have located, by block indices, all instruments. That is not true in our rural districts, is not true in our smaller up-state cities, and I suppose is not true throughout the country at large, and yet, under the rule as laid down by the courts of so many states, as has been here referred to, the abstracter has to assume that as one of the risks of his business, which the former speaker preceding me said should be assumed as a matter of insurance.

MR. G. B. STANLEY (Utah): In our state we have a code system. The use of the word "Mortgage" on our short form mortgage setup, by statute gives an implied covenant of warranty. And in Utah that word "Mortgage" would warrant the title against conveyances subsequently appearing in the chain of title.

MR. ALLIN: Well, that, of course, is statutory amplification of the rule by a rule of construction. If the word mortgage contains in itself a covenant of warranty, then, of course, your document has a covenant of warranty in it. That is the same rule. You probably have in that state the same as we have in New York; a statutory rule of construction of instruments which makes the instrument as written mean very different than what it says, and makes it say, in some instances, what it doesn't mean. But you have got to read into the recorded document the statutory construction of the words therein contained. As for instance in a mortgage, the way the mortgage reads there are days of grace on the payment of principal installments. But under the construction act there are no days of grace in the payment of an installment of principal but only days of grace in the payment of installments of interest.

MR. PAUL GORDON (Springfield, Ill.): As I understood the first part of your composite question it was how far or what period should the abstract cover. Is that correct?

MR. ALLIN: Yes, sir.

MR. GORDON: I know it has been the custom of a great many abstracters, particularly in the case of some subdivision, to begin the abstract with the plat. I think that is largely being done away with, though, as it properly shou'd be, and I have a case in mind where a deed, made in 1863, gave rise to a lawsuit filed in 1927 which went to the Circuit Court of Appeals, the case of Richmond against Hoffman, where fortunately we were able to sustain our construction of the deed and the title which the then owners had, but it might have been otherwise. And if the abstract doesn't go back to the Government, it is apt to miss a deed or will, the construction of which may be applied to a law suit many years hence. I think by all means the abstract should commence with the Government in all cases because otherwise you are apt to miss things of that nature.

MR. ALLIN: Of course we have, in New York, the Livingstone case u[illegible] in Rockland County, which illustrates that because for years the abstracters only went back to about just before the Civil War, and yet, back of that there had been a will which created an estate which was afterwards determined by the Court of Appeals to be a life estate but which was thought by everybody in those days to have created a fee, and the tenant of that estate conveyed a fee; and abstracters always started with the plottage that he laid out and then, less than ten years ago, he died and then his heirs came in and proved that he only had a life estate and upset all the titles up in that section, which was a large section of territory. Therefore, it is, if you ask my opinion, necessary to go back to the source of original title which, in the East, of course, is either the King of England or the sovereignty of the particular state, and I suppose in the West either the Federal Government or the particular state or territory.

MR. MACO STEWART (Galveston, Texas): We have a situation in Texas that brings up this question. The gentleman that preceded you talked about the question of a marketable title. San Antonio, Texas, was gotten on a grant by the King of Spain. Grants were then made by the City of San Antonio by what we call Suerte. Now, a suerte was so much land as a man could water in a given number of hours off the irrigation ditch that the land fronted on, and the irrigation ditch had been gone for a hundred years. Now we have to go back, as well as we can in Texas, to the sovereignty of the soil. But you can't find the sovereignty of the soil out there in that city, which embraces many miles, because they had a habit of granting large areas at that time. Therefore, in Texas, we go back to the sovereignty of the soil, and so there is no way to get a marketable title of many of the properties in Texas, because a marketable title must necessarily be one that is fairly deducible of record and, of course, one where you have no record and have a grant to a suerte and you don't know where the suerte

was, there is no way in the world to call that a marketable title. I just thought that might be of interest.

Implied Restrictions

MR. ALLIN: I want to speak now about this matter of restrictions. In our case of Korn against Campbell, I think 192 N. Y. or thereabouts, the court said that restrictive covenants could be imposed upon land in three ways: There could be a general scheme of restrictive covenants whereby the owner of a tract of land subdividing it into lots would advertise to the world in general by his literature and by uniformity of conveyancing and a uniformity of restrictions in the various deeds, that he was restricting all the lots thus and so. That was called a restriction by a general scheme. Or, two or more pieces of property could be restricted by mutual agreement between the owners of those two or more pieces of property. That, of course, was restriction by agreement. Or, a restriction in the third place could be imposed in the nature of an easement, that is to say the owner of a large piece of land could sell off a small portion of it, restricting that property so sold for the benefit of his remaining land. Of course that applies principally in city lots, where a man owns a whole block and he will sell off lot by lot, restricting them. And it has generally been considered, and was laid down in Korn against Campbell, that the remaining land had in the nature of a dominant easement over the first sold lands to enforce the restriction on the sold land, wholly irrespective of whether the restriction was reciprocal or not.

The other day the Court of Appeals in the case of Buffalo Academy against Bohm Brothers, 267 N. Y., laid down a proposition which rather startled us. In that case, there was the deed of four lots of land other than the premises in question in the case, but coming out of the common owner of the premises in the case in question and these four lots. This deed conveyed the four lots of land free and clear of any restriction, but inserted in the deed a covenant binding upon the grantor that no gasoline station should ever be erected or operated on any of the other lots in the subdivision. Of course, the purpose of that was to give monopoly so far as the subdivision was concerned to the owner of the four lots, which were sold for the purpose of a gasoline station.

That covenant, however, was not picked up or referred to in the subsequent conveyancing of the other lots by that same plotter and so the title came on down to the parties in this case. Now, the Court of Appeals was asked to decide whether that covenant, which appeared in a deed out of the common owner but did not appear in the precise chain of title of the lot in suit, was or was not constructive notice of its existence, and did it bind or did it not bind the land in suit. I think every conveyancer in New York City prior to that decision would have guessed that it bound the land: but the Court of Appeals said it did not bind the land. The Court said: "To claim that it binds the land in suit goes contrary to the well established principle that a purchaser takes with notice from the record only of encumbrances in his direct chain of title. In the absence of actual notice before or at the time of his purchase, or of other exceptional circumstances, an owner of land is only bound by restrictions if they appear in some deed of record in the conveyance to himself or his direct predecessors in title."

Notwithstanding that, the courts of New York and the courts of many of the other states have held that minor circumstances will give a purchaser constructive notice. They have always held that a direct easement referred to in a deed of other pieces of property, binding upon the property in question, is constructive notice to the purchaser, subsequently, of the premises in question because of course that is an estate, if I may use the word loosely, it is an easement in the property which is subsequently conveyed.

Now if there is a restriction by easement, as Korn against Campbell said it was, then it is hard for us to understand this decision of the Court of Appeals, particularly in view of a case like Holt against Fleishman in 74 Appellate Division, where the court held that because a row of buildings had been set back uniformly as a matter of fact, ten feet back from the street line, that that fact and the fact that there had been a restrictive covenant in some of the deeds of some of the buildings, although not in the particular chain in suit, that particular fact put the purchaser on notice of the fact that there was a general scheme of restriction.

Now there, it seems to me, is putting on the title examiners and title insurers a very peculiarly difficult burden, because when should you except a restriction that doesn't appear in your own chain of title? Now gentlemen, what is your practice throughout the country in searching? Do you examine every deed out of every common owner, irrespective of the land described, to see if he has perchance inserted a covenant which binds his other property, or do you not?

MR. EDW. J. EISENMAN (Kansas City): In our country, Mr. Allin, we are not much troubled with that sort of a situation for this reason. In searching the records on a piece of property down there, we make the chain from our own abstract books, and if a deed from a common owner conveying a portion of his property and containing a restrictive covenant on that he retains is filed for record, that deed is posted as a conveyance of the tract conveyed and as a restriction agreement or as a restrictive covenant on the property that he retains. It is posted as two instruments. So any chain man in searching that title will note that deed on the chain for the examiner.

MR. ALLIN: Is that so posted in the public records or only your private records?

MR. EISENMAN: In our private records. So you see abstracters in our community are not bothered with the same situation with respect to notice that you have. We do not depend upon public records down our way. We have our own system and our own records.

MR. B. J. HENLEY (San Francisco): There was this situation in which we recently had a case arise involving a subdivision of 83 lots. Now, several lots had been conveyed without the imposition of any restrictions of any type. Subsequently, a conveyance was executed which contained restrictions in the form of a general tract restriction. Now assume, we will say in this subdivision of 83 lots, 10 lots were conveyed imposing no restrictions and when the eleventh lot was conveyed, to a different owner, restrictions were imposed which took on the characteristic of general tract restrictions for the general benefit of the tract. As a matter of fact, with an expressed provision that the restriction should be for the benefit of all tract owners, and could be enforced by all tract owners. Now do you think that that would subject all subsequent lots in the tract to the restrictions regardless of the fact that there might be 10 lots which were not subject to the restrictions because they had been previously conveyed without imposing them?

MR. ALLIN: Personally, I think so, because the fact that the 10 lots had previously been conveyed was evidence of the fact that the plotter had changed his mind, after conveying 10 lots, and wanted to enforce the others. But probably I have guessed wrong.

MR. HENLEY: Well, that raises a complication that is not answered by the statement from the gentleman from Kansas City, because we examine, we will say, the first two or three conveyances with the idea of determining by that process whether or not the tract is subject to restriction. But, out of these 83 lots there might be 80 of them conveyed without restrictions and then in the eighty-first conveyance, general tract restrictions might have been imposed which would subject the remaining five lots to a general scheme. And that means that if the subdivision took 25 years to sell out, we would have to examine each conveyance right down through the whole period to see whether or not there were any general tract restrictions.

MR. C. W. FISCHER (Buffalo): I am somewhat familiar with the conditions in the case mentioned because we were involved in it; it went to appeal. The circumstances were these: The common owner conveyed a few lots to a certain oil company and inserted certain covenants that you have mentioned. He conveyed other lots and in no case did he covenant that he would similarly restrict all other lots in the tract. Now the setbacks varied, the

class of house varied; some houses were conveyed without restrictions, some for business, and suddenly a certain party made a deal for a certain number of lots and, apparently, was dissatisfied and sought a way out. The court held, as you stated, that you are only bound by such notice of restrictions as appeared in your chain of title. Now there was not, by his own conveyances, a uniform set of restrictions.

MR. ALLIN: Well from that, then, I take it you want us to infer that that was a bad law well applied to make a good case. And lots of our decisions are analyzable that way.

Actual Knowledge of Title Company

MR. SOUTHWICK (Cincinnati): I have often wondered about this and would like to know what you think. To what extent is the title company, or the abstracter, the agent of the purchaser, if the purchaser has employed him as he may to examine the title, and would the purchaser be charged with actual knowledge if the abstracter has in his private records the fact that there is to be a general restriction, or the deeds read that all lots shall be restricted the same. Now if the individual goes to the courthouse and should make a search, the courts have held that he only need to follow his chain of title, unless he has actual knowledge and he is not bound. But if he employs a title expert who has knowledge of the general plan, to what extent would the purchaser then be bound by the title company's, his agent's, knowledge?

MR. ALLIN: That is a two-edged sword and that question has come up in many forms, many times. The question is this: Is an innocent purchaser charged with the knowledge which his agent, the title company, has acquired in some other employment, to the detriment of a title which the title company would not have discovered in the present employment? Now we have generally said "No." We have generally said that. Take, for instance, where a title company was employed to examine a title on a contract. The contract fell through. Years go by. The contractor is dead. An innocent purchaser makes a new contract. He goes to the same title company. How far, and for how long, must that title company condemn that title for the innocent purchaser because of its knowledge of the old contract that its present employer had no knowledge of? Well, that is just one illustration of the question. Unquestionably, the title company is the legal agent of its employer, but I do not personally believe that the title company, as such agent, must tar the present transaction with knowledge that it acquired in connection with some previous employment outside of the limitations that the law would impose upon the present purchaser. Is that clear? Now do you agree or disagree?

MR. STEWART (Galveston): I disagree again. Knowledge to the agent, of course, is knowledge to the principal. That's our law in Texas, all right. Now, if I am examining the title, I may have known something in the years gone by and forgotten about it, but if I know something when I am looking up the title for somebody lending money on the property or buying the property, that fact is just as chargable to my principal as it is to me, and he is bound by what I know. There is no doubt in the world about it. Now, of course, if I am selling to him, that is another story; no matter how much I know, he is the innocent purchaser. But if I am acting for him I am his equal, what I know he knows—whether he knows it or not.

MR. ALLIN: Well, let us press that a little further. It is very interesting and it is very important. Here is a man who in good faith makes a contract to buy a piece of property which, on the record, is perfectly clean and clear and under the rules of law, he would get a good title if he took a deed from his contract vendor. But let us say for the sake of argument that the title company that he happens to employ knows, as a matter of fact, that 10 years ago a mortgage was given on that property, if you will. The mortgagee didn't record the mortgage. The mortgage is not constructive notice. Is this innocent purchaser to be deprived of the benefit of his present contract because he was unfortunate enough to hire an agent who knew too much? There is the other side to it.

MR. STEWART: He would have double-barreled action; he could not only sue the property but the title company for perpetrating fraud on him.

MR. ALLIN: Oh, no, the title company didn't perpetrate fraud, oh, no.

MR. STEWART: Now, wait a minute, I'll tell you where he perpetrated fraud. I'm the title company. I know that A sold to B and B hasn't recorded the deed, and you come up and buy from A, and I am employed by you to protect you. You lose because of me. Now then, you've got a cause of action against me for not having protected you.

MR. ALLIN: No, no, Mr.——

MR. STEWART: And the worst thing about it is this: In Texas, if an abstracter makes a break he is liable not only for the price of the abstract, not only for the purchase price paid for the property, but he is liable for the value of the property when it is ultimately lost, even though it is 30 years later, and the statute of limitations doesn't run.

MR. WYCKOFF: Well, that question has always been a troublesome one to title insurance companies and my own personal solution of it, in the administration of my own work, has been this, that when you employ me to examine your title for you, you employ me to do those things which you should do in order to protect the title and that my agency is limited and that it may be improper for me to suggest facts within my knowledge acquired in the examination of work for another client, because that information might be confidential. So I have come to the conclusion that the agency is a limited one which only requires me to do those things which you should have done to protect your title.

MR. ALLIN: That is exactly the position that I took before, and I think that is the correct position and I want to disabuse my friend from Texas of the thought that there was in the question as I postulated it any thought at all of fraud on the part of the title company. In other words, the title company suppresses no knowledge that it has, it doesn't lead the new client astray. But the question is, must it destroy the new client's rights as a contract purchaser by disclosing to him something which the law does not charge him with, but which by the accident of a former employment, the title company may have discovered.

Now you gentlemen who are practicing attorneys, as I am now—I used to be a real title examiner, now I am just a common garden variety attorney—you frequently find exactly the same situation in your own practice. You are employed by a client. If you wish, let us say you are employed by a client to represent him in the purchase of a piece of property and a contract is made and, for some reason or other, the contract falls through and then, later on, you are employed by an entirely new client, with the chance to purchase for him exactly the same piece of property. Must you, as attorney for the second client, tell him everything that you have learned as attorney for the first client?

MR. HENLEY (Calif.): Mr. Allin, I think there is one phase of this matter which has not been suggested here and that is that the obligation of an abstract company and that of a title insurance company has been distinguished in some of the cases. I am familiar with one case in California in which it is held that an insurer, a title insurance company, which is called upon merely to insure the title, is not bound by the same rule to disclose information within its possession, concerning the title, as one who is employed for the purpose of searching the title. In other words, the relationship between the insurer and the insured is substantially a different one than that between the abstract company and the client with regard to the application of the law of agency.

MR. BARR (Rochester, N. Y.): Another limitation, as Mr. Wyckoff put it, in making reports, and especially where you hold particular information that is not a matter of record which is detrimental to the title that you are examining, is shown by this case that we have had come up, and just how far this lawyer will get with his suit is a question with all of us at the present time. We did reveal to a certain client that there was something wrong with the title to his property and so reported to him. He immediately went to the attorney for the seller and after giving him that information, the attorney for the seller immediately

threatened us with a slander suit, to say that we had slandered his title. Now, whether we are going to win or lose on that I don't know but we may have to defend such a law suit.

MR. HON (Chattanooga): I would like to ask one question: in the talk of the previous gentleman here in regard to the building restrictions that he spoke of in the title policies, where the man violated the building restrictions where it was five feet instead of fifty, can the common subdivision owner waive the violation of that?

MR. ALLIN: Well, the rule as I understand it is that he cannot alone waive it. The case is upheld repeatedly that where a restriction is imposed for the benefit of other lands, the owners at the time of the release of all the other lands have got to join in the release. The original creator of the restriction is not himself sufficient. Is that an answer?

MR. HON: Does that apply to the whole subdivision or just on that street?

Release of Restrictions

MR. ALLIN: Well, I would like to let Mr. S. A. Clark talk for about fifty minutes on that subject,—what is the necessary area from which releases should be obtained,—beccause that is one of the pet subjects we have to deal with in New York City. The answer is very very simple; the application of the answer however, is very very difficult. The answer, legally, is that you must get releases from all the property which had the benefit of the restriction, sufficiently near the released lot to be affected by the restriction. Now that's a very simple answer. But when you come to put it down into geographic form and determine what territory is sufficiently near to the released lot to be affected by the restriction you come into great difficulties. Now we have in New York, I think by common consent, although perhaps not by judicial decision, a sort of a rule. We don't think that it is necessary to go quite so far afield to release a setback as it is to release a restrictive use, I mean a kind of a use. We feel that a setback can be released by the people on the same side of the street and the opposite side of the street in the same block and maybe for a block each way, provided the city blocks are four to five hundred feet long.

On the other hand, we generally have a rule that if you are going to release a use you've got to take what we call nine city blocks, that is, take the block in question and the four blocks that surround it, north, east, south and west, and then the four blocks that are in the corners or parts of those. And it generally resolves itself into a very serious argument between the attorney for the vendor who wants to get his contract signed and the counsel for the title company as to what chance they will take.

Note Referring to Mortgage

Now, here is a question which was asked me, and I was very much surprised when I came to read Corpus Juris that there seemed to be a very great difference of decision on what I thought was the same question. The question asked me was this: when a promissory note contains the statement "This note is secured by a mortgage," is the buyer of the promissory note chargeable with constructive knowledge of all of the terms of the mortgage?

MR. STEWART (Galveston): Are you talking now about a negotiable note?

MR. ALLIN: I am talking about a promissory note. My friend from Texas has just struck the point. Throughout the United States the practice is, and the law is in some states, to give bonds and mortgages, or bonds secured by mortgages; in other states it is to give notes secured by mortgages. Now, if a bond is secured by a mortgage and refers to the mortgage, all of the terms in both instruments must be read together. If there is any conflict the law seems to be well settled, that the provisions of the bond control the contrary provisions of the mortgage. Nevertheless, everything that is in the mortgage must be read in connection with the bond and the purchaser of a bond will take it subject to all limitations in the mortgage. Furthermore the purchaser of a bond and mortgage takes it subject to all latent equities, all equitable defenses, all defenses which could have been set up between the two original parties.

On the contrary, however, Corpus Juris lays down the rule and cites a great many cases that, "By the weight of authority the bona fide purchaser in due course of a negotiable note takes the mortgage securing it free from all equities and defenses which the mortgagor could have set up against the mortgagee and the owner, a bona fide holder of a negotiable note, acquired before maturity secured by a mortgage duly recorded, cannot be defeated by anything which is in the mortgage not referred to in the note." Frankly, I was rather surprised to find that there was that inherent difference in the law of the various states between a note and a mortgage, a note in a negotiable form and a bond and a mortgage. What has been your experience?

MR. MORTIMER SMITH (Calif.): I happened to send that question in and the reason I sent that in was because of the fact that people have been getting sued on deficiency judgments and having deficiency judgments rendered against them. Some are adopting the practice of putting the recital in the mortgage—the holder of the note must look to the property for payment of the note in the event of default. I wondered if that provision that was contained in the mortgage would prevent a holder, in due course, a bona fide holder of that note, recovering a deficiency judgment against the holder of the note.

MR. JOHN UMSTED (Philadelphia): There are two thoughts that arise in my mind about this subject and the first is whether the note is negotiable with a clause of that kind in it. In Pennsylvania I don't believe that that note would be held negotiable and I don't believe it would be held negotiable under the Uniform Negotiable Instruments Act. In addition to that, we have this curious situation arise in Pennsylvania that I think throws a little side light on the subject. A judgment was satisfied and, with the word "satisfied" appeared this "Under decree of court," and our Supreme Court held that any one dealing with that satisfied mortgage was required to examine the decree of the court under which the mortgage was satisfied, and it was found in the record that it was a provisional satisfaction and, therefore, that the judgment was not satisfied and that the one dealing with that record was on notice.

Mortgages for Future Advances

MR. GEORGE L. ALLIN: The next question that I want to discuss is this: whether it is lawful and in what states it is possible, to give a present mortgage to secure future advances and will those future advances have precedence in lien over subsequently accruing liens. That is to say, can I give a mortgage for fifty thousand dollars and put it on record, advance ten thousand today and then go on over a series of weeks or months advancing the other forty thousand dollars, and still have a valid lien for fifty thousand dollars, ahead of second mortgages or judgments or mechanics liens that may come on before I have made the advances. The rule regarding mechanics liens of course stands by itself because that is statutory in practically all of the states, and I haven't found any state that had a mechanics lien law that did not provide that a mechanics lien took effect as of the date of the filing against a previously recorded mortgage so far as it purported to secure advances made subsequent to the filing of the lien; and so in making a building loan mortgage, which is the customary thing, you have to continue your searches.

But how about second mortgages and how about judgment liens?

Now, Corpus Juris on that says that a mortgage may legally be given to secure future advances to be made to the mortgagor and may become a prior lien for the amount actually loaned or paid although the advances are not made until after subsequent mortgages or other liens have come into force. And that seems to be the law in most of the states of the Union. But as I say, mechanics liens are always excepted by reason of the mechanics lien statutes.

Now the Federal law has laid down the same rule, following of course as it generally does the law of the state. But in New York we have this limitation on that rule: "A future advance will take precedence over a subsequently recorded mortgage if the mortgagee is actually obligated to make the advance." In other words, the theory seems to be that the mortgage lien sustains a binding obligation to make the loan. But if

there is the slightest suspicion that the mortgagee has any option whether to make the advance or not to make the advance, then our courts give the second mortgagee priority over the subsequent advances.

Now if any of you gentlemen have any experience in your states on that we would like to hear from you.

MR. EDWARD H. CUSHMAN (Phila.): The situation which you state as a general rule is not the rule in Pennsylvania. Under our State law a lien for new work dates back to the date of the visible commencement of the work upon the ground.

MR. ALLIN: That's a mechanic's lien?

MR. CUSHMAN: Yes; and if a mortgage is recorded and is accompanied by an adequately expressed agreement that the advances will be made, that mortgage will have priority for the full amount of the advances, over mechanics liens, whether or not those advances are made or whether or not the work is done before or after the advances are actually made. Shumaker versus Land Title either 257 Pa. or 217, is our Supreme Court decision in that case. My practical observation has been that most of our title companies ignore that elementary principle of law and have no such expressed agreement.

MR. ALLIN: Well, suppose that the actual commencement of the work precedes the recording of the mortgage but the mortgage is recorded prior to the recording of the lien. Does then the mortgage come ahead of the lien?

MR. CUSHMAN: Oh no, it does not. We have a case in this state where they commenced to remove some shrubbery and then recorded the mortgage. The recorded facts do not show it but they also made a slight drive-way improvement and that was held as visible commencement of the work, and one of our trust companies was set back some $35,000 on that case.

MR. ALLIN: I am going to ask Mr. Wyckoff to explain the Jersey law on that, because it is interesting. The question is this: what is the New Jersey law as to the relative value of a mechanics lien which comes on after a building loan mortgage is recorded, which mortgage was recorded after the work of construction was commenced and the mechanics lien is filed, pending the installment advances on the mortgage?

MR. E. C. WYCKOFF (Newark): Today our situation is somewhat different from what it used to be, and follows much what I heard as I just came into the room. Today a mortgagee can protect himself on the disbursement on his mortgage fund, whether the agreement advance is contained in the mortgage or not, provided the company makes each disbursement or makes a search to see whether or not any notice of intention has been filed. And then they contact each person, write to each person who files notice of intention, to find how much is due, asking how much is then due for his labor. If he doesn't answer it is equivalent to his replying that there is nothing due him. If he does answer, you see that he gets the sum which he gives to you in that answer. But as to that payment, your mortgage is good.

Under the mechanics lien law, no lien can be filed except for labor, not to exceed $200, payable for services within two weeks. That class of labor you don't have to give any notice of intention on. Otherwise, there is no right of lien for materials furnished, except after notice of intention and for those materials, in the request that I suggested as being for the protection of the mortgagee.

MR. ALLIN: What proof do they require that you have given the lienor the request, if he doesn't answer?

MR. WYCKOFF: The practical answer to that is this, that if you don't make the inquiry in writing then you are not in a position to prove, that you never received notice from him. That's all you need.

MR. N. O. KLINE (Atlantic City, N. J.): Attempting to respond to the second phase of your question, I am not able to quote the case but we had this practical experience in our institution which is an Atlantic City bank and title company. In our bank a man sought credit up to $15,000 having then need of only five thousand, but he established a line of credit up to $15,000 and gave his mortgage to the bank for $15,000. Now there was nothing in the record to indicate any arrangement about advances. As a matter of fact, it was an ordinary banker's loan, which is common to us all. Thereafter, he borrowed on a second mortgage and when the second mortgagee attempted to foreclose, he alleged that his mortgage was second only to the amount of advances that had already been made upon the first mortgage at the time he took the second mortgage, which at that time was $5,000. The bank then proceeded to advance up to the fifteen thousand dollars, without taking cognizance of or even looking for a subsequent mortgage. That case was taken to Court of Errors and Appeals and the court held there that the bank was perfectly secured up to the amount of the $15,000 mortgage; That it was the duty of the second mortgagee to protect himself and to notify the bank, he then having full information that the entire amount had not been advanced. Had he served notice on the bank to stop further advances he would have been protecting his position, but his rights were perfectly subordinated to the advance up to fifteen thousand.

MR. ALLIN: Was the bank under legal obligation to make the advance?

MR. KLINE: No, it was a banker's loan, pure and simple, where he established a credit of fifteen thousand dollars, depending of course on future development.

MR. ALLIN: Now, Corpus Juris on that cites New Jersey cases to sustain this proposition, that after notice of the attaching of a junior lien, the senior mortgagee will not be protected in making further advances under the mortgage unless there is a binding engagement to make such advances. Now of course the New Jersey case that is cited had the element of actual notice to the first mortgagee of the second mortgage, but the Illinois and Ohio and Pennsylvania decisions have gone further. They have sustained that rule and they have also said that constructive notice of the existence of the second lien by the recording of it is sufficient to give notice to the first mortgagee, unless he is under a binding legal obligation. And the question seems to turn, therefore, upon the two elements: is there a binding legal obligation to make the advances, and was there notice, constructive or actual, of the second lien.

MR. LYMAN (Connecticut): In a decision in Connecticut we had a case where the obligation was there to make the future advances, although it was subject to an option on the part of the mortgagee to refuse to make them if certain facts or situations existed, and that was treated as if it were absolutely binding and precedence was given to the whole amount advanced even though there was an entervening encumbrance. But they also had the feature which you haven't mentioned, that the mortgage deed must contain the whole story. Of course, that is understood.

MR. CUSHMAN (Phila.): In Pennsylvania it need not be contained in the instrument.

Limitations on Income Tax

MR. ALLIN: Now let me go on. Somebody else has asked what is the statute of limitation on income tax liens, and somebody else has asked the question—how are Federal liens established as against particular pieces of property. I want to take up those two questions because, under the Federal law as it now exists and has existed since 1934, practically every Federal lien becomes a lien on real property only if docketed in the same state office where liens under state law are required to be docketed, if the state has passed a law so requiring it, and many of the states, if not most of the states, have passed such a law. Therefore, a notice of an income tax deficiency judgment docketed only in the office of the Internal Revenue Collector for the district in which the debtor resides would not, in New York for instance and in many of the other states, be a lien on that debtor's real property, as against the innocent purchaser of that property unless it was docketed in the County Clerk's office of that county.

There has been no decision that I have been able to find as to judgments docketed in the district court of the district where the real property is located, and yet the state statutes and the Federal statutes seem to indicate that even a United States District Court judgment, must be again docketed in the County Clerk's office. That is not, however, the practice of conveyancers; we search for District

Court judgments in New York and turn them up, if we find them in the district. We do not search, however, for decrees in bankruptcy or judgments outside of the district which embraces the territory of the property.

Now what is your practice in that? What are you doing about liens under Federal law? How are you searching for them?

MR. L. BLODGET (Camden, N. J.): In New Jersey, as I understand it, we have the state law requiring the docketing in the County. But that does not affect the Federal estate liens. That is my understanding.

MR ALLIN: Only the income tax?

MR. BLODGET: Any other tax lien, yes. We do, of course, get our searches from the United States District Court. We get them both. Then I understand the limitation on the ordinary tax lien is ten years, by the 1928 Act, but not on the Federal estate tax —or is it the other way around? I guess it is on the Federal estate tax that it is only ten years.

MR. ALLIN: Well now, the Federal estate tax and, in New York the New York inheritance tax, are both liens on decedents' real property without docketing any one. They can, however, be cut off through the foreclosure of a prior lien, such as a mortgage lien, antedating the decedent's death, by making the United States Government a party and serving the District Attorney in the District in which the decedent died, or the District Attorney of the district where the property is located; —you can do either. But under the Federal law, the United States still has one year to redeem after the foreclosure sale. So that for one year after the foreclosure sale you've got an unmarketable title if you've got a Federal lien there. And that I believe is the universal law throughout the States. In New York until this year there was uncertainty in the statute as to whether the estate tax was subordinated or superior to a mortgage previously given. It was not until 1937 that the statute of the state set that at rest, but our legislature passed four acts, each of which applied to a particular state lien, one the state income tax, one the state inheritance tax, one the state estate tax —as we have two inheritance taxes in New York, the same as you do in Federal Government, '26 and '32, and now you can cut off all of those liens, they are subordinate or, to put it another way, they are only liens on the equity of the decedent in the real property.

I don't know whether this is of much interest but I will put it in the record. The period of limitation of the lien for income tax is generally considered to be three years. That is, unless the government, the Federal government, reduces its claim for deficiency tax to judgment and dockets it in three years, it is outlawed; however, just for the record again, from 1917 to 1920 it was five years; from 1921 to 1921 inclusive it was four years; from 1928 to 1933 inclusive it was two years, but for all years including up to the present time it is three years. Is there any question on that little matter?

Property Omitted from Bankruptcy

MR. WM. GILL (Okla.): I would like to know what you think is the effect of a title where a piece of property has been purposely or otherwise left out of a bankruptcy proceeding. Never mentioned as an asset.

MR. ALLIN: We have had several cases in my personal experience where property has been left out of the schedules, I don't know whether by accident or by design. In three of those cases we have gone back and reopened the bankruptcy after discharge, had another trustee appointed, or the same trustee reappointed, and sold it in bankruptcy. Our practice in doing that of course, was founded upon the belief that all of the property of the bankrupt passed to his trustee, whether scheduled or not scheduled. I believe that to be the law. I see several gentlemen agreeing with me.

MR. LYMAN (Conn.): And do those proceedings belong to the court or the same referee?

MR. ALLIN: Well, we brought them back to the court and had the court refer it to the same or a different referee.

MR. LYMAN: It was the same court, then?

MR ALLIN: Yes. In other words, the court in bankruptcy never loses jurisdiction of the bankrupt's estate, and by that we mean all the property which in fact the bankrupt owned at the time of the filing of the possessions, whether it was inadvertently left out or intentionally left out.

MR. WM. BEARDALL (Fla.): Do you give the creditors notice that you are going to do that?

MR. ALLIN: General notice, yes; you go through exactly the same procedure and of course if the trustee has been discharged you have to have an appointment or reappointment.

MR. SAUL FROMKES: In connection with bankrupt estates, Mr. Allin, do you consider it necessary, where there is no trustee appointed, where you are about to commence a foreclosure action, that it is necessary to go in and petition the court and have a trustee appointed?

MR. ALLIN: If no trustee is appointed at the time you find your list pending it is my opinion and practice, and I believe the practice of all the conveyancers in New York, to go right ahead with your foreclosure. If you are fortunate enough to come to judgment before a trustee is appointed you are all right, but if you are unfortunate and a trustee is appointed before you get judgment, you've got to reopen your proceedings and bring in that trustee. In other words, it is our opinion in New York that the provision of the bankruptcy statute which says that the title of the trustee relates back to the date of the filing of the petition does not apply if the bankrupt has been divested of his title by the judgment from the sale. But title is in the bankrupt until it is divested by the judgment and the sale, and I emphasize the sale, because it is the sale and not the judgment that divested him, so if you get up to that point of the sale before there is a trustee, your bankrupt is all-sufficient as a party defendant.

MR. BLODGET (N. J.): In the Hartenstein case the Supreme Court of the United States says that after the petition is filed, no State Court can proceed without permission from the bankruptcy court.

MR. ALLIN: Well, I know that case and that gave us a great deal of concern, but it has never given us concern since because we recognize the facts.

MR. BLODGET: You do get permission?

MR. ALLIN: I have never known but one case where we did not get absolute permission. Judge Moskowitz, over in Brooklyn, took it upon himself one time to give permission, conditional that we had to go back and ask him for permission to sell, but that is the only case in my experience where we did not get absolute permission and in that case we had to go back and ask permission to sell. So that point in fact has never bothered us since then.

Ancillary Bankruptcy

MR. W. L. ROGERS (Ky.): Suppose the bankrupt has property in several districts outside the district in which adjudication is made. Naturally, the title goes to the trustee, absolute. The court has plenary jurisdiction. Is it necessary to institute ancillary proceedings in another district outside in order to dispose of the property? For instance, suppose the trustee is appointed in New York and the bankrupt has property in Missouri. The order is given in the New York district to sell all the property of the bankrupt. My question is, is it necessary to institute ancillary proceedings in the district court in Missouri in order to make a legal sale of that property in Missouri?

MR. ALLIN: I think it is. My practice is to do that, and I know that is the practice in New York and in Connecticut. In other words, the District Court of New York will not order the sale of a piece of real estate in Connecticut; the District Court for the Southern District of New York will not order the sale of a piece of property in the Eastern District of New York, and we have to go from the Southern District of New York, which is Manhattan and Staten Island and the counties along the Hudson River, over to the Eastern District of New York, which is Brooklyn and Long Island, and get an ancillary appointment. Now there was one tragic case where there was a trustee appointed by Judge Patterson in the Southern District of New York and when he went over to Brooklyn and asked Judge Moskowitz to appoint him the same trustee as ancillary trustee, he refused to do it and appointed his own trustee, and the two trustees never agreed on anything and that bankrupt estate was just in a turmoil, because

we had two different trustees in two different districts and kept the thing in a turmoil for months. But I do believe that the power of the court to dispose of bankrupt estates is limited by the district lines, although it is true that all of the property of the bankrupt, wherever situated, passes to the title of the court.

MR. ROGERS (Ky.): I believe that the powers of the trustee are geographical, the same as the powers of the receiver in equity.

MR. STEWART (Texas): That question hasn't been decided.

MR. BLODGET (N. J.): The question has been decided contrary to that. I think you will find that in Hobbs & Isreal, in that little pamphlet issued by the American Bankruptcy Review.

MR. ALLIN: I have it in the office. But it is still the practice, just as I have given it to you.

MR. BLODGET: The trustee can sell in any state in the Union.

MR. ALLIN: You can't get New York District Judges to pass upon sales outside of their own district.

MR. ROGERS (Ky.): I have known of cases where the Southern District of New York has ordered the sale of several hundred properties in West Virginia.

MR. ALLIN: Didn't they get an ancillary trustee?

MR. ROGERS: No ancillary proceedings at all.

MR. J. D. FORWARD (Calif.): In California the bankruptcy trustee has a habit of getting that consent and charging a fee. Do they do that in New York, charging $50 or $100 or some such fee, to allow a suit brought against them?

MR. ALLIN: No, I have never known of a case where a trustee got any fee for being sued or permitting suit to be brought.

MR. FORWARD: They claim then they will default, and the creditors will get that much additional money.

MR. ALLIN. I never had that played on me, no.

MR. WYCKOFF (N. J.): Mr. Allin, am I mistaken in my recollection that the trustee if appointed in the court of original jurisdiction can give constructive notice to another jurisdiction by filing the adjudication and the order appointing the trustee in the original jurisdiction?

MR. ALLIN: No, sir, the law requires that constructve notice of bankruptcy can be given by filing a certified copy of the adjudication and a certified copy of the order approving the trustee's bond, because that order, of course, recites the appointment of the trustee. But the statute requires those two documents to be filed in the district where the real property is, to give constructive notice to the bankrupt.

MR. WYCKOFF: Well, if it is not filed, then—

MR. ALLIN: Then there is no constructive notice.

MR. BLODGET (N. J.): There was a very interesting article in the American Banker some years ago; I forget who wrote it, in which the author sustained an entirely different thesis. He said the notice required by the Bankruptcy Act is not mandatory and that you have constructive notice by the filing of the petition, whether it be filed in Florida or Maine or Kansas.

MR. ALLIN: I am perfectly aware of that, and also aware of the fact that I am constantly at variance with many distinguished authors of treatises. Nevertheless, I still maintain that that is the law, that there is no constructive notice of bankruptcy outside of the district until there has been filed in the district those two documents.

MR. CUSHMAN: How do you reconcile those viewpoints, speaking now aside from the practical aspects?

MR. ALLIN: Because there is a difference between constructive notice and transfer of title. Lots of instances can be given in the law where the title is in one man but you have no constructive notice of that, and if you have no actual notice of that you are justified in dealing with the party that you think has jurisdiction. Of course, the law is filled with instances, I can't go into that now, where the constructive notice or knowledge is one thing and actual knowledge is another. I agree with you that the title passes to the trustee, but I say that a person without actual knowledge can deal with the record owner, who is the bankrupt, if he has no knowledge of his bankruptcy.

MR. BLODGET: Do you know of any cases to support that?

MR. ALLIN: I can't quote them, but there are cases on record.

Now, gentlemen, I really will have to leave. Thank you awfully much for patience.

CHAIRMAN GILL: I am sure we are very much obliged to you, sir, for your kindness in staying with us.

Now we shall have Mr. Clayton take the platform and answer your questions on his topic.

MR. WM. GILL: Before you do that, there is just one other point I would like to clear up. How long would you say a creditor of a bankrupt estate would have a right to serve a claim against a piece of property that has been omitted from the schedule of the bankrupt?

MR. STEWART (Texas): As long as it is owned by them.

MR. WM. GILL: We have that particular point involved in a lawsuit now.

CHAIRMAN GILL: From the standpoint of a title company we require either a release or a suit against him and the establishment in court as to his rights.

MR. WM. GILL: Well, of course, we are already in it. My point is, does the state statute govern as to when a creditor's claim outlaws, or would the bankrupt still have control of it, and if it is a fact that they do, would that keep the claim alive longer?

CHAIRMAN GILL: My idea is that it is similar to the administration of a decendent's estate in the absence of any statute, of which I know none, that in bankruptcy the state limitations suspend and just run on indefinitely. Does everybody agree with that?

Title Insurance, Legal, National Title Underwriters Sections

CHAIRMAN PORTER BRUCK: Our first order of business is the report of the chairman of each of these sections. This is a combination, as you know, of the Title Insurance, the Legal and the National Title Underwriters Sections. I am going to ask Mr. Don Peabody, chairman of the National Title Underwriters Section, to give his report.

MR. DON PEABODY (Miami, Fla.): For the last year, as far as I have been able to ascertain, there has been such strict accord between the Title Underwriters and the Title Insurance groups that all of the activities that might have been taken care of by the Title Underwriters have been amply provided for by the Title Insurance companies and, therefore, we have no report of activities for this department.

CHAIRMAN BRUCK: Thank you, Mr. Peabody. John, may we have your report as chairman of the Legal Section?

MR. JOHN R. UMSTED: Mr. Chairman, I have no formal report to make. We had some suggestions that required consideration by the Board, which business has not been completed, so that I have nothing to bring before the body of the Association at this time.

CHAIRMAN BRUCK: Thank you, Frank, for your very interesting report.

To me, the subject of the content of the title insurance form is a very interesting one. I am going to call now for discussion. I imagine most of you are interested in what somebody else does with the A. T. A. form or the L. I. C. form. Certainly I am. Now, feeling that it might be unfair to call on somebody else before I speak my own little piece, I will say it now.

First, in the matter of encroachments, there seems to be some question in the minds of some of us whether we do or do not insure against encroachments in the A. T. A. form. I have always felt that we did, and I think if we think we don't that we had better think again and decide that we do, because after all, that is what the assured wants I am sure.

We have had occasion in our community to amplify the policy by an endorsement, which I think is what Mr.

Hall had in mind. We have a rather simple endorsement to the general effect that the company hereby insures the assured against any loss by reason of encroachments, if there is encroachment, and we insure against loss in spite of the encroachment. We accept the marketability feature on the theory that perhaps the title is unmarketable after all; strictly speaking, we are willing to insure against it. We dislike to mislead the insured.

Ten-Day Notice

The only other provision that has given us any difficulty at all is the ten-day provision for notice, which is consistent with Walter Daly's remarks to the chairman of this committee on the law in Oregon. I had some little discussion with Mr. Southworth yesterday about the ten-day provision. May I ask you, Dick, what is customary in your locality in the matter of time for service?

MR. E. B. SOUTHWORTH: We generally either give a letter of instruction to a large user, such as a life company, to the effect that the time limit expressed in the policy shall not be effective unless we are prejudiced by the failure to so notify us. That has met with more or less universal acceptance, without question. In other words, if they don't get the notice to us in ten days, but there has not been a default taken or, if a default has been taken and we can have it set aside, we do not feel that we are prejudiced by their failure to serve us. In other words, we do not care to rely on a technical exception to the policy. They are buying a service and if in good faith they notify us as soon as possible and we are not hurt by their failure to notify us, certainly we have no complaint; and I feel that where anybody desires that extension of time and you can extend it without prejudice to yourself by reason of their failure to notify you, I think it is up to you to do it.

CHAIRMAN BRUCK: Thank you; I agree. May I ask this question? Again, in our localities we have taken very much the same position that Mr. Southworth has outlined to you, but we have had one customer refuse to accept policies on the ground that we would not waive definitely and without qualification the ten-day provision. The argument was put to us that in no other section of the United States had they been refused. I am not familiar with what the provisions of service are in the various states of the Union, but may I ask this question: Do any of you, or how many of you, are willing to waive the ten-day provision entirely and without qualification? Anybody? (None.) Good.

MR. FRANK I. KENNEDY: Mr. Bruck, we have a 15-day limit in our state, and we have given upon request, letters like Mr. Southworth, although we have taken the position in those letters that the policy as already constituted covers that very point and does not penalize them unless we are prejudiced by their failure to give us notice on time.

CHAIRMAN BRUCK: Any other discussion? Mr. Nethercut, you are very much interested in the question of marketability as suggested by Mr. Kennedy's report. I think, as a matter of fact, you get from practically all of the companies either a letter or an endorsement—I believe in our case it is an endorsement—which covers the question of marketability. Is there any place in the country that refuses to do that, or have you had any difficulty with title insurance policies generally?

Marketability

MR. W. R. NETHERCUT (Wis.): We have not had any difficulty with title insurance policies, and we have had no company from which we take the A. T. A. that has hesitated to give us the endorsement. But it isn't as to the marketability itself that the policy covers, it is to cover the cost of establishing marketability, which I think the A. T. A. does expressly cover. We take the L. I. C. or we take the A. T. A. with that construction, and we have had no difficulty at all with that.

MR. STEWART (Texas): The trouble with the marketability clause apparently is it doesn't register with most people as it does with us in Texas. If my company, for illustration, had issued title policies with marketability clauses in them, we would be in the fix of many of these companies that have blown up and busted, and we are not busted. Now, we'll say I am the mortgagee and I've got one of these marketability clauses, and a mortgagor falls down, and I foreclose, and get the property, and the title is not marketable. Then what am I, as a mortgagee with a contract from a substantial title company, going to do? I am going to walk up to them and throw the papers down and say: "The title is not marketable. Now you make it good." And I'll say to you that in the State of Texas there are very few titles that will meet the technical requirements of what is a marketable title, as defined by our courts, and it would mean that every last one of us would have gone broke in this last depression if we had dared issue policies with a marketability clause in the policy, and it is for that reason that the Board of Insurance Commissioners of the State of Texas prescribed a form, and if it hadn't been for that even my company would have gone out of business, because we never would have issued them with that clause in it, and our competitors, a lot of them at least, would have issued it, and they would all be broke. We battled and fought over that marketability clause. I am in the title insurance business. I have a fortune and a life-time work invested in that business. I do not propose to have the mortgagee tell me how to run my business. If his demand is that it be run in such a way as to break my company. And, as sure as I put a marketability clause in my policy I am gone. That's the thing they do not seem to understand, as to why, in Texas, we fight the marketability clause. In the City of San Antonio there has just been a flood of foreclosures; millions and millions of dollars in property have been foreclosed, and in that city there is not one title that is marketable because there is not one title in the city that is deducible of record.

Now you cannot have a uniform policy, form of policy, until you have uniform laws. The laws of the United States are not the same in each state; therefore, I can't conceive of having a uniform policy, except along such a line as this. One time before we had the form prescribed by the Insurance Board of Texas, my corporation issued a form of policy and it was substantially this, and this is about all there was in it: "The Stewart Title Guaranty Company guarantees unto X Company that it has a valid first lien securing note, described in Exhibit A on the real property described in Exhibit B and will protect and save harmless X Company, its successors and assigns of any and all loss, cost, expense and damage by it sustained by reason of any defect therein and not to exceed the principal amount of the note." And I say that is all any mortgagee should ask for. Yet, they are not satisfied with that; they want a marketability clause in it.

MR. HOOVER (Miami): I would like to ask Mr. Stewart, does or has the Supreme Court of Texas ever passed on the marketability of titles in San Antonio?

MR. STEWART: Yes.

MR. HOOVER: Have they held them unmarketable?

MR. STEWART: Yes.

CHAIRMAN BRUCK: The subject seems to be a little difficult. I was rather interested in Mr. Swezey's remarks about changes in the standard form of policy. I imagine that most corporations who issue a number of policies a day are importuned at times to make certain changes in a particular policy to fit a particular case. As I remarked a moment ago, we make every effort to make changes by way of endorsement and not by way of alterations of printed exceptions or printed conditions and stipulations. I am curious to know whether any of the companies have made it a habit to rewrite conditions and stipulations in the so-called standard A. T. A. form. Are there any comments on that subject?

Printed Exceptions

MR. FRANK KENNEDY: I have been shown by counsel for the Union Central, a policy in which, in their opinion, deviation was had not by changing the printed conditions and stipulations but by printing certain canned exceptions in schedule "B", and their objection is that anybody who goes over the printed matter, because it appears to be part of the standard setup, will not notice those exceptions;

consequently when you get a policy labeled "A. T. A. Standard Form," and then have three or four canned exceptions printed in schedule B, you are really not putting on what you label your policy to be. And I think that objection is well taken. Now I want to say this, while I am on my feet, because that report mentioned the American Bar Association. I think this American Bar Association Committee is going to do a lot of work on title forms. Now, maybe they won't want that kind of form that the lenders want; I don't know, but they are going to do a lot of work on it. They've got Jim Rhodes as chairman of the committee, and that speaks a lot in itself. Jim is a great worker and he writes lots of manuscripts on his ideas, and that is why this committee has recommended that if we study anything further in connection with the A. T. A., we should not forget the American Bar Association, because they are apt to wield a great influence in the next few years on title evidence in this country.

CHAIRMAN BRUCK: Very glad you mentioned that, Frank. As a matter of fact, Mr. Stewart, not to provoke an argument but simply to express my view on the matter, I am rather of the opinion that the life insurance companies may have some slight cause for complaint. It is true that, as you point out, in Texas you have difficulty, if not an impossibility, of establishing marketability of title. We may have difficulty in our locality, and that condition may also exist in some other states of the Union; but after all, I do feel that those who are charged with the responsibility of getting a proper evidence of title for the particular life insurance company or lending institution, are very much interested in having some uniformity of practice throughout the country and I think it is perfectly reasonable of them to ask that we give it. If for some reason we cannot give it, definitely and finally, that is one thing; but if we can, I think we should. I appreciate the fact that you cannot, in your locality, but that condition does not exist generally throughout the country, and I feel that these major lending institutions who do make requests of us—and, incidentally, I think most of them have been requests and not demands—we should give them our consideration, if we can do it safely and reasonably, and do it. So much for that.

Now, Mr. Kennedy, I very much agree with you in the thought that we continue the efforts of your particular committee and certainly, in collaboration with the committee of the American Bar Association. I shall so suggest to the President.

Term Insurance

MR. STEWART (Texas): There is one other thing I would like to bring out. One trouble that we have in the Texas form, and these other forms, is this, that you have a continuing liability. In fire insurance, for instance, you are constantly getting a new premium, but in the insurance title business we get one premium and that ends it. Now we are a responsible concern; A sells to B by warranty deed. Now then, some fly-by-night concern comes along and insures the title to B. B has a right of action over against A. A comes back against us and the loss falls on us, although we didn't get a cent when the property was transferred the second time. Now that is a menace to the title insurance business. I have seen the abstract business in various counties destroyed in that way. I have known many men in the abstract business; I know of no one who ever made any money in it. He may have thought for a while that he was making money, but as he speculated, bought lands when they were cheap or something of that kind, or there was a boom on, he may have made some money at that but he didn't make any money in the abstract business. Now, why? Because after awhile all of your titles are abstracted and then you get down to a mere supplemental basis of five dollars for a continuation. And that's not the worst part of it. If you in your plant,—and having been in business as our outfit has for seventy years—could be the only one in business, it would be all right, but here comes some fly-by-night —and we have plenty of these casualty companies down there—who rents himself an office, brings in a typewriter and starts making up supplemental abstracts. He needs no plant; all he has is to bring them up to date and he'll do that for $2.00 and we cannot, therefore, make any money out of the abstract business because of the curbstoners they are constantly talking about. And the same thing will happen with reference to title insurance. Some concern that is a casualty company, or some other kind of company, will go into the business of insuring titles, and these responsible companies, who have the responsibility of all the old titles, of the validity of the titles, the whole burden of it resting on them, will get no premiums worth talking about and, in the end, will be in the same fix the abstracter is in.

Now, for many years in Texas, we had a provision that when the insured sold a property that that policy died. What was the result? When the insured sold the property, the assignee, the purchaser, came to us and got a new policy and he paid the same price that the other fellow paid. We can't make any money on the first policy we issue because it requires too much examination and research. Our profit comes in the renewals. Well if, after awhile, the renewals get down to nothing, then there will be no profit in the business, and I don't want to stay in a business I can't make some money in.

MR. JOHN HENRY SMITH (Mo): Mr. Chairman, I have been attending these American Title Association conventions for a good many years, and it is the first time I have ever heard a talk like Frank Kennedy made this morning with reference to title policies. Now this is a very live subject and I think that the title men in this room are desirous, very much so, of staying in business. And I think we've got to get down to brass tacks if we are going to stay in business. In other words, I think you must stretch yourself on your responsibilities. We are not shirking any responsibility in our title company at all; we are not afraid of responsibility, and I think that a good many men in the title business are afraid of responsibility and, therefore, are not writing, maybe, L. I. C. form policies for that reason. Mr. Clayton, of the Metropolitan, made a statement here yesterday in his address that the life insurance companies are turning somewhat to lawyers' opinions and abstracts. Now I think that is a very serious question that we are confronted with. Now I believe you gentlemen all want to stay in business; at least we do, and I think that you do. Now we've got to do something if we are going to stay in business, to give the men in the lending institutions and the big life insurance companies the protection that they want. And I think we are perfectly safe in doing it.

And as I said in the beginning of these remarks, Mr. Kennedy's paper was the first I have ever heard of its kind, and he gave quotations from the different life insurance executives in reference to our policy. This morning I visited the Penn Mutual Life Insurance Company and talked to one of its officials and, quite naturally, talked about title insurance. He told me that he belonged to an association of twenty-two members and that they met in New York about every month, and that he was surprised to learn, in those meetings, that there was more or less talk of companies thinking about going back to the abstract and attorney's opinion way of doing business. Now I believe that is caused by the fact that there must be some members, some title company members in the American Title Association that will not take responsibility. I can't figure it out any other way. We are not afraid of it, and I think you gentlemen have got to come to the point of taking responsibility.

Now this Penn Mutual executive also said that there was some talk in that association meeting of his that there was some difficulty, whenever there was a loss, of title companies quibbling over losses. Now, I think you should bend over backward on a loss and if you have one, step right up and pay it. It's good business to pay a loss, instead of quibbling about it and having a law suit to settle the matter. So far as we are concerned— and I suppose there are many others of you who can say the same thing—our company has never been sued on a loss, by any life insurance company or any lender of money, because we do bend over backward, and if there is any question of doubt at all we take the loss.

CHAIRMAN BRUCK: Anybody else? Now the Secretary has prepared a very interesting set of subjects for discus-

sion. One of them rather appeals to me:—Is a uniform price schedule practical? I am going to ask Mr. Charlton Hall to give us his own observations on that question—Is a uniform price schedule practical?

Uniform Prices

MR. CHARLTON HALL (Seattle): In our state it is. In Washington we file a schedule with the Insurance Commissioner, and all of the title insurance companies have the same schedule, and it works fine. Our schedule of rates is printed and the customer comes in and wants to know how much a policy costs, and we simply show him the rating schedule and he accepts it, just the same as you do when you buy a fire policy. You don't ask how much it is going to cost; they quote you the rate, and that is the rate. Your office and all the others are all one-price houses, all we have to do is try and sell our services against our competitors', we have no price-cutting at all. It is a good plan.

CHAIRMAN BRUCK: Thank you. Any other comments on this subject? Mr. Landels, what do you think about the question of uniform prices?

MR. LANDELS: Well, I'm from San Francisco; Mr. Bruck is from Los Angeles.

CHAIRMAN BRUCK: Is that all you have to say?

MR. S. H. McKEE (Pittsburgh): Do you have any price-cutting in the way of commissions?

MR. CHARLTON HALL: It is unlawful to pay a commission. You go to jail if you pay a commission. That's in our Title Insurance code.

MR. LANDELS: I will make reply to your question, Mr. Bruck. In California we have been working for years to get state-wide uniform schedule of price, as Mr. Bruck knows. Our problem has been this: to draw the proper line between uniformity and appropriate accommodation to the public, and that is not an easy line to draw. If we get too uniform, then it happens in certain portions of the state that we are not satisfactorily meeting the local situation which may exist there and which may differ elsewhere. For example, the reason we have not been able to have entirely uniform rates in California has been primarily due to the fact that the manner of handling the closing differs in Northern as between Southern California, and that difference is due party to geography. Los Angeles County happens to be so very large that it isn't practicable for the title company to handle the closing of all the deals, the result being that a large number of the closings is handled by outside agencies in the outlying cities and counties; while in Northern California it is customary for the title companies in almost every deal, to handle the close for the customer. That has been the chief obstacle to the uniformity rate there.

However, during the last year we have adopted a new statewide code of practices which while the rates are not entirely uniform, does serve to help the situation. We find uniformity desirable for the reason that if we don't have uniformity in the state, then any agency doing business throughout the state will tend to adhere to the lowest rate and not the highest and you will have difficulty in maintaining the higher rate. But we have achieved a certain measure of uniformity, at least.

MR. W. H. WILLIAMS (New York): In New York State we have been talking some about uniform rates and I would like to ask Mr. Hall this question. When those uniform rates were established in your state, were they higher or lower than the old rates?

MR. CHARLTON HALL: Higher. Just in answer to that, I will say that our Insurance Commissioner, under whose supervision we operate, got all the title insurance representatives together and said that we had to agree on uniform rates, and he had to approve our schedule and as long as we had competitors in the field, we raised the rates. Since then we have raised them once more, with his approval.

MR. RATTIKIN (Fort Worth, Texas): Of course you know that in Texas we are under the supervision of the Insurance Board, and since the Insurance Act was passed, placing us under the supervision of the Board, we have, naturally, a uniform price. And that price has been much higher than the old price schedule. So I think that uniformity of price as it has been fixed by the Insurance Board has been the best thing that ever happened to the insurance companies in Texas. I believe that is the salvation of all your troubles in the other states: if you can get your Insurance Board, like Charlton Hall has, or like we have, to fix the rating. Of course, we have a method of procedure by which we can come to the Board, or any mortgage company can appear before the Board and ask for change in that rate and have a hearing on it. It is supposed to be a rate that is fair both to the title company and to the public. I think that is the thing that really helped us in putting the title insurance business on the map in Texas, and it would be a good thing if you could get uniformity in the other states.

MR. CHARLTON HALL: What did it do to the chiselers in your state?

MR. RATTIKIN: Well, it put the chiselers out of business. Of course, we still have that in abstracts; we haven't any uniformity in their rates. We do hope to work on that some day, but it certainly has raised the value of title insurance in Texas.

MR. JOHN C. ADAMS (Tenn.): I am sorry we don't seem to have any available data on this question of rates while we are talking on this point. Of course, we all know that the cost of running the business of title insurance, and so far as that is concerned, abstracts, where the company doesn't issue title insurance, has been greatly increased, during we'll say, the last few years. Now, for instance, in our state we have one tax alone, what we call a franchise tax, put on all corporations and of course it includes life insurance companies. Well, it costs our company $1,750 to pay that one tax. As you know, we've got about fifteen other taxes the corporation has to pay. And, as I say, I regret that we haven't any data available from the various companies as to whether they have found it necessary to readjust their rates in view of the increased cost of overhead, and if any of the companies represented here have found that to be necessary, Mr. Chairman, I would very much appreciate their remarks on the subject. It seems to me we are running along on old rates, at least I understand that is true of most of the companies. Now, so far as the titles are concerned, they don't care, they do want us to make some money out of our transactions if we can do it; what those institutions want is protection and we are going to have to give it to them, as Mr. Smith just said awhile ago. But I would like to get some data on that, if any of the companies represented here have found that to be necessary. We have found it to be necessary in Tennessee and I should like very much to know if any of the rest of them have, and how many of them are readjusting their rates upward to meet the increasing costs of overhead.

CHAIRMAN BRUCK: If there are any companies that have had the experience of increasing their prices lately, would they be good enough to notify Mr. Adams of the increase and the basis of the increase?

MR. MORTIMER SMITH: I merely wanted to ask, Mr. Bruck, in the states where the Insurance Commissioners are fixing the rates, whether the Commissioners are appointed or elected, and if elected, whether that could not become a boomerang at some time?

MR. RATTIKEN (Texas): Well, the Commissioners in Texas are appointed; three commissioners; and they, of course, fix our uniform policy and the rates that we charge. But they have hearings on those rates whenever they are requested to hold them. I think it is a very fine setup and one that is absolutely fair to both the public and to the title company. It also stops commissions and rebates, too. Of course, they forbid giving any commissions or rebates, and when you have an applicant to apply for a title policy you can quote him the rate just like you would anybody else. He gets used to that; he has your schedule, you furnish that to him, all the title companies have the same schedule, and the thing is to get the best service. And we think we give them protection. I think our policy is as good as L. I. C. or any other form of policy, and we protect them on it; although we don't guarantee marketability, we do give them protection and at reasonable rates, and we think it is both fair to the public and the title companies.

MR. SOUTHWORTH: How about special risks; do you cover them?

MR. RATTIKEN (Texas): Well, we are permitted to issue on certain risks, and if we want to take that responsibility, we can. We can't charge more for it; we are not permitted to do that. For instance, on a survey, we accept as to survey unless they furnish that to us, and they pay for the survey. And we guarantee the survey if they will furnish it by a responsible licensed surveyor and pay the fee for the survey.

MR. CHARLTON HALL: Mr. Bruck, in Washington we operate, as I said, under the Insurance Commissioner, and he has the authority to approve of our rating schedules. We make up those schedules ourselves, and he approves them. The last time that we raised our schedule, between three and four years ago, we had a protest filed with the Insurance Commissioner against the raise. The protest was filed by the State Counsel for the Home Owners Loan Corporation and a hearing was called, and we presented our figures and our rating schedule was approved.

MR. OTTO FROMKES (N. Y.): With regard to the uniformity of prices in New York State, I do want to say that there has been some legislation introduced for the past two years in the Assembly, giving the authority and power to the Superintendent of Insurance, to regulate these rates. The proposed power was this, that the Superintendent have the authority to go over the schedules of rates of each particular company, and if he found a company was operating at a compartive loss, that he would have authority to increase their rates.

Now, a very peculiar situation is taking place in New York City at the present time. A number of years ago we had title companies who supposedly incorporated under the Title Insurance law who were in the mortgage business. Since the Superintendent has divested them of that particular power, they have gone into the title business and some of these companies at the present time are producing rate schedules which are 50 per cent lower than the Board of Underwriters'. I think the Superintendent in our state should regulate the rates.

MR. JAMES E. BRINKERHOFF (Immediate Past-President Connecticut Title Association): Two or three years ago Jim Sheridan was in our state attending a meeting, which was also attended by a professor from the Yale Law School, which provoked a discussion as to whether or not it was advisable for our American Association to compile a digest of all of the laws. I don't mean the Statute laws of the various States, but the reported cases in our Supreme Courts reflecting on title insurance and abstracters liability. We come from an insurance State. We have heard this morning from Mr. Kennedy that he is going to prepare for us a new form of contract. I am wondering whether or not it would be an appropriate suggestion to make that each of the State Associations at some near time in the future, possibly the next annual meeting or later on, compile a digest of the reported decisions in our Supreme Courts throughout the United States that can again be compiled into a general booklet, which can be placed in the hands of all members of the Association. I think with that we will then be prepared to know where we are going in regard to our contracts on insurance liability.

CHAIRMAN BRUCK: I think that is an excellent suggestion. As a matter of fact, I believe some such work is currently under way and you will undoubtedly hear of it later on.

OPEN FORUM

CHAIRMAN DON PEABODY: We have on the schedule this morning a round table discussion. Have any of you a particular subject you are anxiou to have taken up for discussion? You will find on page 18 of the program a fine list of suggested subjects for discussion. There is one thing that I am personally very much interested in and that is the building of goodwill and publicity, the securing of local publicity. I would like very much to have some discussion on that, if some of you will tell us what you have done in the way of building up goodwill.

Advertising

MR. SMITH (Fla.): To start this off, we have engaged in a series of ads, one or two a week, in our daily papers and in each ad we impress or, rather, point out the value of a competent, licensed real estate lawyer. Later on in the ad we bear down on the fact that our examinations are all made by competent experienced title attorneys. Our town is small, it is true, but we use outside counsel, some fifteen or twenty of them, different law firms in town, and the result is that with the exception of the undesirable members of our Bar, all the lawyers are pulling for us, and certainly every real estate man in town is pulling for us.

Now another thing we are trying to do is beg these people to let us do their closing. We have educated some of the firms now to come in and we prepare a closing statement in advance and then the real estate firm comes in for the final closing with its own checks to cover all disbursements: then we exchange the money and the deal is closed.

MR. PORTER BRUCK: Following Mr. Smith's thought, I would like to call to your attention to a little bit of publicity we have done and found very satisfactory. We do exactly what Mr. Smith suggests, namely, run ads in the paper, advertising the value of the real estate broker in the transaction. The last ad we ran I think brought some two hundred responses in the form of letters from realty boards and other realtors in the county.

In addition to that, we have made a practice, in the past year, in conjunction with our competitors, of entertaining at a dinner and a trip through the plant, inviting every real estate board in Los Angeles County. There are some 28 boards and the total membership of the 28 boards is probably about four thousand. Although not all of those came to our dinner, we did have a total of approximately 2,500 people that we have entertained at dinner and taken through the plant.

In addition to the real estate people we have now started on the lawyers. There are several local organizations, in addition to the Los Angeles Bar Association, groups of lawyers, one particularly, known as the Lawyers' Club. The Lawyers' Club in some respects represents, shall I say, a determined group of lawyers and we felt it was well to cultivate them and show them what we have.

We had a dinner shortly before I left, at which some 260 people attended. We had eight Superior Court Judges and three or four of the Municipal Court Judges, and all of the officers of the Lawyers' Club, in addition to some two hundred of their members. It was a tremendous success, apparently. We have had any number of people comment on it; most of the lawyers thought they knew a little bit about it and found they didn't know quite as much about title insurance and how it is handled as they thought they did.

I commend that practice to you as being a very wholesome one and I think it is money well spent to entertain such groups of people, even at the expense of giving them a dinner. It is surprising what a free dinner will bring out.

MR. JOHN C. ADAMS (Tenn.): Are your examinations made by your staff attorneys only?

MR. BRUCK: Yes, sir.

MR. ADAMS: You don't handle any of your business by outside fee attorneys?

MR. BRUCK: No, sir.

Relations with Bar Associations

MR. ADAMS: I would like to ask somebody from California about that treaty, between the California Bar Association and the Title fraternity. Is that treaty actually signed up?

MR. BRUCK: Yes. I think Mr. Landels can give you more of the details on that than I can.

MR. LANDELS (California): The treaty which was entered into by the Title Association and the lawyers had as a precedent a similar treaty which had been entered into between the California Bankers Association and the lawyers.

About a year and a half ago, we heard that the Bar contemplated bringing a number of injunction suits, so we suggested the advisability of appointing joint committees, to see if we could work out an understanding. The

Bar appointed a committee of three, all distinguished members of the Bar, and we appointed a committee of three title men. That committee met and I would say held about five meetings and then formulated this agreement, or treaty, or declaration. In substance, it provides that the title companies agree not to prepare any instrument except in connection either with the handling of an escrow, or the issuance of a policy of title insurance. As part of an escrow, or in addition to the issuance of a policy of title insurance we may prepare the ordinary instruments of conveyance, such as deeds, mortgages, releases, re-conveyances and instruments of that character. We agree, however, not to prepare contracts nor agreements between the parties.

The distinction which we tried to establish and which I think is rather ambiguously established in the agreement is that it is not a proper function of the title company to prepare legal documents if its preparation involves either the giving of advice to the parties or the formulation of language with which to express a special understanding between the parties. But that we must, in order to conduct our business efficiently and to serve the public, prepare those instruments which are more or less standardized in form and the purpose of which are merely to effect a transaction already agreed to between the parties.

We of course agreed not to file any suits, except through regular members of the Bar; agreed under no circumstance whatever, to prepare wills, or trusts. And that is about the substance of the agreement.

MR. ADAMS (Tenn.): In other words, to keep your company out of the unlawful practice of law.

MR. LANDELS: Well, that is almost correct but not quite. We handle the entire closing there. We prepare the escrow instructions, and we prepare the instruments of conveyance which are used to carry out the deal. We do not prepare wills, trusts or contracts. We never had as a matter of fact.

MR. ADAMS: Well, you are not in the practice of law, proper. You prepare the instruments on which you base the policy, the deed or the trust deed.

MR. LANDELS: Yes.

MR. ADAMS: Was that signed by the State Bar Association?

MR. LANDELS: Well, everybody assumes it was signed. It so happens there were no signatures put to it. It is in force; it has been agreed to by the respective organizations and has worked out satisfactorily. We have had no complaints whatever so far under the agreement.

MR. SMITH: In the defense of a title. do you use staff attorneys or outside retained attorneys?

MR. LANDELS: The practice of the companies differs. I think Mr. Bruck's company in ordinary routine matters employs their staff attorneys. if it is a case involving an extensive trial, they would employ outside counsel in addition; and I think that is probably pretty generally the practice throughout the State. In most litigated matters most companies employ either retained lawyers or outside attorneys.

MR. SMITH: Only where the company is a party?

MR. LANDELS: Yes.

MR. SMITH: And only in defense of a title, or matter of that kind?

MR. LANDELS: Yes, of course if the title has to be cleared, then it is up to the owner to bring the suit and employ his own attorney. When the title company is the defendant, the company might use its staff attorney or employ outside attorneys, depending upon the circumstances of the case. Ordinarily, they would employ outside attorneys, because their staff attorneys are generally not equipped to handle that class of work.

Florida Experiences

CHAIRMAN PEABODY: I want to say that you will find, in every town of any size, that the realty board has a column in the newspaper; and you will be very much surprised, if you offer that editor an article on abstracts or title insurance, how readily he will receive it. It is quite a job to publish that paper every week or every day, and they are very glad to have this copy. We had a very pleasant experience in Miami, when the Secretary of the Real Estate Board, after I had run several articles, himself wrote an article on abstracts for the paper.

Following this thought just expressed here, in Florida we have a Title Examiners Section of the State Association. That was done with the idea of having close co-operation between the lawyer and the abstracter. I am going to ask Mr. Robin of Tampa to give us our experience with the Bar Association and the Abstracters on this unauthorized practice of law business.

MR. P. R. ROBIN (Fla.): Several of our companies in the state about three years ago had suits filed against them by the various county bars for the unlawful practice of law and in order to get these suits dismissed and get some sort of agreement between the members of the bar as to what we may do in connection with our title services, we asked the Bar Association to appoint a committee, which they did, a committee of three, similar to that in California, and the Title Association also appointed a committee of three members.

They had five joint sessions and, although we haven't anything in writing as to an agreement, all of the suits then pending were dismissed, and the arrangement in Florida today, so far as I know, is very satisfactory. We have in every instance co-operated with the attorneys and the attorney is co-operating with us.

MR. ADAMS (Tenn.): What do you do about drafting of papers where you are issuing a policy on a deed?

MR. ROBIN: Several companies in the State of Florida who have their own attorneys or examiners in their own companies are permitted to draw the form instruments, such as an ordinary warranty deed or mortgage, in connection with a title insurance transaction.

MR. ADAMS: You mean the staff attorney?

MR. ROBIN: Yes, sir. They are permitted to do that; but where the instrument is of a difficult nature and requires special attention and work, such as trusts, wills and other things, we don't touch it. In our county we let the attorney draw their own papers in any transaction.

Abstracters Section

MR. R. G. WILLIAMS

Watertown, S. D., Presiding

OPEN FORUM

Abstracter's Insurance

MR. GLADE R. KIRKPATRICK (Tulsa, Okla.): I tried to find out the different contracts Lloyds write over the country, and see which contract was similar to this. I find that all the brokerage houses in the country have a policy that is almost word for word identical with this. And to be real frank about it, I did not know before that the brokerage houses, where you go down and play the Board, and gamble your money, carried that sort of liability policy, but they do. Their policy is almost identical with this, but they don't advertise it. Let us refer directly to one of the terms of the policy. It provides that if any loss occurs under the policy, the adjuster may set a period of sixty days to determine the loss, and then at the end of sixty days it shall be paid. And on all the policies I have investigated around here that sixty-day clause is in there. I have never yet found one adjuster that would settle a loss before the sixty-day period had run.

Of course your adjuster is in a position where his record is the only thing that keeps him on the payroll as an adjuster with any insurance carrier. In other words, if he should consistently pay before the sixty-day period, the company might feel he is paying his claim too quickly, and that they are taking losses that they should not take.

Are there any questions that any of you want to ask me concerning this matter? I will attempt to answer them.

Rates for Insurance

MR. CARDON: What are the rates charged?

MR. KIRKPATRICK: The rates are dependent on the result of the application at the time they turn it in, with a minimum of $30, I believe. I am

not sure about the rates. But you have your application here. Then they take your measure of loss that you have over the operating period covered by this application, and take a certain percentage of that in arriving at your premium.

MR. CARDON: Is it based to any extent upon the size of your account or volume of your business?

MR. KIRKPATRICK: It is based primarily on the volume of business, together with the ratio of loss that you have shown in your past experience; and the number of employees that you have in your company enter into it, and is one of your prime factors. Of course that goes into the ultimate rate. Your premium would vary. I believe it is a minimum of $30.

MR. CARDON: What I was trying to get was just exactly what that would cost or approximately what it would cost.

MR. KIRKPATRICK: I wrote Mr. Crawford for that, and he told me if I would fill out an application he would give me a definite answer on what my particular policy would cost. He gave me a sort of general guess on how it would be based. I imagine for the average company it would run somewhere between $30 and $75. Do any of you know the definite rate?

MR. A. J. ARNOT (Bismarck, N. D.): I had one for $20,000 which cost me $50; $5 for each $1,000—$5 for each additional employee.

MR. CARDON: Have you had any loss?

MR. ARNOT: No; in fact I have only had two losses in 20 years.

MR. MELVIN JOSEPHSON (Boone, Iowa): Do you happen to know what their attitude might be toward losses in the event they were not licensed to do business within the state; and is it necessary, to sue them, to go to New York, London, or elsewhere?

MR. KIRKPATRICK: Their attorneys and adjuster tell me, from their standpoint, which makes no difference—however, I talked to one of their attorneys from Kansas City and I talked to one in Oklahoma City—they all tell me frankly in case you had to sue you would have to go to London to sue them.

They are domesticated to a limited extent in Illinois. But I find out that the Illinois domestication is domestic in that they cover certain lines of business.

I addressed an inquiry to the Insurance Commissioner up there some three months ago. At the time I left the office I did not have his answer to it—asking them what line of business they had domestic in Illinois. I do understand from hearsay only, from the Chicago people, that they are forming a domestic company, and that they intend to domesticate it in Illinois. Just how far that will go and whether it will take this particular line of indemnity I don't know.

Suit in London

MR. ARNOT: I might add for your information I found out when your policy is written in London, signed in London and dated and everything else, you have to go there if you want to sue. You have to depend on their good will toward the customer.

MR. WARREN R. HICKOX (Kankakee, Ill.): We took out a policy of $5,000 to $10,000 and it cost us about $85. They are incorporated in Illinois. You can sue them in the State of Illinois. Outside of that, as you say, you have to go to London to sue them. You figure out the number of your employees and the gross amount of business you do, percentage of loss for five years last past.

MR. ARNOT: That is a separate corporation, I might say, for Illinois. I investigated that with the Illinois Insurance Commissioner. Anything written outside of Illinois does not apply.

MR. KIRKPATRICK: That is what the gentleman from Kansas City told me, and it was sent to London, and you have to sue them in London.

THE CHAIRMAN: Do you want to take any action on this matter? Mr. Kirkpatrick has given a lot of time and study to it. Do you want to just drop it, or discharge the Committee? Or what would be the pleasure of the meeting?

MR. O. W. GILBART (St. Petersburg, Fla.): Mr. Chairman, from what the gentleman says it would appear like a very unsatisfactory kind of policy for us, for two reasons. First of all, it takes sixty days to satisfy an irritated, agitated, irked customer who comes in to you for restitution and some kind of settlement. You try your best to satisfy him and you put him off sixty days. In the meantime he is getting hot under the collar all the time and going around all over town not doing you a lot of good. It takes too long to make a settlement. Second, if the company took a notion not to settle, there is only one place in the United States that you can sue them or you must go to London.

The most practical manner of handling the situation would be to set up a reserve in your own office for any mistakes you might make, and if a customer comes in, and if you are in the wrong and have made a mistake, you get more good will and more advertising out of the matter by settlement with him promptly, and make him go out of your office feeling that he got what is justly and rightfully his. And you have a booster instead of a knocker.

This proposition here, I think, is wholly unsatisfactory, if you are going to build good will and have better advertising for your company and for yourself as an abstracter. You can't let people wait sixty days to settle if they are irritated and you are wrong.

THE CHAIRMAN: Do you want to put that in the form of a motion?

Motion as to Abstracter's Insurance

MR. HICKOX: To get it before the meeting I will put it in the form of a motion. I think it is useless. There is no use spending your money for anything like that. I make that in the form of a motion, Mr. Chairman.

THE CHAIRMAN: Is there a second to that motion?

MR. KIRKPATRICK: I will say something now, Mr. Chairman. In Oklahoma we are liable for loss. The thing that confronts us down there, in case of a loss is that each day of delay, the damages continue to grow. The only value that I would look at on the policy, myself, the only consideration I give to it as protection to my company is to cover a lost of $5,000 or over. With a loss that big I would like to have that protection.

MR. CARDON: Mr. Chairman, I would like to see something worked out where the excess liability could be handled on a proper contract. I don't think any of us object to paying our small losses. Small means a loss of $5. There are larger losses than that. There are $100 and $200 losses. In most instances we can take care of those. But from what I know of abstracters there are not very many of us that can take care of an $8,000 or $10,000 loss.

I would like to see the Committee continue its efforts to obtain some sort of plan to protect us on those losses. Whether it is $1 or $5 or $2,500 is immaterial. I personally would like to see the Committee commended for its efforts so far and continue the efforts to obtain the policy that is satisfactory to the abstracters for the larger losses.

MR. GILBART: The points of the two gentlemen are well taken. When I spoke a moment ago, I had reference to smaller losses. I see what they are driving at, and their point is absolutely correct. The Committee should be commended for their efforts, and I would like to amend my resolution, that they be continued, looking towards some kind of indemnity or protection on the larger losses. But the smaller ones, you get a whole lot further, by taking care of them.

MR. CARDON: I will second that motion.

THE CHAIRMAN: You have heard the motion. Is there any discussion? All in favor of the motion will signify by saying "aye."

VOICES: "Aye."

THE CHAIRMAN: Contrary; it is carried.

MR. SHERIDAN: In the first place, I would like to say that the advertising that is on the tables is there to take home. We would particularly like to see officers of State associations ship it home, then put it on Beaver Board and show it at their conventions.

I send out bulletins once in awhile. You know pretty well what is going on, but there are one or two things that I think might be touched on that won't appear so fully in the bulletins that will go out or in the records.

We probably face some legislation of a radical character; not only our business but every business. We seem to be in a era of attack against anything

that is legitimate (and we consider ourselves legitimate operators). We have the probability of state control of our business in any one of fifteen or twenty jurisdictions, and that possibly may increase in the next session of the legislatures of the respective states.

Illinois Activities

In Illinois, to protect the State of Illinois, and with no particular consideration to other states excepting insofar as the effect on other states that passage of legislation in Illinois might have, they faced a fight in the last session of the Legislature which forced the delivery into Springfield, week after week, for ten to twelve weeks, of all the way from four up to twelve men constantly being called into Springfield to kill this, that or the other thing inimical to our interests. Those men went on to Springfield at their own expense. It seems so unfair that they decided to raise the President's fund, the President's war chest for the State Association. And at the Peoria Convention just held, with 20 per cent of the delegations having gone home, and with probably another 15 per cent not there at all, they raised $2,550, and doubtless will have pledges for another additional $1,000. They hope to have a war chest of $10,000 in Illinois.

Iowa

In Iowa they are working on an abstracter's license law. A special committee has been appointed to submit that at a special meeting of the Iowa Title Association and to deliver that on the statute books. They have gone into it will full knowledge that it will cost a lot of money. Unless they raise $3,500 they will present no bill. That is the belief they have as to the cost of putting such a bill on the statute books. Of that $3,500 some $1,500 was raised in the last few hours of the last morning of the convention held in Des Moines some two weeks ago.

Wisconsin

We have a deporable situation in Wisconsin. I am not here to argue that a license law is good or is bad. But I do want to say this to you. The Indiana Title Association was wrecked, veritably wrecked some ten or twelve years ago by the fact that the abstract people of Indiana were not of one mind. Notwithstanding that fact a license law bill was presented to the Legislature. The bill itself was slaughtered by our own people of Indiana. Bad blood was created. There were wholesale resignations from the State Associations. That continued for some six years I believe. And only in the last few years has the situation in Indiana been improved.

Now we have a repetition, as I get it, of the picture in Wisconsin. At their Oshkosh convention a bill was drawn, was considered, perhaps somewhat hastily, but nevertheless it was considered and it was presented to the Legislature of Wisconsin. The bill was killed by our own people.

Now, what can be more absurd than that situation? I am not discussing the propriety or impropriety of the bill as drafted. I point out though that we were not of one mind when the bill went in. So if you are going to do that (and I think you will have to give very serious thought to whether you will or will not, in your own jurisdictions, write license law bills and bonding bills). Consider all those points and then attempt to get behind your bill, all the title people of your own state.

Land Title Assuring Agencies

The American Title Association subsidized a book written by Daniel B. Gage. I want to touch on it just one-half minute. It is well worth the $1.50 that it cost to buy it. I would like to see every member of the Association get a copy of it not only for himself but tell the juniors in his organization it is procurable and let them buy a copy. You might consider buying a copy if you have read it and give it out. It states facts about abstracting companies and about abstracters who operate as individuals and about title insurance companies. But it is a fair discussion of our business and it is well worth having in our libraries. You can get it from the Recorder Priting and Publishing Company, of San Francisco, for $1.50.

Central Housing Committee

In Washington there is that organization that we know as the Central Housing Committee. From it there may come a drafting of a Torrens Bill (and I speak in the belief that I am 99 per cent correct in that statement), which will attempt to place the faith and the credit of the State behind the Torrens title certificate rather than to force a plan to proceed against the indemnity fund.

I speak somewhat facetiously about it but it is something to consider. Keep in touch with your members of the Legislature and prepare yourselves because it looks like trouble is coming. We must protect ourselves on it.

Abstracter's License Law

MR. WILLIAM GILL: I would like to add one thought in connection with what Jim Sheridan said. He did not go into detail as much perhaps as he could. We do know that there has been drafted a national Torrens Act. There is a gentleman here from Washington at this Convention today who told some of us, that for the past two months he had been working on the National Torrens Act. He is a representative of the Central Committee composed of some eight or ten governmental agencies. He asked this question that I asked the abstracters. It is two weeks ago since I was down there. Down in Texas you have no regulation of any kind governing abstracts. A man in the blacksmith business today can say tomorrow, "I am an abstracter." He can go out and make abstracts. His abstracts are acceptable by those who do not know the difference between responsible abstracters and some other kind. His name on the certificate is worth no more than his name on a promissory note. He may go out of the abstract business in ten days or two weeks' time and a new corporation come into the business. That condition is true. And we have other states in the Union.

Now, what is the argument going to be against the Torrens system where you have that kind of condition existing in your city? I say to you frankly, and you agree with me, that a Torrens certificate would give more protection to the public in the state where every person in the world can go into business whenever they please and can go out of business whenever they please. Don't ever think that the Torrens system doesn't have a public appeal. It does.

In those states where you have no regulations of any kind I wonder what your argument is going to be on the revised system or some new system of title insurance, compared with what you are giving the public at this time.

Wisconsin

Opposition to Abstracters License Law

MR. JOHN T. KENNEY, Madison, Wis.): Mr. Chairman, if I may be permitted I would like to say a few words in opposition to the idea of license and bonding laws for our business.

The paper is mistaken about the law of Wisconsin. An effort was made, very foolishly, to pass a license and regulation law in that state of a very drastic character, similar to that of a few other foolhardy states who have passed such a law. I did not pay any attention to it in the beginning. I did not happen to be at the convention, and it was one of the few that I ever missed. I received no notice that it was coming up. They proceeded to have a committee appointed to prepare a law, which they did prepare. Now that law provided, first, that three men should be appointed to regulate abstracters' business in the state absolutely and completely. Briefly stated they would have the right to take charge of the whole thing in the entire state and make all sorts of regulations as to price and responsibility and everything else. When that came to my attention just before the Legislature met, I thought maybe it ought to be repealed. And I found some surprising things. Now I say that in a few states that this also provided for a bond which was not a bond, continuing the same liability as before but imposing a wholly new and different liability.

Contract Liability

In those states where they have this bonding law the courts have held that they are absolutely responsible for any mistake, anyone and at any time practically. Why should the abstracter be put outside of the general law as laid down in Wisconsin and some of the other states, be explicitedly laid down in Wisconsin and approved by the Supreme Court, that an abstracter, like

every other business and professional man, is liable where he has been employed and where he has made a mistake and subjected his customer to damage. In other words, he is not liable, and why should he be to anybody except to those with whom he has privity of contract? In other words, the lawyer gives an erroneous opinion. Well now, his client who paid him for a correct opinion can sue him and has a right to sue him and collect damages. But suppose somebody else that happens to get hold of this opinion or knows about it should erroneously proceed as he thinks perhaps he has a right to proceed under it and should get in wrong. Why should he have a right to sue that lawyer?

There is no sense in the world to give him any right to sue a lawyer for a mistake for which he had nothing to do, a gratuitous service that he mistakingly interpreted and used.

A doctor, for instance, causes damage to his patient because of erroneous treatment of the surgeon or anybody else, and he is sued for damages; and they are sued every day. But if somebody else sues him because they think they know something about it, for any reason, and never paid him for any service, never received any service, why should they have, for any reason, a right to sue him? In other words, the general law is in regard to all professional business that if they have caused damages to somebody with whom they have had contractual relations they are liable, otherwise not.

Why should the abstracter be put outside of the pale of the other men? Why should he be treated differently from all other professional and business men? I know of no reason. Of course I know this is a fact. All of you perhaps have noticed it. Examining attorneys frequently, and insurance companies and people who handle abstracts would like to have us give them an insurance policy that we will stand back of our abstracts under all circumstances and at all times and against everybody who is damaged on account of it. Why should abstracters be placed in a category outside of that of other men and be held responsible in a different and further way?

I don't see why we should. In Wisconsin some of us got together and we defeated the bill.

I think it is time that the abstracters stand out and hold up their heads and say we are willing to stand for anything that is right and fair, but we shall not ask for or accept legislation that is wholly unfair or unjust.

Now they say that abstracters should give a bond not only to protect anybody, anywhere, any time who happen to get hold of our abstract, no matter how, but also to protect the public record.

Use of the Records

Now, in Wisconsin and in a good many other states the statute provides that everybody must be permitted, freely and under reasonable regulation, to use all the public records and all the public offices. Why shouldn't they be? Anybody, no matter what he knows, can go in there and use the records.

An attempt was made in the State in the early days to change that rule. A register of deeds in the County of Green Lake, Wis., was an abstracter and he did not like to have abstracters coming in there in competition with him and so he shut out the abstracters. And they went to the Supreme Court on the subject and the Supreme Court of Wisconsin held, that under proper regulation nobody can be refused permission to examine the records regardless of whether it refers to his own title or somebody else's title.

There is also a statute in Wisconsin which provides that any public official who refuses to let anybody freely use the records under proper circumstances and care is subject to a penalty of $5 a day for that refusal.

Now, everybody else can come in and use the records, no matter if he knows anything about them or not.

Under the license laws that they have in only a few states, similar to the proposed Wisconsin law, the courts have held, that abstracters are under a special liability; that they will make good for mistakes. The ordinary rule is that nobody is responsible for negligence unless it is something that he ought not to have done or guard against by reasonable care, and prudent care. Nobody else is responsible for anything more than that. Lawyers or doctors or business men, no matter who they are, are required to exercise only reasonable care. There are none, however, that are required to do any more; and especially required to furnish a bond to do more.

It is absurd to call upon abstracters to furnish a bond to do something of that kind that should not be required and is not required to do under the general laws of the United States and of practically every state in the Union.

The abstracters have just simply gone ahead, and in those states where they have gotten this sort of law, have simply been egged on by examiners; in some cases, who would like to have the abstracters fully responsible and so completely at their mercy that he does not dare to refuse anything they ask.

I am very sorry to disagree with some of our people in Wisconsin and apparently with some of the people throughout the country. I think we ought to get down to brass tacks with this thing and consider simply and fairly what we are doing.

Abstracters and the Torrens Law

I am not afraid of the Torrens law in particular. I happened to be in the Ohio Legislature some forty years ago when that question was before us there. The first state that passed the law in the Union was Illinois. I was just a young lawyer beginning to practice. One thing I do not like to do is examine abstracts. It is tedious. I didn't like to do it. I saw they had their law in Illinois to do away with abstracts. I said let us do away with it in Ohio. In the next Legislature I happened to go down as a member. In the meantime, however, the Supreme Court of Illinois had held that the law was unconstitutional. The first question that came before us was how should we amend that law or should we repeal it. And the law office thought we ought not to amend the law. I will confess very unwisely I was one of them to do it. But on the judiciary committee it was referred to the subcommittee to consider the proper amendment. We spent about three months on that subject, the subcommittee. And we finally came to the conclusion that the Torrens law is a wholly foreign kind of law that cannot be made constitutional under the Constitution of the United States or of any other state.

There is no actual Torrens law in operation in any state in the Union today. The law they have in Illinois and a few other states (and most of them are not using it, and Illinois in only one county), the law they have is not the Torrens law at all. It is a completely different law which requires a great many other things and has all the main features of the Torrens law.

As a Canadian lawyer said, addressing a Bar Association in the States, some years ago, when asked about this, if they had it in Canada said, they have no written constitution in Canada or Great Britain, he said, "Under our constitution when the country decides your land belongs to another man he is not injured. You have no recourse." I said, "We wouldn't like it. He don't like it. And we went through the Revolution to change it." He said, "That is the law in Canada and in Great Britain."

Open Forum—Abstract Section

THE CHAIRMAN: This is your meeting and the Chairman will just turn it over to you. I just ask you to limit all your talks to five minutes or less, if you can. We can cover a lot more ground if you do that.

Colorado and the Abstracters Law

MR. FROST: The situation this morning seemed to have turned largely on the question of the general principle of the laws regulating abstract companies. I want to say, first, that the abstract situation in Colorado, and the general feeling among abstracters, years ago, was very much as was expressed by the gentleman from Wisconsin.

In other words, I think that, generally speaking, the abstracters were opposed to any form of regulation in Colorado. Gradually it became apparent to a great many of the abstracters that some form of regulation would have to come about in Colorado. And in 1929 the law was passed, without any serious opposition, creating an Abstracter's Board of Examiners, and also provided that the abstracting companies should give a bond in a surety company, and other regulatory features

—but a comparatively mild regulatory act.

It does, however, change the common law rule. Under the common law the abstracter was only liable to someone who had contractual relations with him. That law is well set forth in a recent Arizona case which is reported in the Pacific Reporter. I can't recall the name of the case. But it goes into the history of the law on that subject in much detail. There were four exceptions to the general rule, and the tendency of the courts has been to establish a sort of rule like this applying to abstracters.

You all know that in the case of a warranty deed, the warranty deed runs with the title. That is no new principle in the law. And the idea of the courts, to avoid hardship, seems to try to bring about a situation more or less like that in regard to an abstract of title. That is to say, not only the man who orders the abstract and pays for it has a right of action against the abstracter but also subsequent persons who acquire that abstract. That is not the common law, but the tendency of the courts for a great many years has been in that direction. One way they get around it, if a man, we will say, somewhere down the line, is injured by an omission in an abstract years before, under the common law he would have to sue the grantor, and so on, back until they got back to the fellow that actually got the abstract, then he could sue the abstract company. So it has been the first rule about persons, for anyone to get relief under the common law, to bring himself within any of the four recognized exceptions. That has been the reason, presumably, why some five or six states have created a new type of liability by requiring an abstract company to give a bond, and under the present bond anyone entitled to rely upon that abstract has a right against the abstract company for negligence in making the abstract, either omission or commission.

Mining Claims

Now, that law went into effect in Colorado in July, 1929. I suppose, without any question, I have the worst situation in Teller County than exists anywhere in the world,barring none. I think the law has worked well. I think it has worked remarkably well in Colorado. I think the law will work well in any state. To give you some idea of the difficulty in Teller County—that was the last of the great mining districts discovered in the world, in our part of the world, anyway. And starting in 1891 there was a tremendous influx of people into the region which is now known as Cripple Creek mining district. There were thousands and thousands of mining claims which were laid out and a great many thousands of them were patented. And in an area which comprises the district, as we know it today, property of about 4500 acres, 4300 let us call it, there are about 3,000 mining claims which criss-cross in every conceivable direction. There are no limits as to the names. There were 110 Last Chances located in that district during that period. 110 Last Chance mines called by that name and located by that name in that district. There are some 75 Eureka Lodes. Twelve of the Last Chance Lodes went to patent. I think some 14 Eureka, Sunrise, Sunset, Morning Star, and Little Mill, names like that. There is an enormous amount of claims under the same name. In due time when those are surveyed and patented each one has a separate survey number. But even with that the indexing of the claims is a tremendous task.

In 1899 while the boom was at its heighth they created Teller County; cut out El Paso County and Fremont County; but the records were never transcribed. Anyone examining the records may have to go to three places to see the records. When this boom came on, of course all the blacksmiths that thought they were abstracters or real estate men, took a hand in it. In all there were 18 or 20 different concerns or companies that undertook to make abstracts beside a great number of private individuals. So you can imagine what sort of situation those abstracts presented; every kind and character and description of what a man thought an abstract should contain.

Analyzing the situation, of the old abstract companies, around 1909 or 1910 I became involved in some mining litigation which required an immense amount of litigation of the records. I found out that the old abstract companies had an average— different companies varied say from five to ten intruments; a hundred missing, about as many more than that so badly abstracted that they were misleading. And there was only one set of abstract books of mining claims of all of them that were any good. So that will give you some idea of the complex situation in Teller County; with the claims overlapping in every direction; innumerable names of claims alike; and the records distributed over three different counties; and the old abstracts all in such bad shape that you have no idea in the world what you are going to find when you start to look over them.

As I was saying a while ago, I had more problems to submit to the Abstracters Board in Colorado than all of the other abstracters put together because I seemed to have gotten all the different problems all rolled into one county there. The theory and practice in Colorado has done wonders for abstracting and it has worked wonderfully well.

However much I am opposed in theory to legislative interference in public matters, and that is my theory, and however much I agree with the gentleman from Wisconsin, as a matter of pure theory I want to say that in Colorado the Abstracter's Act has worked wonderfully well in actual practice.

Benefits of Abstracters Laws

MR. J. K. PAYTON (Springfield, Ill.): Can you tell us in a few words what benefit you have derived from this law?

MR. FROST: In the first place, it has crystalized the practice of abstracting, and that has of course taken place over a period of time, so as to bring about, to a great extent, uniformity in practice in making up abstracts. That is not complete as yet. But in the different counties and different parts of the state the ideas of the former abstracters have been so diverse that you would hardly know what to expect to find in an abstract, we will say, from San Miguel County or some other mining district. And even in the same district different abstracters have followed such different practices that you hardly knew what to expect.

At the time the mining was most active the practice was very largely for attorneys, after they got the abstracts, to go to check it up with the records, look for additional instruments, and then examine every instrument. The practice in Colorado has been to crystalize the method of making abstracts, so that now most of them compare very well with the decision in the Colorado Court of Appeals. That, so far as I know, is the only decision in the United States as to what an abstract should actually contain. That decision also sets forth that it is the duty, when any man sells a piece of property, for the vendor to furnish the vendee with an abstract of title. In other words, that is implied in every contract in Colorado, that the vendor will furnish the vendee an abstract of title. It sets forth in very clear and concise language exactly what an abstract should contain.

Then it has had the effect of causing abstract companies, where there were several in one county, and not enough business for one, to consolidate, and in that way has raised the standard of abstracting throughout the state.

It has also given people so much more confidence in abstracts that now instead of a man, when he gets an abstract of title, immediately hiring an attorney to run down the records, he is willing to accept the abstract of title in most counties. In other words, the person who formerly went to a lawyer for examining titles, and by that I don't mean just examination, I mean that they would go to the records and spend days and days of work on some of these mining titles; that now the abstracts are in sufficiently good shape so that generally all the man has to bring in is his abstract to the attorney, and the abstract attorney can examine that abstract, without having to go to the records. That is the second advantage.

Another advantage is the fact that people would buy property, having so much greater confidence in the titles. I think that underlying advantage is perhaps the greatest of the three, the

confidence which is given the people in the abstracts and indirectly in the titles.

MR.PAYTON: What I am getting at, couldn't you cope with all the competition that you have and sell your product to the people in spite of your curbstoners?

Abstracters Bonds

MR. FROST: No. All of the other companies soon went out of existence because they couldn't get surety bonds without having reliable books. That has driven the curbstoners out, because they not only have to have a set of books, under the law, but they have to be able to satisfy the surety company that they have a standing, and that their books have a standing from which reliable and accurate abstracts can be made.

There has been no trouble in getting bonds from surety companies providing you have got a reasonably good personal reputation and have a good set of books.

MR.KENNEY: Don't you have to furnish them indemnity.

MR. FROST: No, sir. Generally speaking, the surety companies are sufficiently satisfied with the standing of the abstract companies so that they accept our application without requiring any counter indemnity.

MR. KENNEY: What do you have to pay for that bond per thousand?

MR. FROST: In all of the smaller counties it is twenty-five dollars a year. It is well worth the money. People are satisfied that there is going to be a surety company standing behind the abstract.

Utah Abstracters Bill

MR. CARDON: I was Chairman of the Utah Title Association. We were one of those groups that wanted a licensing law because our former law was not working satisfactorily. We investigated very thoroughly the Colorado law. We went up to a number of gentlemen in Colorado and got copies of their act and their impression of it. The same thing in connection with the Montana law. And in the course of time I got a copy of the law that was proposed.

I can say this to the gentleman from Wisconsin who was here this morning, I don't blame him for fighting that bill because, in my opinion, it was just a little bit too strong for him. I don't say that with any feeling of animosity towards the other fellows, but I am inclined to think that had I been in Wisconsin I would have seriously questioned that particular bill too because I think it did go a little bit further than we want our legislation to go. I think the State of Colorado has a very excellent bill. I think Montana has an excellent law. We hope our Utah law will be as successful as they have worked in Montana and Colorado. Since the act was placed in effect in the State of Montana the surety companies have had no losses on their abstract bonds, I understand, and that they are more ready and willing to issue licenses in Montana today than they ever have been before because they know that an abstracter who qualifies under the Board of Examiners is going to be careful, and is going to be properly qualified to do his work.

The main reason we wanted the law in Utah was because the former requirement was merely that a man file a $10,000 bond and he got a license from the Board of County Commissioners. No examination, qualifications or anything else was required.

MR. KENNEY: Did you have to have a set of books?

MR. CARDON: No. Less than a year ago the Chief Deputy Coroner of our county was fired because of his inefficiency. He goes out and gets a bond and makes application to the County Commissioners for a license. That license would have been granted because of politics, he being of the same political party and a friend of the three County Commissioners. We had our bill enacted and made retroactive to January 1st.

MR. PAYTON: Does the bill give the State authority to regulate your charges?

MR. CARDON: No. The sole authority is given to the Board. The Board of Commissioners, incidentally, must be of good standing among the abstracters. I mean they must be licensed and active abstracters. They can't go out and make political jobs out of them solely on a political basis. They must have been abstracters for five years before being issued a license. On the 11th and 12th of this month every abstracter in the State of Utah was called to Salt Lake City and given a rather thorough examination on their knowledge of the technique of abstracting and their ability. Then in addition there is a bond under our old act. We were required to give a $10,000 bond in all counties. At the present time the smaller counties have a $5,000 requirement and the larger counties still have the $10,000 bond. And we were informed by the American Surety Company, who also write bonds in Montana, that they would be very glad to co-operate with us to see that every abstracter in the State of Utah was bonded in a Utah company at a fee of $25 for the $5,000 bonds and $50 for the $10,000 bond.

I am quite sure that the Utah law is going to mean the actual working of a proper state association, and enable us to get somewhere. There are things that we have got to work out. There are some things we still want to do. There are some things we want to eliminate. It is not perfect by any means. But we feel it has gone a step further in the title business in our state. You see, they are required to have five years' experience.

MR. KENNEDY: How about the applicants?

MR. CARDON: That is left to the Commissioners what experience they shall have. They are given rather broad powers that way.

Benefits in Colorado

MR. DYSON ROBERTS (Sterling, Colo.): Mr. Chairman, these gentlemen asked what good did the law do. I might relate my own experiences.

When I went to Colorado and started in the abstract business there were two curbstoners and two companies with books. There wasn't enough business really for one. Finally one of them dropped out, one of the curbstones dropped out, and the other curbstoner got in trouble with the Federal Land Bank and went to Leavenworth, and that left the two companies with the books and they consolidated. About that time we passed our abstracters' bill. I couldn't say that I was really in favor of it, but I was for it because I thought it would help our business and it proved to help us at the very time when a curbstoner went to Leavenworth.

When he went to Leavenworth we had an old fellow there. He had been a judge of our county court. He never knew anything and he never will. He was going to start in the business; and he advertised that he would make an abstract, "awful careful" and all that. And he couldn't draw a warranty deed and draw it right. It just so happened our abstracter's bill had been passed but it hadn't gone into effect. He tried to do business for about a month. As soon as he found out that he had to be licensed, why, he dropped out.

Another thing, the Federal Land Bank demanded copies of court decisions. And the Clerk of the District Court was going to prevent me from getting those proceedings. He didn't know what he was talking about. He He said the court didn't have to pay any attention to the statutes. He looked it up a little bit. He said too much has been said already. If it had not been for that bill it would have taken from me several hundred dollars a year business along that line. It might have been that I could go into court and beat him. I didn't have to go into court at all. What I did was to show him the statute.

MR. PAYTON: Whenever they license you they got absolute control over you. They fix your rates and everything else.

MR. ROBERTS: No, we don't in Colorado. The statute provides that we pass an examination. It says nothing about regulating our fees or forms used or anything else. We are just getting together on that.

When I went to Colorado the fees were $5, or $1 for the first five entries, $2 for the certificate, and a free certificate in the next 30 days. The average fee in Colorado now is $5 a certificate and $1.50 an entry. I don't get it myself, but we will before long.

Opposition from Indiana

MR. HIRAM BROWN (Indianapolis, Ind.): You heard Mr. Sheridan talk about the State Association of Indiana and the trouble we have there, but I

think you picture it a little too darkly. I am violently opposed to a licensing system. I don't think an abstracter should be regimented. I think he is an individualist and can express himself in the preparation of his abstract. I don't think Illinois should tell a man in Indiana how to work, or a man in Indiana should undertake to tell the man in Illinois. I think that is a matter that ought to be determined by each State Association.

The matter came to the front in Indiana because an institution, one of the largest abstract companies there, alone in its field, undertook to shut out curbstone competition. They went to the Legislature with a bill; they couldn't get the support of the majority of the abstracters in the state, and the bill was not passed.

As a substitute for that, however, we discussed in the State Association the matter of regulating the ability of abstract companies to do satisfactory work so far as the public was concerned. A committee was appointed that undertook to determine which of the abstract companies in the State was qualified to do work. We have that committee now. And the State Association issues a certificate of approval. We have a large seal that goes on the final certificate.

The HOLC, the Federal Land Bank and FHA asked our State officials for a list of the approved abstracters in Indiana. It is my understanding that they don't use anybody else. But we are not controlled by the state. They don't tell us what hours we shall work, what wages we should pay, or what prices we should charge for our work.

Association's Attitude on Abstracters Bills

MR. WILLIAM GILL (Oklahoma City, Okla.): I would like to put Mr. Brown and the rest of you gentlemen straight on one point. I don't believe you or anybody else can ever say the American Title Association is trying to force down your throat any kind of abstract bill. It is not our policy. It was not our policy when I was chairman of this section for two years.

I don't think the time has come when we don't welcome the frank expression of the views of our members. As much as I disagree with the gentleman from Indiana, I was very glad he had the nerve to get to his feet and say what he had to say about it. Whenever we can get an exchange of ideas then we are getting somewhere.

But there are many states represented here today, and I have had considerable correspondence with five different states that are interested in some kind of an abstract law. The purpose of this discussion was to bring out the good points and the bad points so that you could make up your mind in the State Association. But if you have the idea, Mr. Brown, or if anyone else has, that the American Title Association is attempting to tell any State Association what it should do, you are wrong in that idea because most certainly we are not.

In answering Mr. Payton's question as to what the abstract law has done in some states, I think I might say it has done us a lot of good. We don't have a license law, I mean a board or a commission. Personally I am opposed to a board or commission because I did not want to play politics all my life with a board or commission. Those of you who think different, that is your privilege. If you want a board or a commission, take what you want or take nothing. Do as you please about it.

In my particular state a requirement of getting into business now is that you must file a $5,000 bond. You must have a complete set of indexes.

Down in the State of Texas you have the chain abstract. There is one company down there that owns 52 title plants. In Oklahoma there is one company that owns three plants. We have access to the index. Anyone can go in and check the index and make an abstract.

Some fellow who was not doing any business in another county would drift down into that part of the country, go in there and cut the prices. It makes the meanest kind of condition. When the oil boom was over he would go back to his home town after he had taken the cream of the abstract business. That was the primary thing.

Please don't get the idea the American Title Association is trying to tell you to do anything. Personally I do think I have a right to express my opinion, the same as anyone else, that we should have some kind of regulatory statute. I think it would react to your benefit.

I think if you will go into the states that are regulated in some manner you will find that it will benefit the business.

We get $6 for a copy, $5 for a continuation. Sometimes they argue over the price. I say, "When we put our name on the certificate, we sell you $5,000 worth of protection that is good for five years, for $5, $1 a year, and we pay five times that to give you the protection." We found that was beneficial.

Don't get the idea we are trying to tell you to do anything you don't want to do. Before you make up your mind, consult these other states and find out whether or not it is beneficial and you go back home and do as you please.

MR. PAYTON: I wouldn't object to putting up the $5,000 bond or $50,000 bond, because I have got four times that invested, and every dollar is behind my work. I am not objecting to the bonding business, but I don't want a license.

I know the barbers and painters and everybody else in our state, that is licensed, they told me what they have to do, and what they shall charge. I couldn't get a man to paint my back fence unless he has a license as a painter.

MR. KENNEY: You approve, do you not, of the special liability that the courts have put you under since the passage of the licensing and bonding law?

MR. GILL: You and I don't agree on that. My idea is when you sell a man something and put your name on it you ought to have standing back of it, and if you don't have the financial responsibility somebody ought to come along and supplement that; or the man who buys gets something rather than selling him your primissory note.

I think you ought to guarantee your work.

Liability of Abstracters

MR. KENNEY: That is the case of Sackett, et al. versus Rose, 55 Oklahoma, page 399. I don't believe in that. Don't call us abstracters if you want to be an insurance company. In other words, the same liability that existed through the one person under the contract is now extended to everybody to realize on that abstract. In all the other states where they have this bond the courts have held that they are practically insurers of the title.

MR. GILL: You are wrong.

MR. KENNEY: The courts say so. I can give you the decisions if you want to take them down.

In Oklahoma, Sackett, et al. against Rose, 55 Okla., 398 (1916).

In South Dakota, Goldberg, et al. against Sisseton Loan Title Co., et al., 24 S. Dak., 49 (1909).

Nebraska, Gate City Abstract Co., et al., against Post, 55 Nebr., 742 (1898).

You will find, when you come to look it up, that you have that law when the question has been raised. Now, maybe the question has not been raised. You are not under the general rule that other business and professional men are. You have come in and got a law passed. You asked for it, bonding you to absolutely make good your work regardless of the circumstances of whether you are negligent. That is absolutely unfair, unjust, and unreasonable.

MR. J. C. JENSEN (Salt Lake City, Utah): I can't agree with some of the gentlemen here. As far as we of the State of Utah are concerned, as abstracters, we feel that our abstract is the thing that real estate transfers are being based upon. We are turning out work that is supposed to be accurate and properly done. Since 1888, when our abstracting commenced, we have been perfectly willing to assume responsibility for our work. We don't want to do it for nothing; neither are we insuring the title. But we do stand back of our work absolutely. I think an attorney should be responsible for the opinion he renders just the same as an abstracter is responsible for the certificate he signs, but he is not in our state.

MR. KENNEY: Nor in any state.

Utah Law

MR. JENSEN: Because the attorney is not responsible for the work that he turns out is no reason, in my mind, why an abstracter should not be re-

sponsible for the work that he turns out. We are perfectly willing out in our state to assume full responsibility and liability under our certificates. We do want to be paid for it, it is true, but we don't ask an insurance premium for it because we are not insuring the title, but we are guaranteeing absolutely the accuracy of the work that we turn out. Now, that is our stand. We have two forms of certificates in Utah, as you have in some other states. We have a certificate of registration which is issued to the individual abstracter.

Our bill as introduced and passed in the last Legislature this year provides for an examination. It had a grandfather clause in it as previously presented, and that was deleted. And every abstracter in the state before he could continue in business, or a new abstracter could engage in the business of abstracting, had to submit himself to an examination, which I believe is absolutely right and proper.

We have men in Utah who are anything but qualified to operate as abstracters of title. And some of those men, under our new law now, although they have been practicing as abstracters for many years, (this is not common law,) some of those men are on a probation, on a probationary period right now as a result of that examination, because the abstracts that they submitted as part of their examination were woefully deficient, absolutely impossible for an examiner to take that abstract and go through it and form an intelligent opinion on that title.

We take the stand in our state that the abstract of title should be so complete that an examiner in New York or Philadelphia or any place else can take that abstract of title and find in it all of the information that is necessary for him to intelligently pass an opinion upon that title. We feel anything short of that is not an abstract of title as it should be prepared. So we had an examination, as Mr. Cardon told you, on the 11th and 12th of this month. And we had every abstracter in the State of Utah, with the single exception of one man who was physically unable to come (having wrenched his back and he couldn't travel), every abstracter in our state was at the State Capitol and took the examination on the 11th and 12th of this month. I happened to be the sole Republican member of the Board of Abstracters.

MR. KENNEY: How come?

MR. JENSEN: Ask the Governor. The bill provided that there should be a board of abstract commissioners appointed by our Governor from men who have had five or more years' of abstracting. The day before, the last night the Governor had for considering the bill, he called me at 9:30 at my home and talked with me for half an hour over the telephone and said he was ready to veto our bill. I asked him why. His principal objection was that it gave the Board of Abstract Commissioners too much authority. He was afraid that we might give a technical examination that might eliminate some of the County abstracters, as he termed them, and put them out of business. I assured him that we abstracters had no such intention whatever; that it was an honest effort on our part to raise the standards of abstracting in our state. And that is exactly what it was. That is what the primary purpose was and is our purpose today, to raise the standard of abstracting in our state.

A blacksmith or a sheepherder, if they had a little pull, could have obtained a license and gone into the abstracting business.

Abstract Business and Abstracters

For six years we worked to get this bill through the Legislature, and we finally were successful this year. Our certificate of registration, as I say, issued to an abstracter, enables him to operate as a licensed, registered abstracter in any county in the state. Our bill provides also for a certificate of authority. This certificate of authority is issued to any person sufficiently responsible, who wants to engage in the abstract business; not as an abstracter but in the abstract business. Our statute provides that every abstract business must be under the direction of a registered abstracter. So that if our banks or trust companies want to go into the abstract business they must receive a certificate of authority to enable them to go into the abstracting business. But they must have in charge of that business a registered abstracter.

We had, as I say, all of the abstracters in our state there for examination. We gave them an examination which I felt was very inadequate. Some of them felt it was very, very difficult. But from here on the examination, so long as I am on the Board, will be very much more difficult than this preliminary examination that was given in lieu of the grandfather clause at this time. Because we do have men who could not examine or could not prepare an abstract of a difficult search operating as abstracters in the state. Some of them are licensed now. As the first requirement in our examination we had them submit by the 21st of May an abstract of 25 to 30 entries, including an abstract of court proceedings, probate proceedings, foreclosure proceedings. That was the first part of our examination. Some of the abstracts that came in from some of our old experienced abstracters were terrible examples of abstract work, and were so incomplete and so inconsistent in their preparation that, as I say, some very few of even the old abstracters were placed on a sort of probation from now until October, during which time they will have to submit an abstract. And after these two days of examination, during which time we had some talks prepared and gave them all the schooling that we could give them in two days of time. We had this abstract case in each part of their examination. Then we had a three-hour written examination on the second day of our examination, and from that we had to condition some of those abstracters. And they can't receive their permanent certificate of registration until they can show better qualification than they showed at our June 11th and 12th examination. And from here on the examination will be more complete, more detailed, and the qualifications of the abstracters in our state are going to be raised. It is going to be more difficult for abstracters to come in.

Bond in Utah

Now, our law provides here before a certificate of authority shall be issued to an applicant—this is a certificate of authority to a person, firm or corporation engaged in the abstract business, not the individual abstracter—"Before a certificate of authority shall be issued, the applicant shall file with the board a bond or bonds, to be approved by it, running to the State of Utah, in the penal sum of $10,000 in counties having cities of the first or second class and in all other counties in the sum of $5,000 for the use of any owner, mortgagee or other person having an actual interest in the property covered by an abstract of title." Some of the gentlemen said we are not insuring the title, anybody, anywhere, any time. We don't do that in our state. The person has to have an actual interest in the property. Then any person suffering a loss because of having relied upon an abstract shall have a right of action for the amount of damages sustained provided that such liability shall not accrue in favor of any person who had actual notice of the error or mistake complained of.

We feel that eliminates the possibility of deliberate attempt to perpetrate fraud and work a hardship on the abstracter. We welcome the responsibility that is ours as abstracters in the state. We are perfectly willing to stand back of and guarantee the accuracy and efficiency of our abstracts. And, of course, we want our fee to be such that we can operate in that way and still get by.

We, as the Board of Abstract Commissioners in the state, have this power:

"The board shall have, and it is hereby given the power to cancel and revoke any certificate of registration issued to any person under the provisions of this act for a violation of any of the provisions of this act, or upon a conviction of the holder of such certificate of a crime involving moral turpitude, or if the board finds such holder to be guilty of habitual carelessness or inattention to business or of fraudulent practices, or for incompetency."

We formed a reorganization of the Utah Title Association. Mr. Cardon was elected president of that association.

We, as the Board of Commissioners, told them that we wanted those abstracters of the State to set up their own standards of what they wanted to maintain.

We have the power to cancel and revoke licenses for the causes that I have read to you. But we asked the Utah Title Association to set up and define for us as Board of Commissioners what they consider was fraudulent practice, what they consider was incompetency, and so on, from their own standards; and we will maintain those standards.

MR. CHARLES F. PAINTER (Telluride, Colo.): Did you revoke many?

MR. JENSEN: We will if they do not make a better showing than they did on June 11th or 12th.

Benefits of the Colorado Law

MR. CHARLES E. PAINTER, (Colorado): I am in a little county in the southwestern corner of Colorado. I am a firm believer in this license system that we have in Colorado. I think it has done good and it is going to do more good. It has done this much good, that it has eliminated the county clerks throughout Colorado.

I have been in the abstract business since 1883. I have my own set of books that I have kept up continuously since that time. I have a small amount of business, it is true. Our county is only 80 miles long and 20 miles wide, but we go to the extreme Utah line. Our county is diversified in mining and agriculture and cattle and livestock industry.

The one thing that I want to impress upon you gentlemen is this, that, in my opinion, it has helped us, it has eliminated the county clerk from making abstracts.

Originally the laws of Colorado provided that the county clerk should prepare abstracts, and there was a schedule of fees. If I remember right it was about sixty cents for the first five entries and thirty-five cents for each subsequent entry. I think it was not to exceed $1 for the certificate.

Now as to the Abstracters Board. We had to pass an examination. I say this for this Board of Examiners, they insist upon having some knowledge of the business. Before we had this Board of Examiners and license fees we came up in competition with the Clerk and the County Recorder. You are not always in agreement with him, as it happened in my own case. I was not given the courtesy of examining the records of some of the proceedings, and he made it rather arduous for me to take off these instruments each and every day.

Now under this law they are prevented from preparing any abstracts.

There are certain attorneys throughout Colorado who are trying to insist that county clerks in some instances prepare abstracts at a cheaper rate. With our Colorado Title Association now we practically, over on the western slope, without any exception, charge $1.50 an entry and $5 for the certificate. I believe that the workman is worthy of his hire. He should be paid for what he gives.

I was the first county clerk. I was rather fortunate. Our County Commissioners had a complete transcript, a little different from my friend here, that cost them some ten or twelve thousand dollars. I paid the County Clerk and Recorder of Eureka County $3,000 to start me a set of abstract books. When those books came over they were delivered to me. They purported to contain all of the entries that affected the territory which was cut off and created into San Miguel County. It was of great benefit to the county as well as to myself. In rechecking those I had to put in the book and page. The County Recorder of Eureka County had the book and page of Eureka County records. He didn't furnish me the book and page in the transcript so I had to go through and put all those in. In that way we had a good check on it. We found a number of instruments that were taken off that didn't belong there, and probably a hundred or two that were omitted. So it was a good thing for the county and a good thing for myself.

I am fortunate in this, that I have no competition. I still tell them that I have information to sell. If you want if you must pay me for it. And we are getting in our county on the western slope, $1.50 and $5 for the certificate.

The principal thing I want to impress upon you is this: It eliminates the County Clerk and the Recorder. They are changed every two years. Sometimes they are re-elected and sometimes they are not. I have been in this business so long that I claim that I am more competent to furnish abstracts of title than any of these new younger fellows that are coming in the field, that are elected county clerk. That is one great advantage that I think the law has in helping us.

Our Association is working wonders toward getting uniform certificates, uniform prices and so forth.

The Situation in Iowa

MR. MELVIN JOSEPHSON (Boone, Iowa): I have been listening with a great deal of interest in the discussion of the abstract license law and I have summed it up something like this: That the states that have passed such laws and have had them on the statute books several years, are very much pleased with the workings of the law, while we who have not passed such a law are rather fearful of the consequences thereof.

Iowa has passed a resolution to the effect that we shall attempt to put through such a law in the next Legislature. The reason we have done so is that there are companies in our state or men who have invested large sums of money in building plants. They have made many abstracts from the time of original entry and such abstracts now come in for continuation.

We found in many of the counties men have come in and set up offices and made just as beautiful looking certificates as those who had invested large sums of money, are continuing the abstracts without the use of indexes, are cutting the prices, giving large commissions to secure the business; and it is operating at a tremendous loss for the man who has had the large capital investment.

If I thought for a moment that such a law to be passed in our state was title insurance—I might be a little hesitant myself in having such a law put through. But it doesn't seem to me that an abstracter would be liable for the forgery of an instrument.

In our city a man built a house on a lot and after it was built he wanted to get a loan and he discovered he built on the wrong lot and put it on a neighbor's lot.

It does not occur to me that an abstracter would be liable as title insurance company for such a mistake.

There is a matter that I am very much interested in obtaining information on, and that is the operation of the Board of Examiners; that is, their authority and some of their powers under the law.

There is a case in the State of Utah. I would like to ask Mr. Jensen for the law and the authority. Is it considered an unlawful practice to pay commissions or give discounts or rebates?

Commissions in Utah

MR. JENSEN: As I stated before, we passed the buck to our Utah Title Association and asked them to set up their own standards as to fraud. If it is established, as a fraudulent practice, giving rebates, commissions, and so on, then we will endeavor to uphold that as a fraudulent practice. It might not be constitutional, but we are going to do our best to maintain the standards that the abstracters set up for themselves. That matter is being considered now by the Utah Title Association. They haven't made their remarks to us as yet. It gives us the authority. I gave my copy to the gentleman who is presiding here so I can't refer you to it (referring to pamphlets entitled "State of Utah, Abstracters and Abstracts of Title, 1937, Issued by Board of Abstract Commissioners"). But it gives us the authority to set up certain rules and standards. But instead of setting those up as a board of commissioners, we simply turned them over and asked for rules to be made by the abstracters themselves as the Utah Title Association. If they want to go so far as to make it a fraudulent practice to give rebates, then we will establish it as one of our rules, and a license will be revoked and the certificate of registration revoked if they go contrary to those rules.

They can fight it out in the courts with us if they want to. There is an appeal from our decision as a board of commissioners to the District Court, and from there to the Supreme Court if they are not satisfied with the decision as it is made by the Board of

Abstract Commissioners. It is not a court of last resort, but we do have certain powers.

The South Dakota Law

THE CHAIRMAN: I think we will find this is very much like Bill Gill's effort to secure uniform certificates, uniform abstracts. There are some states where you can do that and there are some states where you can't. Personally I have found that an abstracter is the most stubborn beast there is in the world. I have found that in every convention I have ever been in. One man has his system of doing his business and can't change it. They have their own ideas.

I don't think that the American Title Association should force any state to try to get this law, but I do think that if a state association expresses a wish to have this law then the American Title Association should give them all the help that it possibly can.

We have the law. We were one of the first people to get the law.

MR. KENNEY: Which state are you from?

THE CHAIRMAN: South Dakota. I have been Secretary of the Abstracters Board of Examiners since the start of the law, and if I started to tell you the benefit of the law and what it has done for South Dakota I would have to call time on myself, so I won't do it. If anyone wants any information as to what we have done and how we feel it has helped, I will be glad to see you afterwards.

Do you want to continue the discussion any further or do you want to take up something else?

MR. J. R. DOSS (Eufaula, Okla.): I would like to correct possibly a little impression that rippled over my mind. When we in Oklahoma make an abstract, my abstracts show everything that affects that title of record. And after having made the abstract we do not insure the title. It is not an insurance proposition. It is a guarantee that you have shown everything affecting the title to that property of record in your county. That is what we do in Oklahoma in making an abstract.

Of course, our liablity or our responsibility or whatever you want to call it runs to the world. I have never heard of anybody that picked up an abstract out of a gutter and sued the abstracter because he got hurt. It is usually somebody in the title or has depended on that abstract for his information. And that very, very seldom happens. So why not make a product that you can stand behind, then the whole world will be proud of it, and elevate your business. That is the way we see it.

Liability to Third Parties

I think perhaps my bringing up is different from some of the older abstracters. I started business in South Dakota over twenty-five years ago. South Dakota has had a bonding law since it was organized, when it was changed from a territory. We have always been bonded. We always feel, when we put out an abstract, we are back of it. It doesn't make any difference whether we have a bond or not. We are going to pay for that loss. We are not going to hide behind anything. If there is a third man or a fourth man who makes an error in our abstract, we are going to take care of it. Of course we could say we didn't make the abstract for you therefore we won't pay for it. But we worked under this other law all our lives. We have always been responsible for our abstracts. So the bonding law is nothing new to us. It was no innovation at all. When our law was up we had these people remark to us, "Well, that bond is just a fake anyway. An abstracter never paid a loss. You never hear of an abstracter being sued." And probably this case you quoted is the only case in South Dakota, for this reason, that the abstracters have losses but they pay them. They don't go into court. I say this one is perhaps the only one we have under the bonding law since 1888. That shows you that the abstracters are back of their product. In this case they had to sue. But in other cases I know abstracters that were paying back so much a month for years on their work. It didn't get into public records.

MR. FROST: There are about forty decisions in the United States. Taking the decisions of the different states together that have got the laws they only hold that the abstracter is liable for reasonable care in making his abstract, but he is liable to everybody that has his abstract.

MR. PAYTON: He must use reasonable care in making his abstract, but he is liable to anybody subsequent to that time that relies on the abstract and suffers actual damage.

Torrens Law and Abstracters Law

MR. HARVEY PEARSON (Danville, Ill.): I would just like to have a statement from anybody here that has an abstracter's license or the bonding law or any law governing the abstract business in your state, as to whether you had had any Torrens agitation in your state. I would like to know what the effect might be of setting yourself up and regulating yourself under a state statute, whether that will come in any way under the Torrens Act.

MR. GEORGE B. STANLEY (Heber, Utah): We organized the Utah title Association in 1932. At that time we had a Torrens law on our statute books that had been there since 1917. There have been about fifteen titles registered under it in the State of Utah up until the time we were organized. In 1931 we had it repealed through the efforts of Mr. Cardon here. I might say this, that these boards and things that you are so worried about, the matter of organization among yourselves in your various states—in Utah when our license law went into effect the Governor appointed the president and the vice-president of the Utah Title Association as members of the Board of Abstract Commissioners to run the business of the State.

MR. FROST: In Colorado they passed the Torrens Act a great many years ago. I believe it was in 1903. It has been practically a dead letter everywhere in the State. They tried their hardest in El Paso County, and they registered thirty titles in El Paso County. It did not work successfully in any way whatsoever.

MR. ROBERTS: I will have to disagree with Mr. Frost. The Torrens Act is in operation in Colorado and it works. We have it in our county and we have a lot of it. We have it in Sedgwick County, and we have it in Washington County, and it works. This gentleman says he doesn't fear the Torrens Act, but it works. I see it work every day. It has its defects. I can tell you its defects, but I can cure its defects so you won't be in business ten years hence. Now, if anyone doesn't think the Torrens Act isn't serious, he had better get into the localities where it is working. I know what it is. There are only three or four counties in Colorado where it is in operation, and I am in one of them.

THE CHAIRMAN: I think you are right about that. They may not have a workable Torrens system, but if the Federal Government says we want this Torrens title it doesn't make any difference whether it is a good title or not. They will get it. And it is going to hurt the abstracters.

MR. MAYO: Our plant started work in 1887, and we expect to keep on. We did not get more than ten per cent of the HOLC work. The other plants did the work. From men on the inside of the HOLC legal operations in our community, and from what we hear from Washington, they are going to put through this year a uniform law of some kind, whatever name it goes under, and it is going to affect the title business of the United States.

The Federal Land Bank operates in our community, and we did a little work for them. They had their system of the eleven-year abstract. Our Secretary this morning said they don't intend to furnish any evidence of title, and I know that the Federal Land Bank furnishes no evidence of title and that the purchaser is going to pay the bill. As to these laws which are going to be used for their evidence of title, whether it be Torrens or whatever name it goes under, we are going to smell the smoke this year without a question.

Liability in New Jersey

MR. CHARLES F. MAISCH (Toms River, N. J.): I just want to say that in New Jersey we are not placed like you fellows out in the West with the Government land. First of all I want to say we are responsible to the one who gives the order for the abstract. Under the law we are responsible that far. But many of us hold ourselves re-

sponsible to anybody that makes use of that abstract. But as an illustration, you folks have a definite description of your property, we don't. Our properties are all by metes and bounds and courses and distances. I have one property in our county that has 138 courses to it. I know one in South Jersey that has 248 courses.

Frequently we can't locate a property without the services of an engineer. An engineer that I have frequently made use of informed me recently that they are not responsible for their work. I won't give them any more of our work. If I want to be responsible for my work I want somebody to hold himself responsible for his work. We don't have a bond in New Jersey. There is no bond law or abstract law. We are trying to put an abstract license bill through but I question whether we can.

The gentleman over here spoke of the Torrens Bill. I think we succeeded in killing that in New Jersey last winter. The realtors were very much impressed with it and were going to push it. We sent an article of the facts to the realtors throughout the State, and we are satisfied that we killed it. I don't think the realtors will bring it up again.

The View in Illinois

MR. PEARSON: I am just wondering, as we discuss this liability here – if we don't show our responsibility and do a workman-like job then we don't have much excuse to be in business. Someone down there is sincere about the facts that the Torrens registration would be better either for the Government or for the people themselves, one or the other. If we try to hide behind privity of contract and that sort of thing, and try to get away from our responsibility, why, we can't blame them too much for coming out here and putting this across.

When we get together we don't attempt to run any legislation in any particular state, but we do like to get ideas that we can all use when we go back to our own respective states. I know there have been two or three states in this Union in which Torrens agitation was very bad this past year or forepart of this year and will be again as soon as the Legislature convenes. Anything that we can do here to build up more good-will and conduct our business so that it commands the respect of both the Government and the people who own these properties is doing something for the good of our business.

MR. JOHN HENRY SMITH (Kansas City, Mo.): When the HOLC commenced business they demanded a certificate as a bonded abstract. I think the abstracter ought to be liable for every abstract. We haven't had any Torrens agitation in Kansas that I know of.

MR. ROBERTS: In the last three or four years the Government alone has probably loaned $150,000 upon the so called Torrens certificates in our county. They never demanded an abstract.

stract. They bought half our county as far as the loans are concerned. Maybe the bill is not a pure Torrens bill, but we have a registration system in which a county clerk is the registrar and issues a certificate, and the loan and transfers are made on the certificate. They don't have an attorney. They don't have an abstract. They do it themselves.

MR. KENNEY: Then they will have a lawsuit.

MR. ROBERTS: They may have a lawsuit but, nevertheless, it takes fifteen hundred to two thousand dollars a year in fees out of my business, regardless of whether they will have lawsuits or not, they are using it.

MR. COPPINGER: I would like to know how the Federal Government is going to pass a Torrens law that is good for every state in the Union. Won't it interfere with States' Rights? You will have the same old question. There is no way of getting the Torrens law upon the statute books in our State, Missouri, Wisconsin, or any other state excepting by operation of the State Legislature. The United States Government cannot do it.

MR. WILLIAM GILL: It has been recommended in the states that now have the Torrens law, or whatever you want to call it, that the credit of the state be put back of it. In those states that do not have the Torrens law it will have the support of the most powerful groups in the United States.

MR. PAYTON: How are they going to do it? When they put the pressure on Illinois and all other states, that the Federal agencies are going to loan money, that they cannot loan money unless they pass a legislative act, it will put the pressure on and they will pass it.

MR. COPPINGER: The Legislative Committee and the State Title Association should get busy and use their influence with their Senators and State Representatives.

MR. CARDON: I think a good thing is to go back home and get the states organized and I mean organized. Cut out the fighting and get uniform and give the public something. If you don't do it you will live in the day when you wish you had done it.

Photostating

MR. HARVEY PEARSON (Danville, Ill.): I would like to hear some discussion on photostating, if there is any body here who can give comparative information on the two different types of installations. We have been thinking about that in our county, and there are two or three different kinds of equipment on the market.

CHAIRMAN WILLIAMS: I think Mr. Kirkpatrick has one of those. You might tell him what you have.

MR. G. R. KIRKPATRICK (Tulsa, Okla.): In 1928, we negotiated a contract with our county for photostating. We did it primarily for the reason that at that time we had a clerk that had a habit of going back and printing these records in there, and had several forgeries, so it was put in more as a matter of protection. And if you do get a contract like that, the record can't be altered. If he makes a mistake, he has to make a correction in the proper way.

We get a take-off in our plant for a little bit less money than we did on the old typewriting system. If you don't have a plant that is a take-off plant, I don't believe it would be proper. It depends a lot on your law. Our law in Oklahoma provides anybody photostating records must keep an exact copy of the record he gives the county clerk, so that the county clerk can have something with which to replace that which may be destroyed. For that reason, we carry it full size in our plant. That takes up a lot of storage room. Were we simply doing it for our own convenience with a take-off system, we would use a smaller size. With the contract with the county, we have to make an exact duplicate, and it is not very much cheaper than the typewritten method. It would be more expensive, but for the fact we get paid for doing that work for the county.

MR. A. J. ARNOT (Bismarck, N. D.): How do you charge the county? On what basis do you charge them?

MR. KIRKPATRICK: We charge them on the basis of 37 per cent of the recording fees collected by them, up to $1200 gross, and 35 per cent over that. The law allows a maximum of 40 per cent. We are trying to get it so we can get by reasonably, and low enough that the commercial boys can't step in on it. Under the law in Oklahoma, under the photostat system, we pay 75 cents for the first page, 50 cents for each additional. That has brought about a short form instrument down there so they can get the instrument acknowledged on the one side for 75 cents. That is the basis the county clerk charges on under the Oklahoma law.

MR. FROST (Colorado Springs): Do you have to make a take-off, or do you put the whole instrument in the abstract?

MR. KIRKPATRICK: I do not put the photostat in my abstract.

MR. PEARSON: Do you operate the machine at the court house?

MR. KIRKPATRICK: Yes, at the court house.

Cost of Photostats

MR. FROST: What does the equipment cost?

MR. KIRKPATRICK: The dark room, the chemical tank, the drier and everything, costs around $7500.

MR. ARNOT: Does the county furnish supplies?

MR. KIRKPATRICK: No, we do. The county furnishes water and electricity.

MR. ARNOT: For that 37 per cent?

MR. KIRKPATRICK: Yes. A small

county, with a small volume, couldn't do it.

MR. FROST: How many instruments a day do you average?

MR. KIRKPATRICK: From 60 up to 200, depending on the condition of business.

MR. FROST: Do you ever experience difficulty in photostating some instruments?

MR. KIRKPATRICK: Wherever we find one that way, it is simply marked "illegible," and it is the same way as when you had it the other way. If you can't read it from the original instrument yourself, you can't read it from the photostat, either, and under the old system, they marked it, "illegible."

A photostat will do this. It will immediately show up any erasures that have been made that you can't detect with your naked eye, because there is that glaze on the plate, with the lighting there, the paper is thinner, and there will be a little halo of light strike around that erasure. There have been two or three times that it has been used when there have been arguments over whether an instrument has been altered or not. You can lay that on a photostat table and shoot it, and tell whether there has been an erasure. We have had a lot of attorneys come into us because of that.

MR. FROST: Do you make a negative and make a positive from that?

MR. KIRKPATRICK: They are both negatives. That is, they are black with white writing The positive is the white sheet with black markings or printing, and is not as clearly read as the black sheet with the white printing. You can do it quicker with two negatives, than with a positive. A positive comes out a gray color, and the black that lays on that is not a very good black. It is not a very nice sheet to work with.

MR. FROST: Sometimes they make the negative, and a positive from the negative, and the positive comes out clearer than the original.

MR. KIRKPATRICK: What type of machine is that?

MR. FROST: I have seen it work, but I don't know the name of it. They have tubes on the side, and it lays flat on the plates.

MR. KIRKPATRICK: It is more expensive to work with a positive, and our experience has been the positive is not as good a sheet as the negative.

MR. J. H. MURRAY (Flint, Mich.): Do you store them in your own office?

MR. KIRKPATRICK: Yes. We discontinued our take-off system and store them right in our office.

MR. FROST: How do you keep those documents in such a place that you can quickly locate them? Do you bind them in volumes?

MR. KIRKPATRICK: Yes. Then we have designed a cabinet—our index books lay on top and the books rack underneath in two racks. So as we work around, they are below us. They rack very nicely.

MR. PEARSON: What type equipment do you use?

MR. KIRKPATRICK: We use a Photostat Recorder No. 3, a duplex machine, with the duplicate paper. Not the automatic developer. The ones that tried that haven't been very successful. We use just the reporter system,—dark room, chemical tank, washer and drier.

You get different instruments, and a man may have signed his name in green ink, and you have an automatic developer, it will come out without the green ink. For that reason, we use the dark room chemical tanks. We have never had anything yet we couldn't get.

Another interesting thing,—when you shoot an instrument, lots of times, the way the lights hits it, you will pick up a fingerprint on there that doesn't show very plainly on the original instrument.

CHAIRMAN WILLIAMS: I think Mr. Cardon has something he wants to take up this morning.

MR. L. B. CARDON (Salt Lake City, Utah): One of the questions I had in mind has already been answered this morning, concerning the photostat, in the recorder's office. That has been proposed a number of times in our county, but has not been installed as yet. A number of our abstracters are objecting to the use of the photostat, saying that it is more difficult to read, and would be hard on one's eyes after using it for years, and I would just like to ask a question if that is a just criticism or not.

MR. KIRKPATRICK: Our girls in our office get along a little better with it than they did with the old system. We haven't had any slow-down of work at all. We have had it since 1928.

MR. CARDON: One other question I would like to ask, a little bit off the photostat,—I saw down in Los Angeles recently the photographing of records at the Huntington Museum there, by moving picture film, and their enlargement on the screen for the purpose of reading, and I understood at that time that one or two abstract and title insurance companies in the country had used that for photographing records. I wondered if there was anyone here who knew anything about that, or had made any investigation on it.

CHAIRMAN WILLIAMS: I imagine the Title Insurance Section would be the place to look that up.

MR. FROST: Do you photostat plates as well as ordinary instruments?

MR. KIRKPATRICK: No.

Objections to Photostats

MR. MURRAY: I don't have anything to add or any questions to ask, but I just wanted to tell what was done in our county. The register's office used the photostatic method, has been using it for, since about 1927 or 1928, and I don't know that there is any criticism of it. With the photostatic method, of course, you get a picture of the original instrument, the way it was signed, the way it was notarized, and everything about it, so that there is no chance then for errors in the register's office, the way there was when they used to copy everything.

When the building was designed, there was an office for the abstracters' use placed in the register's office. That office was large enough to hold the representatives from all the abstract companies, so that we have our own place to work, and we have our own typewriters in there, and so we are out of the way, of course, in the register's office, we don't interfere with them and they don't interfere with us, and we have considered making photostatic copies of the records, but in our minds there were two objections to that.

One was the filing space. It would take as much filing space in our office to file the photostatic copies as it does in the register's office. They use up a lot of space in order to file their books. We have about one thousand volumes now of deeds and mortgages. And then, in our opinion, there was another objection, and that was that then every girl in the office would have to be a take-off girl, she would have to be an abstracter, and take-off girl too. As it is now, we have one girl, sometimes two when the work is heavy in the register's office, and we take off everything on 5x8 sheets, 20 pound paper, so that we can condense our filing space into a very much smaller space than we would have to have if we had photostatic copies of every report.

MR. JOHN HENRY SMITH (Kansas City, Mo.): In our office, we just completed the take-off of our register's records. We made those on a loose leaf, and filed them in boxes. We reduced our sheets to a legal size sheet, 8½x14. A 600 page volume will be about 2½" thick by a legal size. And then we file them that way, and when we go to make an abstract, we just take out the sheets and give them to the stenographer and save a lot of time that way. We use a rectograph. It used to be advertised in the "Title News" years ago. We found it very successful to take the records that way.

MR. CARDON: What is the approximate cost of taking off an instrument by either method?

MR. SMITH: We don't have any experience as to the cost of taking off individual instruments, but on a volume like we worked on ourselves, we have what they call the Duplex Automatic, which eliminated the hand drying. Or in other words, with your machine, all you have to do is shoot the picture, and turn the sheets over, and that is taken care of automatically, and it costs us, I think, a little better than seven cents a sheet, if I remember correctly. I have the figures at home.

CHAIRMAN WILLIAMS. Are there any more topics that you want to discuss?

Charging According to Valuation

MR. CARDON: We are rather anxious to revise our price schedule in Utah. We have a situation there in which the price to a certain extent is controlled by an old act of the Legislature passed in 1888 by which the recorder was authorized to make abstracts for 75 cents per entry and $3.00 for a certificate. So we have no direct competition, but our prices have been held down by that old statute which we hope to have repealed when another legislature meets.

But we would like to revise our schedule upwards in the meantime. A number of our companies are now charging $1.00 an entry, and I think most companies are charging $5.00 for the certificate. But that $5.00 certificate charge is not at all satisfactory, —to charge $5.00 for a $100,000 piece of property, or a $500,000 property, is entirely out of reason from the standpoint of the risk assumed, and we are seriously contemplating making some sort of a valuation charge on the property, and we would like to hear from some of the companies who have been making such a charge, and having experience of that type, and would like to know somewhat what their schedule runs.

MR. S. O. RHEA (Seattle, Wash.): We have such a schedule in effect in most of the State of Washington, and since the gentleman asks for an explanation of it, I will be very glad to tell what ours is, and how it works.

In Seattle, there is, first of all, a charge of $2.50 which is the flat certificate charge. That remains at $2.50, provided the valuation of the property is less than $1,000. The valuation of the property is determined from the assessed valuation on the tax rolls. The assessed valuation is supposed to be one-half of the actual value. So we take the assessed valuation, which is shown on the tax search when the tax search is made, and double that to determine our certificates charge. On a property which shows a valuation, assessed valuation of $5,000, we double that, making it $10,000, and we charge 50 cents for each $1,000 of that valuation over and above the first $1,000. On a $10,000 property, arrived at the way I show, we would have an additional certificate charge of $4.50, making the total certificate charge in that case $7.00.

The certificate charge of $2.50 covers nothing else but the certificate. We charge extra for tax searches, special assessments, name searches,—so much a name, so much for each year we search taxes, and all that sort of thing. We make a limit on that surcharge of certificate of $100,000 assessed valuation, so that if the assessed valuation is over $100,000, we do not charge for the amount in excess of that.

It has been a very satisfactory method of arriving at the charges, and the owners of the property feel, and of course they should feel, that the liability of the abstracter is more for high priced property than it is for a low priced property. We have schedules established which we all follow throughout the state on charges for abstracts, foreclosure statements, statements to parties at interest, and statements of owners, encumbrances, and all that sort of thing. Different customers desire different services. Power line or telephone line companies would probably only want to know about certain easements about a property they propose to cross.

MR. McCUNE GILL (St. Louis, Mo.): Does that surcharge apply to continuation abstracts?

MR. RHEA: That surcharge applies to continuation abstracts, but not to what we call closing abstracts. I suppose that term, "closing abstracts" is self-explanatory, but if it is not, I will explain it. If a mortgage company proposes to make a loan, and of course passes on an abstract, they bring the abstract to us to continue. That is a continuation. When they get their mortgage ready to file and their deed perhaps also, we call that a closing abstract. We do not charge an additional name search for names we have already searched.

Now, it is the policy of the company to recognize the final continuation of the abstract as a closing abstract if it is done within a period of about one month.

MR. GILL: What I mean is this. You have a continuation, say one deed and taxes, and that is all, for which you might get $10.00. It is a $50,000 piece of property, and you want to charge them $25.00 more as a valuation charge. Is there any resistance where the surcharge is two and one-half times the abstract charge?

MR. RHEA: No, there is not. They do not complain of that at all. We have very little complaint on abstract charges.

MR. GILL: Then is there any complaint the other way around? Suppose the abstract is a complete one, and you had to charge them $75 for that, and then you had to put $25 on that. Would there be any resistance?

MR. RHEA: There might be; when it gets up into tall figures there are always complaints. But it is not a surcharge they are complaining about, it is because there is so much "junk," as it looks to them, that goes into the abstract. You have all had the experience of an owner coming in and saying, "There hasn't been anything happen. I have only been in one transfer." By the time you get through looking up the record, you have about eight or ten instruments. There has been a road deed, an easement, a mortgage, maybe a lien, and that's what they complain about. Most of our complaints are that the title shows up with more changes in it, more items to show, more information on the abstract than they had anticipated, and it is usually along that line.

MR. GILL: Does anybody charge $1.00 a thousand out there?

MR. RHEA: I don't know of any $1.00 a thousand. I do know some counties that make a flat certificate charge of $5.00 and that $5.00 includes tax search and a general lien search. It does not include the assessment. There are some counties that include the assessment.

MR. GILL: Fifty cents a thousand on the value, which you consider twice the assessed value, is practically $1.00 on the assessed value.

MR. RHEA: That is right. We figure it the other way, take double the assessed valuation and 50 cents per thousand. We show them a bigger valued property. You begin to talk assessed valuation, and we would have more trouble putting it over than we would if we talked about the actual value.

CHAIRMAN WILLIAMS: Are there any other topics that you want to ask about?

Length of Abstracts

MR. FROST (Colorado Springs): One question I would like to bring to the attention of the meeting, and that is the fact that abstracts are continuously getting longer, and especially in the newer States. I believe that the recording is making the abstracts grow at the rate of 3 per cent to 5 per cent per annum. I am speaking from a gross standpoint, from the beginning. Thus making the cost of the original abstract from the beginning pretty large. Has anybody ever thought of any scheme by which the length of abstracts could be cut down?

MR. JOHN H. MURRAY (Flint, Mich.): We are plagued with the same problem. Our titles now are about a hundred years old, and we go back a hundred years to make an abstract, and it does make a long abstract. We get quite a lot of objection to those long abstracts. We have quite a good deal of agricultural land, and a man who owns a farm comes into the office and wants an abstract, and he has perhaps sold five or ten acres. We are getting a lot of that. And we go over an abstract and tell them it's going to cost $75 to make this abstract for maybe two acres or five acres, or even of forty acres, a large piece of land.

Frequently we find that a man back in 1860 had a farm, and every spring he mortgaged it to carry him through the summer, and then released it in the fall. Well, as a result, there's $25 or $30 of charges in there for those old mortgages that everybody has forgotten about years and years ago. But when we propose that to the attorneys, that you leave out all those mortgages and put some statement in either the caption of the abstract or the certificate, to show that those mortgages are not shown because they have been regularly released, the attorney tell us we are practicing law when we presume to say that.

Another thing some of us thought was, we would work out a scheme or

agitate for a law which would permit us to start say forty or fifty years back, if we could locate some source of title. But that question was promptly answered at a meeting a day or two ago in the other room, when somebody said the place to start an abstract was at the source of the title. Our source of title was one hundred years ago,—patent from the government. So far, we haven't come to any definite conclusion as to what we are going to do.

MR. HARVEY PEARSON (Danville, Ill.): In two or three of our downstate cities in Illinois, they have worked out an arrangement with the local bar associations especially with reference to platted tracts, subdivisions and additions, in which a master abstract is prepared showing that title down to the adoption of the survey and the plat. And that is on record in the title company's office, and from then on, anyone desiring to transact business with any lot in those approved subdivisions is given only from that date. That eliminates the early titles, and they find it quite satisfactory in that respect.

Also, in connection with your Michigan case, I am just wondering if it might not work like they do in some places in our state. You do know pretty well the ground that will be subdivided into these homestead tracts of an acre or five acres, and we make master abstracts on that, either multigraphed or duplicated, or in some cases even printed abstracts, in which the actual certificate is signed and an original signature, which gives the effect of an original abstract, and then they see fit to give a price on that inasmuch as they have that already made up and ready to hand out over the counter up to a certain date, that is a fixed price on that part of it, and then you get your regular price for your continuation.

New Jersey Custom

MR. CHARLES F. MAISCH (Toms River, N. J.): Your problems in the West are quite different from New Jersey's, but when I started in making abstracts for myself, I found that a lot of lawyers came back to me, asking a lot of questions, and some of them had a penchant for doing that. I made a note of them, and I now try to make the abstract just as complete, the abstract of each instrument as complete as I possibly can. Then, in the front of my abstract, first I have a title page, then I have the premises in question, then I have a page for a report. That is divided first into a paragraph telling in whom the property is vested, then the encumbrances, then the judgments of lien. Then I give a history of the title from the beginning of title down to the present date, and call attention to all the instruments that I show and anything that affects those instruments, or affects the title, I will put any notes in that affect that particular instrument. I find that it really saves me time and money because I rarely have a lawyer write back and ask me any question about any part of the abstract. That is simply because I make it so painstakingly complete that I don't have to do that, and I think I save time and money by doing it that way.

MR. FROST: Do you go clear back to the beginning? How far do you go back?

MR. MAISCH: We have a habit in New Jersey—I am speaking with Mr. Wyckoff present and I think he will bear me out—we find out who the recent owner is, and trace it back until we find what we consider a good beginning point. As an illustration, sometime ago, possibly a year ago, I had a party direct me to make a 30 year search, and I went back 150 years to get a good description.

MR. CHARLES M. LYMAN (New Haven, Conn.): The way we are attacking that problem of the length of the abstract in Connecticut is by attempted agreement among all our parties interested in the state. We tried four or five years ago through the Connecticut Title Association, which has a uniform practice committee, to reach an agreement on how far back these searches ought to be made. The majority of our members were in favor of agreeing on 60 years as being sufficient. Nevertheless, one or two of the larger offices objected so strongly that they finally adopted as a standard 100 years for fee titles, and 75 years for mortgage titles. I can't justify the difference myself, but they seemed to feel there was some difference in responsibility.

This past year, our state bar association is reorganized and divided up into sections, and we have in the real estate section also a uniform practice committee, and among the first of the problems that it is attacking is that of the length of search for title, and I suspect there that they adopted a 60 year period as sufficient.

Of course they attach provisos that there must be some confirming facts in the period actually covered, and of course lots of times in order to get 60 years, you have to go further back in order to find where the deed started. But I think when those standards are definitely adopted, that way, that the old business of one searcher going a little bit further back to dig up something to discredit the other searcher, is going to be done away with. Nobody will feel justified in raising questions about the title back to the agreed limit unless those questions are indicated by these in the period actually searched. I think we are making progress and it is going to make us better off with the public as well as ourselves.

Practice in Utah

MR. L. B. CARDON (Salt Lake City, Utah): We have a little different problem out West, of course, than you folks do in the East. That comes about by the fact that a good share of our abstracts will be sent here to Philadelphia and to New York and to Cleveland and a number of the other Eastern cities for examination by attorneys in these cities on loans on real estate in the Western territories. We may decide as far as we are concerned a 40 or 50 year search is sufficient, but the minute the abstract gets back here, the attorney says, "No, I want it shown to the original title."

So I personally can't see how a limitation can be made upon the search in any of our Western states without the matter being also approved by the bar associations of some of your Eastern states. Our local bar association so far has insisted upon showing it back to the original title, although in the last session of the Legislature they had a bill prepared, not introduced (but maybe in another couple of years it will be introduced), making it a legal matter that anyone who could show continuous possession and payment of taxes for a 50 year period would be construed to have had a good title without the necessity of bringing a suit to quiet the title in any case. In other words, a 50 year continuous possession was prima facie evidence of the ownership of the property.

MR. E. C. WYCKOFF (Newark, N. J.): Mr. Chairman, there is an incident in the title business that is common knowledge to people in Newark which a stranger coming in might not know, which illustrates, perhaps, the danger of being arbitrary in the period of search. In the early days of Newark, the churches of Newark had considerable grants of land, and as the city developed they leased them for long terms—99 years, at various rentals, and conveyances got into the habit early in the period of the lease, of conveying by deed rather than by assignment of lease, with the result that you go back with a 60 year title based on a deed only to find possession under a lease. So when you are operating in that neighborhood, which is our business section, 60 years isn't sufficient. A stranger going in there won't know that. It is just an example to show that the statutory period of limitation as the basis of limitation of search, isn't going to answer your problem.

Practice of Law

MR. WILLIAM GILL (Oklahoma City): Before I left home, I got a letter from the Committee on Unauthorized Practice of Law of Oklahoma, which reads: "The Board of Governors of the State Bar Association on May 21 ordered the Committee on Unauthorized Practice of Law to take up with the Oklahoma Abstracters and endeavor to have them adopt the form of notice now being used with abstracts in the State of Michigan, copy of which is attached. I should like to suggest also that you call this formal notice to the attention of the American Title Association at its Convention, which I understand will be held at an early date. The notice is the notice used by Howard P. Morley Co., of Centerville, Mich., which is attached to each abstract that goes out of his office." It reads:

"To Our Customers: Good title to real estate is the absolute and undoubtful right to possess, use, enjoy and dispose of the land, the things contained therein, permanently attached thereto, the space above and certain interests in or attached to any or all of these. Real estate has no value beyond the title thereto.

"It has come to our attention that many purchasers of abstracts erroneously believe that when the abstract office fills an order for an abstract, that the mere fact of furnishing same conclusively shows that there are no clouds upon or flaws in the chain of title. We wish to correct this wrong impression. It is the part of the abstract office to do only those things that are certified to by it, and the abstract as it is finally built up and assembled shows the instruments which form the chain of title as they appear from the sources referred to in the certificate—be the title good or bad. Hence the abstract, when procured, should be submitted to an attorney for examination and for his opinion as to the character of title, which opinion is now usually given, according to the more modern practice, in writing."

I would like to make a motion that the Abstracters Section of the American Title Association, requests the State Associations to give serious consideration to the question of adopting something similar to this form, for distribution by the abstracter members.

Uniform Certificate

MR. WARREN R. HICKOX (Kanakee, Ill.): I am not saying much about these things, because Harvey Pearson, from Illinois, knows a good deal more about it than I do, but a matter has arisen that Mr. Cardon, of Utah, spoke of, about these abstracts going to these Eastern states and attorneys, for their opinions. We have adopted a uniform certificate in Illinois, and I am informed by our secretary, Mr. Marsh, that 50 out of 80 of us are using those uniform certificates. It not only saves time and money in our office, but it seems that the titles are being passed on your abstracts a great deal quicker and better by having the uniform certificate.

Now, the question has arisen in Illinois, that I understand Mr. Marsh and Mr. Pearson have been having also, but I had one from one insurance company, that they are going to require guaranteed policies. Well, if I am wrong, Pearson will call me, but I think that started all our trouble in Illinois, with the Torrens Plan, the HOLC demanding a guaranteed title, and an abstract besides. I have taken it up with two of the insurance companies on this matter of special certificates. They have now eliminated those special certificates on our abstracts because we use the uniform certificate.

I thought that might be a subject that some of you men in other states would be interested in, that our uniform certificate is eliminating a special certificate to the company. Now, when you get those certificates from Prudential, John Hancock, Northwestern and different companies, why, you have got to scratch out here and there, especially on drainage, when you can't get them.

And I just thought of getting this matter up as to what is coming up. I hope they don't ask us for guaranteed title, because if they do it will put more extra expense on and there is going to be trouble raised every time we begin to add extra expense.

Report of Finance Committee

ARTHUR C. MARRIOTT
Chairman

Vice-President, Chicago Title and Trust Co., Chicago, Ill.

MR. ARTHUR C. MARRIOTT: Mr. Chairman, Ladies and Gentlemen: I don't want anybody to get the idea that I am about to make an appeal for contributions, so that you all may remain here until I have finished. As you know, the Association has three sources of income, from direct dues, dues from State Associations, and from the Sustaining Fund. Under our budget we will require for the balance of the year $15,000. We have on hand about $1,000.

On the basis of the receipts we took in last year from direct members' dues $725, from state dues, $8,522, and from the Sustaining Fund contributions, $10,390. On the basis of last year's performance, then, we may expect to receive, if you contribute as generously in 1937 as you did last year, about $150 more from direct members dues, $2,000 more from state dues and $8,000 more on Sustaining Fund pledges. That will be a total of about $10,000, and as I say, under our budget we will require $15,000. Where the other $5,000 is coming from is what makes the chairman of your Finance Committee an elderly gentleman.

Therefore, on the basis of funds on hand, and if nothing else comes in during this month of July, the Association can last just one month more. I don't want you to get the idea that I am appealing for funds, because I am not. I am merely telling you what the situation is.

It is not unusual; the same situation prevailed during the last two or three years when I have been chairman of the Finance Committee. But, somehow or other, checks drawn by Dick for invoices on the first of the month and sent to Jim, pass contributions going from Jim to Dick, so that we always do seem to be able to cover those checks, and one of the delightful things about this job of mine—and there are many things about it that are delightful—but one of the most delightful of all things about it is the fact that every month I can expect two inquiries, one from Jim wondering where the money is, and the other from Dick—will it be safe for him to draw the checks to pay the bills which Jim has sent him. So taking it all in all, it is just a state of continual enjoyment, month after month.

Now, seriously, I am not worried a bit. Not at this moment, at least. I will be, along the first part of July. But right now I am not, because you folks always do come to the front when we need money; somehow or other, it is always there, and I know that in an association as worth while as this is, that none of you are going to permit it to dry up and fade away, simply because of the failure of its members to support it.

You will probably be called upon, in the next month or so, to contribute a little something not only to this general fund but also perhaps to our fact-finding committee's fund, and if such a request is made on you I hope that you will not refuse or reduce your most generous contribution to the Sustaining Fund because of the calls which the fact-finding committee may make upon you.

May I leave with you also this thought, that in Illinois it was deemed advisable by our State Title Association to create a fund which would be a sort of a war-chest or emergency reserve and so at our Peoria Convention, some $2,500 or $3,000 was raised and set aside, subject to the disposition of the Executive Committee for occasions of emergency. I hope that we in this Association might have such a fund, a fund of say $25,000 to $30,000. It is not impossible. Our company will be glad to join in any such a contribution, generously, and I think we ought to keep in mind that though, that back in our State Associations such a fund be raised and held by the State Association, and that we in our National Association have a fund so as to do away with this necessity of having to call upon the members so that our own checks will be good. Thank you.

PRESIDENT-ELECT WM. GILL: Down in Oklahoma anyone with the name of Will Rogers can be elected to office, regardless of what that office may be. It seems in the American Title Association anyone by the name of Gill can likewise be elected to office. Now I appreciate the fact that I do not possess the eloquence of my good friend, Ben Henley, nor the dignity of Henry Robins, nor the literary accomplishments of McCune Gill, but with your support we hope to carry on successfully. And I want to take the privilege of presenting to you the best right-hand man a President ever had—Porter Bruck, of California.

Along the line of Art Marriott's remarks, you know it is a long way from Michigan down to Oklahoma and, in order to save the sheriff from making a trip there I want to introduce to you your treasurer, Dick Southworth.

Is there any unfinished business? Any new business?

MR. HENLEY: Mr. Gill, I would like at this time to offer this motion; although it is somewhat out of line from the standpoint of precedent, it seems to me that it is desirable at this time, from the standpoint of the members of the Oklahoma Association, so that they may know whether or not the 1938 Convention is to be held in Oklahoma City. I would like to move that the Convention here urge the Board of Governors at this time to designate Oklahoma City as the locality for the 1938 Convention of this Association.

(Motion seconded by Mr. Becker.)

PRESIDENT WILLIAM GILL: It has been moved and seconded—and the Chair will certainly not declare the motion out of order—that the Board of Governors be requested to select Oklahoma City as the 1938 Convention City.

(Question put and motion carried.)

MR. HENLEY: Now, Mr. President, being a perpetual motion-maker and being reticent and retiring as I told you a few moments ago, I would like to offer a motion of thanks to our Philadelphia hosts for the very fine entertainment and the very satisfactory and instructive convention which has been held here.

(Seconded by many members.)

(Question put and motion carried by rising vote of thanks.)

PRESIDENT WILLIAM GILL: There being no other matters to come before the Convention, the Thirty-first Annual Convention of the American Title Association will stand adjourned, to meet in Oklahoma City in 1938.