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(Continued)

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Left to right, rear row: Frank I. Kennedy, Detroit, Mich.; Royce E. Wright, Milwaukee, Wis.; Arthur C. Marriott, Chicago, Ill.; James S. Johns, Pendleton, Ore.; William Gill, Oklahoma City, Okla. Front row: J. E. Sheridan, Detroit, Mich.; E. B. Southworth, Minneapolis, Minn.; Porter Bruck, Los Angeles, Calif., President, A. T. A.; Jack Rattikin, Fort Worth, Tex., Vice-President, A. T. A.; R. G. Williams, Watertown, So. Dak.

Proceedings of the Thirty-Second Annual Convention *of the* AMERICAN TITLE ASSOCIATION

(Continued)

October 24, 25, 26 and 27, 1938

Oklahoma City, Oklahoma

A Guest Speaker

Mr. President, Delegates to the convention and friends: When I hear such an elegant introduction as has been given, I am reminded of the story they tell of the gentleman who introduced a certain candidate for Governor. At the proper time of introduction, he mounted the platform, whipped his spectacles on, wiped his forehead, and said, "If I could only present this matter as I know the late Governor Morrow would do, I am sure it would be the best introduction you have ever heard. At this moment should the late Judge descend and mount this platform he would say, 'Folks this is my son, Ed, in whom I am well pleased!'"

Now for some time my friend, Jim Sheridan, has wanted me to come to one of your conventions. I had distinctly told him I did not want to make a speech and I see he has very kindly made arrangements to that end.

As I look at your program I see at 10:45 A.M. the Honorable Allen E. Denton, etc. but before his time clock registers again in his program I see the word "discussion." Knowing the title people as I do, I am certain he did not intend for me to make a speech and to make it more certain, I turned to page sixteen of your program. There I see "Notice to All Members—It is believed that the greatest interest of those attending the Convention will be centered on the general talks of our own members on problems which will be of great benefit to us. Following this thought, a select list of topics is being presented with informed speakers on each topic."

HON. ALLEN E. DENTON
Washington, D. C.
Chief of Title Section, Public Lands Division, Department of Justice

I, therefore, think I do not have to make a speech.

I do want to take this opportunity to express to you members of the National Title Association my personal appreciation of the efforts your officers have made to cooperate with the Federal Government during the last few years. On the part of title work, your Secretary and your other Officers have done a noble piece of work, helping us at times when we needed help. We certainly appreciate that effort on the part of this organization.

I might say that when inquiries come to my office as to services of title and abstract companies, examiners, etc., I have for use a copy of your Directory in my right-hand desk drawer, as does my secretary, in case we do not know you, that is a very good source of information for the time being.

I might direct special attention to one point: That the Attorney General has nothing to do with procurement of abstracts of titles, except in cases where the Department is called upon to procure abstracts for other agents. However, most contracts provide that the title must be satisfactory to the Attorney General. In making your contracts I suggest you have no thought of involving Justice (Attorney General) in the matter of securing payments of these abstracts.

The second is when you have matters for discussion or adjustment, bear in mind that there are certain restrictions that make it difficult or impossible for the government to deal as may the private individual.

I will be here for some time and I want to meet you all. I see many familiar names on your program, on your convention registration list and on your title papers, and I hope to meet you all personally.

Uniform Laws of Real Property

CHARLES C. WHITE
Chief Title Officer, The Land Title Guarantee & Trust Co., Cleveland, Ohio

Because our national government is one that does not, in most of the affairs of life, operate directly upon the citizens of the various States, and because most of the relations of our daily life are regulated by local laws, both statutory and judge-made, it has necessarily resulted that there is very little uniformity among the laws of the different States. Such uniformity as there is in statute law has arisen out of the fact that the newer States copied the statutes of the older States, and out of the further fact that when a legislator in State X feels that "there ought to be a law" on any subject, he does not evolve the same out of his inner consciousness, but goes to the Statutes of State Y, or some other State that has legislated on the subject, and copies the law of that other State, with such modifications as seem wise to him.

In Early Days

At the time of the adoption of the Constitution there was no thought that there should be uniformity of laws among the States. It is quite probable that most of those who thought about the new government at all conceived of it as a federation of almost independent States. It is also quite probable that the States rights theory of John C. Calhoun was more in accord with the general understanding of the Constitution than the theory of Webster and Marshall. Federalism was a growth and is still growing. There is, and always has been, a difference of opinion as to whether the growth toward federalism is a wise one. But that there is, and has been, such a growth can hardly be denied.

It is rather significant that the Constitution grants to Congress the right to make general laws on two subjects only, naturalization and bankruptcy. That the power of naturalization should be national rather than local seem almost axiomatic. And we moderns feel the same about bankruptcy. But it took almost one hundred years to convince the people of the wisdom of a uniform law on the subject of bankruptcy.

Notwithstanding the existence of extreme States rights theories and notwithstanding the difficulties in the way of uniformity, there have always been those who felt that something should be done to bring about some sort of uniformity among the laws of the various States. The problem of uniformity has been approached in three ways, (a) By the attempt to develop a federal common law. (b) By the National Conference of Commissioners on Uniform State Laws. (c) By the American Law Institute.

By Development of Federal Common Law

The history of the attempt to bring about uniformity by the development of a federal common law is well told by Robert H. Jackson, Solicitor General of the United States, in an address before the recent meeting of The American Bar Association at Cleveland, and published in the August, 1938, issue of the Journal of that Association. The title of his address is "*The Rise and Fall of Swift vs. Tyson.*"

To understand just what was decided by *Swift vs. Tyson, 41 U. S.* (1842), it is necessary to quote Section 34 of

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Chief Title Officer, Land Title Guarantee and Trust Co.

the Federal Judiciary Act of September 24, 1789, which has been in force ever since that time:

> "The laws of the several States, except where the constitution, treaties or statutes of the United States otherwise require or provide, shall be the rules of decision in trials at common law, in the Courts of the United States, in cases where they apply."

Clearly this section seems to lay down the rule that Federal courts should apply the local law in cases arising under the statutes and judicial decisions of the several States. But Justice Story in *Swift vs. Tyson* refused to apply what he conceived to be the law of New York as laid down by decisions of the Courts of that State, but held that the Federal courts were free to develope a common law of their own. To reach this conclusion it was necessary for Justice Story to hold that the phrase, "the laws," as used in Section 34 of the Judiciary Act of 1789, comprises only statute law and does not include that sort of law that is made by the decisions of the State Courts.

The rule laid down in *Swift vs. Tyson* would not have been so harmful had it been applied only to questions of commercial law. But the Courts did not so restrict its application, as the following quotation from Solicitor Jackson's address shows:—

> "The aftermath of the rule was, however, even more remarkable than its origin. The newly announced power of the Federal courts to disregard the decisions of a state grew by what it fed on. One field which might have been thought to be typically local, and so exempt from the rule of *Swift vs. Tyson*, was the construction of wills and the determination of title to real property. Even here, however, the Federal courts asserted their independence. In *Lane vs. Vick*, 3 How. 464 (1845), the Supreme Court had before it a question of the construction of a will dealing with real estate. "It is insisted," the Court said "That the construction of this will has been conclusively settled by the Supreme Court of Mississippi" (p. 476). The Court then declared: "With the greatest respect, it may be proper to say, that this court do not follow the state courts in their construction of a will or any other instrument, as they do in the construction of statutes" (ibid.).

Suppose, however, that there was in fact a state statute affecting title to real estate. Even in this situation the Court for a time declined to follow state decisions. In *Williamson vs. Berry*, 8 How. 495 (1850), an action in ejectment, the question was presented of the validity of a conveyance by a trustee of real property which had been approved by Chancellor Kent pursuant to a series of private acts of the New York Legislature authorizing conveyances of the property with the approval of the chancellor. The legislation and the conveyance took place in 1816-1817. The highest courts of New York, in proceedings involving this land, had sustained the validity of the conveyance as being in accordance with the private acts, and these decisions were concurred in by Chancellor Walworth, Kent's successor, who had presided as chancellor for almost twenty years. These decisions were rendered in 1836 and 1838. Then in 1850 the case of *Williamson vs. Berry*, involving the same land, reached the Supreme Court of the United States. That Court held that Chancellor Kent had misconstrued and exceeded the authority granted by the private acts, and that the decisions of the New York courts should not be

followed, Mr. Justice Wayne, speaking for the Court, said (1. 543):

" . . . we cannot admit that the rule hitherto observed in the court of recognizing the judicial decisions of the highest courts of the states upon state statutes relative to real property as a part of local law, comprehends private statutes or statutes giving special jurisdiction to a states court for the alienation of private estates."

Thereafter the New York courts adhered to their former decisions and the conflict in the state of titles to the land was intensified. Finally, in 1860, forty-four years after the conveyances in question, the Supreme Court was again presented with the question in *Suydam vs. Williamson*, 24 How. 427, and at this juncture the Supreme Court receded from its former views and decided to follow the views of the New York Courts."

It is sometimes said that "coming events cast their shadow before." But by its decision in *Erie R. R. Co. vs. Tompkins* the Supreme Court of the United States, without warning, and to the surprise of the lawyers in the case, overruled *Swift vs. Tyson*, and admitted that the courts had been all wrong these many years. This is the rather dramatic way in which Mr. Jackson describes the event:

Swift vs. Tyson

"On April 25 of this year there occurred one of the most dramatic episodes in the history of the Supreme Court, with the overruling of the 96 year old doctrine of *Swift vs. Tyson* (16 Pet. 1). This change was not impelled by "supervening economic events," nor was it a part of the program of any political party. It was a change of a legal doctrine, the very existence of which was but little known outside of our profession. The change was made on the initiative of a majority of the Court itself, without even demand by a litigant or argument of the point at the bar. It involved a volunteered confession that the Federal judiciary almost from the foundation of our government has pursued a course now clearly unconstitutional, has all these years been exercising a power not conferred by the Constitution, and in so doing has invaded rights reserved by the Constitution to the several states. The consequences to litigants are not yet clearly apparent, but the importance of this event to our developing jurisprudence has seemed to make the rise and fall of *Swift vs. Tyson* an appropriate subject for my paper today."

In a bulletin sent out to the members of The Pennsylvania Title Association by my friend Henry R. Robins, President of Commonwealth Title Company of Philadelphia, he has this to say about *Swift vs. Tyson:*—

"Mr. Charles Warren, in "New Light on the History of the Federal Judiciary Act of 1789," published in 37 Harvard Law Review, calls attention to the erroneous construction placed upon Section 34 of the Act of 1789, and after examining the original document, makes the statement that the purpose of the Section was merely to make certain that in all matters, except those in which some Federal law is controlling, the Federal Courts would apply as their rule of decision the law of the State, *unwritten as well as written.*

The fallacy of developing uniformity through a system of so called "Federal Common Law" is self-evident, when we realize that each of the forty-eight States has its own system of common law, which, in many instances, would not be uniform with either the common law of a sister State or a general common law throughout the country. As stated by Mr. Justice Brandeis in the Erie Railroad case, the doctrine would render impossible equal protection of the law, and in attempting to promote uniformity throughout the United States, it would prevent uniformity in the administration of the law of the State."

Mr. Robins calls attention to the fact that there is nothing in the overruling of *Swift vs. Tyson* that would change the law as to judgments in federal courts. Unless a State has passed a proper "conformity law" the lien of judgments in federal courts will be coextensive with the territorial limits of any particular County.

More time has been taken up with *Swift vs. Tyson* than would seem practical to title men, but it is an interesting subject in itself, and it illustrates the futility of trying to bring about uniformity by the development of a federal common law.

The American Law Institute

Chronologically we should next take up the approach to uniformity through the work of the National Conference on Uniform Laws. But logically the next in order is the work of The American Law Institute. The attempt at uniformity through the work of the Institute comes next logically, because it is an approach to uniformity through the re-stating of what is conceived to be a sort of general common law—a common law applicable to all States.

The fundamental fallacy of the work of The American Law Institute is that there is no common law in this country other than the common law of the several States. This is especially true of the law of Real Property. There just isn't any such thing as a common law of Real Property in this country. That this opinion is not peculiar to the writer is shown by the following statements:—

In the December, 1937, issue of University of Pennsylvania Law Review. Prof. William R. Vance has a devastating review of the two volumes of Restatement of Property. Since I am partly responsible for this Restatement I naturally do not agree with all that Prof. Vance says. But I do agree with the following criticism and it might well be taken as the text for a part of my talk today. Prof. Vance says of the Restatement:—

"The task undertaken was impossible from its inception. There is no "American Law of Property," and there can be none so long as the present federal system of government persists."

To some extent this is true of all the law that is being restated. Years ago Prof. Albert M. Kales called attention to the fact that no national law school could teach a law valid for all States. This is especially true of Real Property Law. I have always contended that Real Property Law is largely a local issue and a part of the burden of my song today is that it is largely statutory.

In 1895 Louis N. Dembitz of Louisville, Kentucky, Bar wrote a book entitled "A Treatise on Land Titles in the United States." In his preface he has this to say:—

"The American law of real estate is, in all its practical workings, the creature of statute:—little else but names and underlying ideas is "common law," and not much more is traditional equity. The American statutes have, indeed, a great family resemblance. But the lawyer, in opening a text-book, does not look for the broad outlines. They are common to the whole country. He looks for those details that will fit the case which he has then in hand, and the state in which that case is to be tried. The law writer must therefore seek to make himself fully acquainted with the statutes of each state, in all their details; in the points, great and small, in which they diverge from each other; and with the decisions in each state which bear upon and interpret these statutes. Among the forty-odd states, several must, of necessity, agree on almost every question, as it cannot be answered either by their legislatures or by their courts in as many different ways as there are states; and, fortunately, there has been much borrowing among law makers and law construers. Yet the variety between state and state seems interminable, and is much aggravated by frequent changes,—statutes amended and repealed, decisions overruled or ignored. The work of arrangement is overwhelming."

In the Preface of "Cases on Possessory Estates," Prof. Richard R. Powell says:—

"The third objective of the editor has been the stressing of the constant relevance of statutes in property law. The curricula of the law schools have minimized, for too long a time, both the contributions and the difficulties to be found in legislation. In no jurisdiction does a lawyer practice a non-statutory law of property. The percentage of statutory ingredient differs from state to state, but is everywhere large. From

the beginning the student in this field needs training in the integration of this statutory element and of the judge-made law of his jurisdiction."

Prof. Lewis M. Simes in the Preface to his work on Future Interests says:—

"The changes in the law of Future Interests in the United States which have come about since the year 1900 either by statute or by judicial decision have been very great. Coordinate, therefore, with the purpose of presenting those historic techniques which still survive has been the writer's purpose to give a complete and accurate picture of the existing law in this field. To do this it has been necessary to discuss statutes to a greater extent than is usual in a treatise of this general character. In spite of the obvious difficulties involved in such a course, an attempt has been made to indicate how common law principles have been modified by statute."

Restatement of the Law of Property

Of the volumes thus far published by the Institute it may fairly be said that the restatement of the law of property is the least satisfactory. This is not due to lack of ability on the part of the restaters, but is rather due to the difficulty, one might almost say the impossibility of the task. Such reform as we have had in the law of real property in this country (and this is also true in England) has been statutory, and statutes cannot be restated. Neither can there be evolved from statutes a common law of real property.

A few instances will illustrate the difficulty of trying to restate a supposed common law of real property.

In the early days of the restatement a controversy arose as to whether words of inheritance are necessary to convey a fee. Most of the states had passed statutes doing away with the necessity but there were a few states that seemed to have retained the old common law. All the members of the property group felt that the old common law rule had outlived its usefulness, and should everywhere be abolished. Some of the restaters wanted to take the bull by the horns and boldly state that no words of inheritance are necessary to create a fee. This would have been, of course, stating the law as we thought it ought to be rather than restating the existing law. This difficulty has run through all the restatements, but has been especially bothersome in restating the law of real property.

Section 151 of the Restatement of Property states that an estate for the life of another (an estate *pur autre vie* as it is called in the old books) will, upon the death of the owner, pass (with certain exceptions) to the personal representative of the deceased owner, to be distributed in the same manner as chattels. This is probably as good a rule as any, but it cannot be said to restate the law of Ohio (for instance) since the question has never been decided in Ohio. How can there be any common law on the question in a state whose courts have never been called upon to decide it? I will admit that the restatement on this point has persuasive force, but it is not common law in any particular state until the courts of that state have said so.

Reversions

Section 159 of the Restatement of Property says that any reversionary interest in land (which term includes possibilities of reverter) is alienable. Now this may be a good rule and has been made law by statute in many states. But that it is common law may well be doubted. In Section 715 of his work on Future Interests, Lewis M. Simes says:—"The cases are divided as to the alienability of a possibility of reverter after a determinable fee," and he cites about the same number of cases pro and con. A citation of Section 159 of the Restatement in a state whose courts have decided that possibilities of reverter are not alienable would not even be persuasive. This is just another case where the property group has restated as common law what they thought the law ought to be rather than what the law is. Section 159 would be persuasive in a state where the question had never been decided.

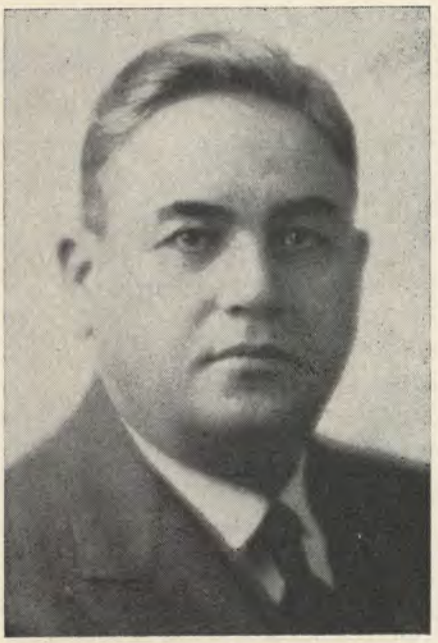
When the property restaters got to rights of entry for condition broken (which in the Restatement are called powers of termination) their nerve failed them. No doubt they felt that rights of entry should be as freely alienable as possibilities of reverter. But there was too much authority against them, and in Section 161 they restate the law as they find it and do not try to make a new law. They restate the law "as is and always was," that rights of entry are not alienable, except as they have been made alienable by statute.

Remainders

But when they came to remainders and executory interests they went off the reservation again. Section 162 boldly states that all sorts of remainders and executory interests are alienable. There is no doubt that this ought to be the law and there are statutes to that effect in many jurisdictions. But there is not such overwhelming weight of authority for the proposition as to restate it as part of the common law. In Section 714 of Sime's "Future Interests" he says:—"In some jurisdictions, the courts appear to have reached the conclusion that contingent remainders or executory interests in land are alienable without the aid of a statute, on the other hand, in a small number of jurisdictions there are decisions which have never been overruled, to the effect that such interests are inalienable." Notwithstanding the conflict of authority Simes comes to the following rather cautious conclusion:—

"On the whole, it seems probable that, except in a very small number of jurisdictions, contingent remainders and executory interests of all kinds, both in land and in things other than land, are freely alienable. As to things other than land, very few of the statutes aid us. But it is believed that the courts would in the main follow the analogy of the rule as to land and hold such interests alienable wherever analogous interests in land are alienable."

Section 240 of the Restatement of Property states that "when a remainder is subject to a condition precedent the termination, before such condition precedent is fulfilled, of all prior interests created simultaneously therewith does not destroy the remainer." In other words, the Institute takes the bold stand, notwithstanding a considerable conflict of judicial decisions that contingent remainders are indestructible. There was a decided conflict of opinion on this subject among the restaters and the fight was carried to the floor of the Council of the Institute. It was finally decided to let this section stand. There is no doubt that remainders should be indestructible, and they have been made so by statute in various states. There has been no reason for their destructibility since the development of the Rule against Perpetuities. But to restate boldly and baldly, as a part of a supposedly ideal common law (a common law that cannot exist in a vacuum, but must be a common law of one or more states) that remainders are indestructible when as a matter of fact they are destructible in some jurisdictions, is to mis-



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Mr. Linstrom's address, "The Recording System vs. Public Registration System," appeared in Title News, Volume 18, Issue No. 1, 1938.

conceive the purpose of the American Law Institute. Its function is to restate the law. It has no law making powers.

What has been said about the work of the Property Group of The American Law Institute is said in no spirit of captious criticism. I was a member of this group for some time and I have possibly found fault with some sections which I helped frame. But as Emerson said years ago—"Consistency is the hobgoblin of little minds. Say what you think today, and to-morrow say what you then think, even though it contradicts everything you said today." To a great extent the Restaters of Property were engaged in an impossible task. There is no American common law of property. To whatever extent the laws of real property are ever made uniform in America it will be through the medium of legislation, and not through the development or the restating of any sort of common law.

National Conference of Commissioners of Uniform State Laws

This brings us to the "lastly" of our discourse, namely: the work of the National Conference of Commissioners on Uniform State Laws. This organization has been in existence since 1892 and consists of three members from each state and territory, appointed by authority of the legislative or executive authority. While the method of appointment of the commissioners gives the Conference a sort of quasi-official status, it is a wholly independent organization. The object of the Conference as laid down in its constitution is as follows:—

"Section 2. Its object shall be (1) to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable; (2) to draft model acts on (a) subjects suitable for interstate compacts, and (b) subjects in which uniformity will make more effective the exercise of state powers and promote interstate cooperation; and (3) to promote uniformity of judicial decisions throughout the United States."

While the Conference is no part of The American Bar Association, it maintains a close connection with that body by having its annual meetings the week prior to the meeting of the Bar Association. And the constitution of the Conference provides for a further connection with the Bar Association by laying down the following as one of the duties of its president:—

"The outgoing President shall also make a report to The American Bar Association upon the work and recommendations of the National Conference during the preceding year, the action taken thereon at the Annual Conference just closing, and request the endorsement by The American Bar Association of uniform acts finally approved and recommended by the National Conference for enactment by the several states."

Uniform Acknowledgement Act

The experience of the Conference on Uniform laws has not been particularly happy with uniform laws of real property as is shown by a few statistics as to states adopting such laws.

(a) The uniform Acknowledgments Act passed in 1892 has been adopted in only nine states, although an Acknowledgments Act would seem a peculiarly fit subject for uniformity. (b) The Foreign Acknowledgments Act passed in 1913 has been adopted in eight states. (c) The Mechanics' Lien Act passed in 1932 has been adopted in only one state. (d) The 1927 Uniform Real Estate Mortgage Act was adopted in one state and has since been thrown into the discard. But the Conference has, largely at the behest of our governmental mortgage agencies, again taken up the project of a uniform mortgage act, and I predict that they will get exactly nowhere. (e) The Foreign Probated Wills Act, 1915, adopted in eight states. (f) The Foreign Executed Wills Act, 1910, adopted in eight states.

Federal Tax Liens

The one conspicuous exception to the seeming lack of interest in uniform laws affecting real property is the Federal Tax Lien Registration Act which was passed in 1926 and has been adopted in nineteen states. There is no reason why this law should not be universally adopted.

As contrasted with the lack of interest in uniform real property laws the statistics as to commercial laws is interesting. (a) The Negotiable Instruments Act passed in 1896 has been adopted in fifty-three jurisdictions. (b) Sales Act, 1906, adopted in thirty-six states. (c) Warehouse Receipts Act, 1906, adopted in forty-eight states. (d) Bills of Lading Act, 1909, adopted in twenty-nine states.

Laws other than property acts or commercial acts. (a) Declaratory Judgments Act, 1922, adopted in twenty-five states. (b) Narcotic Drug Act, 1932, adopted in thirty-six states. (c) Aeronautics Act, 1922, adopted in twenty-two states. (d) Veterans' Guardianship Act, 1928, adopted in thirty-three states.

Statistics are never particularly interesting, but these particular statistics seem to prove that it is not difficult to bring about uniformity in statute law when there is a real demand for uniformity. And they seem further to prove that there is no loud call for uniform laws of real property.

Uniform Estates Act

The most ambitious project in the way of real property law ever attempted by the Conference on Uniform Laws was The Uniform Estates Act. A member of the Conference who has always been one of the advisers in the Law of Property for the American Law Institute conceived the idea of using the Restatement of Property as a basis for a sort of codification of the law of Estates. Since it largely represents my own ideas I am quoting from the 1937 proceedings of the Conference, some remarks by Mr. Willard B. Luther, one of the commissioners from Massachusetts:—

"While approving the Act as a whole, if any such Act be considered desirable, Commissioner Luther wishes to be recorded as of the opinion that no such Act is either necessary or advisable for the following reasons:

"1. All property, except certain intangibles, is local and land is universally local. There consequently seems to be no real need for uniformity in laws dealing with property.

2. "No such Act can be retroactive and the adoption of any Act would muddy the situation in a particular State rather than clarify it. The existing law would run along for several generations in order to take care of estates already in existence, yet at the same time a new body of law would be growing up in connection with estates arising in the future."

It is interesting to note that on a vote to disapprove the Uniform Estates Act the vote was thirty-six for approval and eighteen for disapproval.

At the 1938 Conference the Act had been split into two Acts, The Uniform Property Act, and The Uniform Estates Act, both of which were approved by the Conference and recommended for adoption by the states. The Uniform Property Act bears the approval of the property group of The American Law Institute. The Uniform Estates Act has no such approval.

The chief provisions of The Uniform Property Act are (a) No words of perpetuity necessary to the conveyance of a fee. (b) All future interests are made alienable. (c) Conveyance of land adversely held by another is valid. (d) Abolishes Estates tail. (e) Failure of issue means definite failure of issue, and there is no such thing as an estate tail by implication. (f) Abolishes Rule in Shelley's Case. (g) Abolishes the so-called Rule in Wild's Case. (h) One's heirs may be made purchasers. (i) Contingent interests are made indestructible. (j) One may be both grantor and grantee in a deed.

It seems to me that The Uniform Property Act as a whole is rather innocuous. There is no particular harm in it, but there is no conspicuous virtue. Most of its provisions are already law, either by statute or judicial decision, in a majority of the states. The whole act seems to me an example of "much cry, little wool."

I am not going to discuss the Uniform Estates Act further than to say that I do not believe it will serve any useful purpose, and I predict that it is not going to be adopted in many states. It attempts to redefine estates, both possessory and future. But such estates have acquired a rather definite

meaning in the various states and lawyers are too conservative to venture in untried fields. One good feature of the Act is Section 16 which puts a definite time limitation on such possibilities of reverter and rights of entry as are created in the future.

The American Title Association is on record in favor of certain uniform laws affecting title to land. At the 1913 convention and again at the 1923 convention the Association adopted the following Proposals for Uniform Title Laws:—

Proposal No. 1.

In all states where the limitation on actions to recover lands is longer than ten years, reduce it to that period, and abolish the saving clause for persons under disability; or in the alternative, provide a longer limitation, say fifteen years, which will render titles absolute, regardless of disabilities.

Proposal No. 2.

A Lis Pendens law in those states which have no such law, providing generally that no suit in any court shall affect the title to land unless a notice of lis pendens is filed in the office of the Recorder or Register of Deeds.

Proposal No. 3.

A statute validating defective acknowledgments that have been of record for one year, so worded as to cover future cases as well as past.

Proposal No. 4. (as introduced)

A statute permitting married persons to convey their lands without their consorts joining, excepting in the case of homesteads, and permit no claims of homestead to be asserted unless a homestead is designated of record by either husband or wife.

Proposal No. 4 (as amended)

A statute permitting married women to convey their lands without their husbands joining, excepting in the case of homesteads, and permit no claim of homestead to be asserted unless a homestead is designated of record by either husband or wife.

Proposal No. 5.

Abolish inchoate dower in states where it still exists, or better still, abolish dower altogether and give a wife an interest in fee simple in lands of which her husband dies seized.

Proposal No. 6.

An absolute bar to the foreclosure of mortgages ten years after their maturity (or perhaps a shorter period) unless they are renewed of record.

Proposal No. 7.

Short statutory forms of deeds and mortgages. Providing that the form shall imply all the usual covenants.

Proposal No. 8 (as introduced)

Barring claims against unadministered estates, say in seven years after the death. Possibly five years would be better.

Proposal No. 8 (as amended)

Barring claims against unadministered estates after three years from the date of death unless letters of administration have been taken out within that period.

Proposal No. 9.

Simplifying certificates of acknowledgement and abolishing separate examination of wife in states where it is still required.

Proposal No. 10.

Abolishing private seals and witnesses in deeds and mortgages in states where they are still required.

Proposal No. 11.

Dispensing with the necessity for words of inheritance to convey a fee simple, and providing that unless otherwise specifically expressed, a deed shall convey all the estate that the grantor had.

Proposal No. 12.

A statute abolishing the blanket lien of judgments and requiring a specific description of record of the property sought to be held.

Proposal No. 13.

Provide that when a conveyance is made to a trustee and the powers of the trustee and the nature of the trust are not disclosed of record, the trustee's deed shall pass the full title.

Proposal No. 14.

Make it mandatory upon a court in granting a decree of divorce, to adjust and determine all property rights of both parties, and in the case of real estate, require a record of the decree in the office of the register of deeds.

Proposal No. 15.

Limit the time during which a testator can suspend the alienation of land —Say twenty years.

At the 1923 meeting a committee was appointed to devise laws to carry out the above proposals. The report of this committee is published in full in the 1924 Proceedings of The American Title Association.

Aside from Proposals Nos. 14 and 15 the above recommendations seem feasible and could well be recommended for passage in every state. It will be noted that they do not deal so much with substantive law, as with matters of execution of instruments and matters of procedure. I may say that six of the above proposals are law in Ohio, and two others are partially in effect.

In conclusion I may say that I am not particularly enthusiastic about Uniform Title Laws, but I am interested in reform and modernization of Real Property Law, and I recognize that such reform and modernization can come only through statutes. As an illustration of what may be done I cite my own State of Ohio. Within the last fifteen years there have been introduced in the Ohio General Assembly, largely at the instance of the Cleveland and Ohio State Bar Associations, twenty-two acts for the clarification and simplification of the law of Real Property. Of these acts fifteen are now on the statute books. In addition a committee of the Ohio State Bar Association devised a new Probate Code which went through the Ohio General Assembly practically as proposed. You do not need to wait for the Conference on Uniform Laws, or any other outside agency, to provide you with modern real property laws. Get busy and do it yourself.

Uniform Judgment Lien Law

Finally, there is one law that I should like to urge the Conference on Uniform Laws to get busy on. There is needed a Uniform Judgment Lien Law, so framed as to make judgments in federal courts liens only in the county where the federal court sits. In other words a "Conformity Law."

Title Insurance from the Viewpoint of the Mortgagee

W. R. NETHERCUT

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As I take it, this topic is not intended to develop a list of technical points that the mortgagee would like to demand in title insurance coverage, but rather to explain the attitude of the mortgagee toward title insurance, how it can help him and where it sometimes falls short. Insuring titles may not present more problems than other lines of business, but that it has its full quota we would all agree. That the insured is just as much concerned with these problems as the insurer may surprise some of you, but I believe it is true or should be true. Our problems are really the same, although the viewpoints from which they are approached by the insurer and the insured are naturally different and occasionally seem diametrically opposed.

It has been my privilege for several years now as a member of the Examiners Section, to attend these annual conventions and sit in on your title insurance discussions. I have been not only entertained by the spirited debate and repartee, but I could hardly avoid receiving a fairly definite idea of some of the insurer's problems and his ap-

proach to them, and my only excuse for discussing the subject assigned is the hope that a frank explanation of the mortgagee's needs will help you understand our position as you have helped me to understand yours.

A few weeks ago there came through the mail from a well known title insurance company an advertising leaflet containing a list of its larger clients. This list did not purport to be complete, nor did it indicate the volume of business from each. However, it contained fifty-six names — the United States Government, three refining companies, one merchandising concern, one investment company, one casualty company and forty-nine life insurance companies. That shows in a rough way what is hardly necessary to prove to you, that the life insurance companies as a group are, under normal conditions, the largest users of mortgagee title insurance. May I speak then particularly from the viewpoint of the life insurance company, admitting that there are many other mortgagees for whom I have no qualifications to speak. It should be understood also that some of the following remarks are particularly applicable to the situation of the foreign lender. A large proportion of life insurance funds has to be loaned outside the state where the company is located. In the case of my own company, domiciled in Wisconsin, only 7% of its mortgage loan account is on Wisconsin property, while 93% is invested in other states running all the way from Massachusetts to California. It is probably unnecessary to state that my comments represent my own opinions and that I hold no mandate to speak for life insurance companies generally. With this preamble, I want to take up briefly—

(1) Our need of title insurance.

(2) How well the need is being met; and

(3) What you—for our mutual advantage—can do about it.

In Early Days

Title insurance first attracted me because it eliminates the re-examination of the early title by a different lawyer each time the land is sold or mortgaged. The duplication of work involved in such re-examination is not only an economic waste, but too often results in different conclusions and requirements by counsel, even though they may be equally competent and learned. In my boyhood days the conclusive argument in case of dispute was "I betcha!" The fact that a title insurance company would back its opinion with its assets appealed to me as a practical way to settle differences of opinion between attorneys without resort to the courts. Since then I have learned many other advantages of title insurance which it is not necessary to rehearse before this group, and I admit to being thoroughly sold on title insurance in theory.

But does a life insurance company need to insist on it in those parts of the country where abstracts and attorney's opinions are in general use? I am afraid it would pain all good title insurance advocates to see the title expense and loss figures of a sizeable life insurance company using the old system. With a small legal force and well spread risks such a company can show a loss ratio that is almost astronomically small. It is true, of course, that any title containing serious record defects will not be accepted by such a company. In effect the life insurance company is carrying its own title insurance, and at a very small cost. The point I wish to make is that the indemnity feature of title insurance, while of utmost importance to an individual owner or mortgagee, is a minor

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consideration to the life insurance company.

I would not have you believe that the life insurance company disregards the indemnity factor entirely nor that it is unconcerned about the financial strength of the insurer. Quite the contrary is true—and let me explain why. The assets of mutual life insurance companies are treated in the nature of trust funds to be held for the benefit of the policy holders and their designated beneficiaries. The men who handle the investment of these funds are, as a class, keenly aware of their responsibilities. Long experience in the investment of millions, even billions, of dollars has shown the advisability of a conservative policy and the practical safety of making loans on the abstract and attorney's opinion basis. Call it the horse and buggy system, if you wish! The abstract of the record title is usually examined by a local attorney who is familiar with the company's procedure and the attorney's opinion and abstract are then reviewed by the home office legal staff. The abstract continued to show the mortgage of record is held by the mortgagee until the loan is paid or becomes the property of the purchaser if foreclosure results.

In place of the actual possession of this complete history of the title with opinion thereon by a trusted attorney, title insurance would substitute a brief instrument stating the examiner's conclusion of the present condition of the title, and, of course, agreeing to defend that conclusion. Instead of taking a chance on matters not of record affecting the title, the life insurance company is asked to take a chance on the financial responsibility and stability of the title company not only at the present time, but throughout the life of the mortgage and maybe longer. Do you not understand then why the insured is interested not only in the present financial statement of the insurer, but in its experience, its growth and its management, and also in every problem of the insurer affecting its future strength and stability? Examination and regulation by state authorities are an attempt to safeguard the insured, but with no correlation between outstanding risks and reserve deposits the attempt is, to say the least, inadequate.

Speed and Service?

As it appears to the conservative investment official the question is: Shall the life insurance company mortgagee sacrifice complete evidence and knowledge of the title under a time-proven procedure in order to secure the admitted convenience, speed and service of title insurance? There *is* a question there from the mortgagee's viewpoint, and I think you would do well to recognize it.

After stability in the insurer, the mortgagee needs speed and service and these title insurance can supply. I heard a story about speed the other day and while I can't vouch for it, it shows what real speed is. "The Hiawatha" is the crack streamliner of the Milwaukee Road, making the run between Chicago and Minneapolis, a distance of 415 miles, in 390 minutes. It seems that a passenger was kissing his wife goodbye as the train pulled out of the Chicago station and before he realized it, found himself kissing another woman in Milwaukee. That story may illustrate speed on the part of the railroad, but I think it also suggests contributory negligence on the part of the passenger.

In this period of competitive lending speed is an increasingly important factor. The preliminary opinion may not be ready on five minutes notice per the Atlanta System, but it will ordinarily be available in about the time that a continuation of abstract could be prepared, checked and certified. Time con-

sumed by an outside attorney's examination and delay on the part of a busy attorney in getting around to making the examination are both eliminated.

Local Investigations

Service is particularly important to the foreign lender who needs protection against encroachments, easements and uses, rights of parties in possession and mechanic's liens not of record—things that can be determined only by investigation on the ground. This need is met by the full coverage policy—either the A.T.A. or L.I.C. With your facilities and local knowledge the increased burden of the full coverage policy can be easily handled, and to the mortgagee it spells service with a capital "S". Under service we should mention also the defense of the title after policy issues, which can be handled much more effectively by the local title company than by the foreign lender.

Competent Title Examination

There is one other need of the mortgagee—every mortgagee—and that is for the most competent legal examination of the title that is possible. While it is dangerous to generalize and there would be many notable exceptions to any statement on the subject, it is my belief that the opinion of a title company attorney with all of the facilities of the title company at his command, dealing constantly with title questions and making a study of the statutes and decisions of his particular state—such an opinion, I say, should be the most accurate and reliable obtainable anywhere.

So much for the mortgagee's need of title insurance. Now how well is that need being met? In general and speaking from my own experience, I would say, "Very well indeed!" The cooperation shown by the insurer in giving us protection and in approving our requests for modification of the policy form have in nine out of ten cases been all we could ask. We have tried to limit these requests to what was reasonable and to what we felt was important, and the response has been fine.

Notice Clause

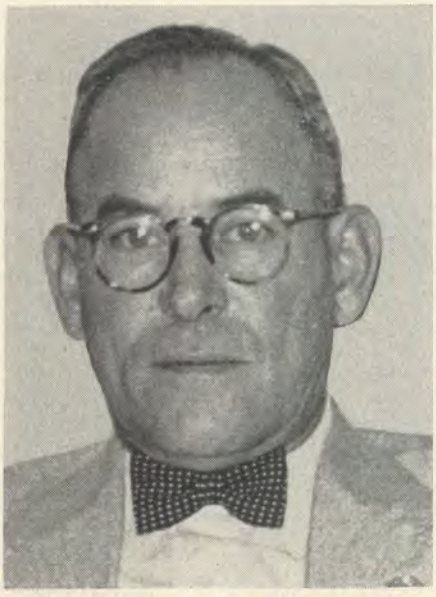
As a life insurance company we have to qualify under the laws of each state in which we write business. Thereupon the insurance commissioner or other designated officer of that state is authorized to accept service of process for us. Service may be had on the company without our actual knowledge and there may be delay, entirely beyond our control, in notifying us. Hence we dislike the ten day notice period specified in many policy forms and have secured modification thereof in certain states where the statutes permit. In other states where the time for filing answer is short, such a modification would put the insurer in a hole and we have therefore waived it. I cite this as an example of a special need of the foreign lender and a reasonable agreement to meet the need where it is possible.

Establishment of Marketability

We have also requested construction or amendment of the A.T.A. Standard Loan Policy to expressly cover costs of *establishing* marketability as well as defending it— the language of the A.T.A. policy being less clear than the L.I.C. policy on this point. This has been agreed to by all insurers who issue us the A.T.A. policy. Other life insurance companies request other and maybe more numerous modifications, and have, no doubt, received the same degree of cooperation from the insurer.

Exceptions

Our occasional disagreements with the insurer have been on questions of



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exceptions to the coverage. There are two schools of thought on the matter of coverage— one looks at the question from a strictly legal viewpoint, the other from the insurance angle. Recently I had some correspondence with an officer of one of the title companies we regard very highly. He wanted me to understand that his company was willing to waive certain record defects and not set them out as exceptions in the policy, but that we should not then take the policy recitals as a complete title opinion or a warranty that that was what the record actually showed. I assured him that when we took title insurance, we took it as insurance and not as a representation of the record and that the more things his good company was willing to be responsible for, the better we would like it. Certainly the conscientious legal attitude of my correspondent did not reduce our regard for him or for his company.

But usually when we encounter the legal viewpoint it is in connection with the refusal of the insurer to waive minor or very remote objections or matters against which the insurer is amply protected by the subrogation clause in the mortgage policy.

Reasonable Risks

To sell title insurance, and to do it with safety to the company, there must be a proper blending of the legal and the insurance attitude. It is entirely natural that the balance will not always be perfect. We have come a long way from the day of the fire insurance company of which it was said that it would write a risk on nothing but pig-iron under water. If there is no risk there is no reason for insurance and no justification for the insurance part of the charge. Dr. Gage in his recent book, with which most of you are familiar, found that losses suffered by title insurance companies in fifteen states averaged just 3.21% of the premiums charged. That would not indicate that the companies have been assuming undue risks. I believe it does indicate that the insurer can safely liberalize the coverage given and that it would be wise to do so in order to increase the saleability of title insurance. Except in certain parts of the East where it originated and in California where they do things by main strength anyway, title insurance is like life insurance, it is not bought, it is sold. Anything you can do to further the popularity of title insurance will increase sales and redound to your own advantage. I think this is fully appreciated by most companies and that they are doing a splendid job. The occasional exception is all the more noticeable for that reason.

Costs

Then there is the matter of the cost of title insurance. Even though this cost is ordinarily paid by the borrower, the mortgagee is vitally concerned. In the very intensive campaign that is now going on for acceptable loans the question of costs is often a deciding factor. If there is too great a difference in cost between title insurance and the abstract-opinion, a life insurance company may not be able to secure the business unless it waives its title insurance requirement. We have been faced with this situation more than once in recent years when arranging for local representation in a new field. The desired correspondent has stated flatly that the greater cost of title insurance will make it impossible for him to secure the type of loan we want and, if title insurance is required, he is not interested in our contract which is otherwise acceptable.

We Need Mortgage Paper

Since our first concern is good loans, we have agreed in such cases, to accept abstracts with opinion of a selected at-

torney; while it is too early to tell the results in these particular places, we are confident from our other experience that it will work out satisfactorily. Aside from the competitive angle in securing new loans, the mortgagee will be directly interested in the cost of title insurance when it has acquired title and is selling the former security, but has no abstract to submit to the purchaser.

As I said earlier, the mortgagee is primarily interested in the financial responsibility and stability of the insurer. Therefore, a price schedule not so high as to discourage sales, but high enough to operate adequately and put aside proper reserves should be to the best interests of the insured as well as the insurer. In view of the service rendered by the title company and its guarantee, it is to be expected that title insurance will cost more than the abstract. It is understandable too why the cost of title insurance should be higher in the larger cities where the records are more voluminous and complicated. It is not so clear why cities of approximately the same size and conditions should vary so tremendously in their rates. I know this is a subject which this association has studied very thoroughly and without accomplishing much toward uniformity. I do not believe that complete uniformity is either necessary or desirable. In most places it seems that the rates are fairly commensurate with the service rendered. In cities where the rates seem high they are, no doubt, justified in the minds of the local title men by local conditions or by local traditions. I merely wish to go on record that from the viewpoint of the foreign lender and mortgagee, the wide variation in rates has no satisfactory explanation, that the mortgagee *is* concerned with title insurance costs, and that if they can be held down to a reasonable figure, the mortgagee will be better able to insist on title insurance.

So, while a real service is being rendered by the title insurer to the mortgagee, there are still things to be done which will make title insurance more acceptable and establish it on a firmer foundation than at present. That of course is the endeavor and the goal of this Section of the American Title Association. A new approach to the problem is now being made in collaboration with the American Bar Association by appointment of a joint committee to survey the entire field of title insurance.

The Bar Association View

Presumably the Bar Association members will represent the users' viewpoint and the Title Association members that of the insurer. A glance at the roster of the committee will convince anyone that the insurer's position will be ably presented. The fact that this is a joint project should encourage us to feel that the recommendations which the committee will make are well considered, practical in operation and as equitable and satisfactory as divergent interests permit. Organization of the committee and plans of procedure were reported to the American Bar Association at the convention in Cleveland last July. The program is well conceived and I want to call particular attention to two of its features. Three general fields of investigation are outlined—

First: **Organization, Capitalization, Rates and Reserves.** As previously pointed out the financial strength and stability of the insurer look very important to the life insurance company mortgagee. More emphasis on these matters was urged at a recent convention of this association by Mr. John R. Umsted of Philadelphia. It is fair to say that such failures as have occurred among title companies have been due not to the title risks, but to other lines of business conducted by the same companies. So far as mortgage guarantees are conerned, that situation is very generally cleared up. It is still approved practice to combine a title and trust business. Some companies may even do a banking or real estate business and have a title insurance department.

Segregation of Assets

How much of the assets of such companies are really segregated to the title division and so held that they cannot be reached by general creditors in case of difficulty? Substantial assets lose their impressiveness when analysis shows that the insured will have first claim on only a small portion thereof. Deposit of securities with the state treasurer is good so far as it goes, but many title companies recognize that such a reserve is insufficient for the total risk outstanding and voluntarily carry an additional reserve. It is to be hoped that this committee can assemble data and determine a safe ratio of reserves to risks which the title companies can use as a guide. In order to work this out it will be necessary to know the amount of your outstanding risks and too many of you do not attempt to keep such figures. I doubt if there is any other insurance business in the country that could not furnish definite and accurate figures on its outstanding risks.

Termination of Liability

Of course your problem is quite complicated by the fact that a title insurance policy has no definite date of termination and in the case of an owner's policy may run on indefinitely. For a title insurance company doing business over a large territory in several states and without abstract plants, the expense and difficulty of checking terminations would be great. But for the average company operating mostly in one or two counties, and with a daily take-off system, it should be simple. Some do it now. Why not all?

Plant Costs

Another question for the committee's consideration under this head is the proportion of capitalization which can safely be carried in abstract and title plants. The expense of maintaining a plant is heavy and, of course, necessary to the continuation of operations, but where there are several title plants in the country it may have no value at a forced sale. So, from the viewpoint of the insured, it is a doubtful asset. Maybe the survey will disclose a fair percentage at which the plant should be carried.

The second field of investigation is **"Title Underwriting,"** referring to the extent of coverage to be given. The circumstances in the individual case will have to determine this question, but the setting up of norms and fair standards will be helpful.

Policy Forms

The last subject to be examined is the **policy form,** and we are very much interested in that. About twelve years ago the foreign lender's need of a full coverage policy resulted in the drafting of the L.I.C. policy—named after its authors, the Life Insurance Counsel. Soon thereafter the A.T.A. form was approved by this association. The coverage of the two policy forms is substantially the same, and the conditions and stipulations are very similar. By one form or the other the life insurance company mortgagee has been pretty well satisfied and the title insurance company has increased its sales accordingly. However, time and use have developed numerous criticisms of the language and the arrangement of both policies. Some of these were brought before the 1937 Convention in the report of the Committee on Uniform Policy. No action was taken and no action can be taken at a session of this kind. It is a matter for careful study and discussion by a smaller group such as this joint committee.

Constant Refining

But the fact that these policies have been very serviceable for more than a decade is no reason to be satisfied with them for another ten years. At least that is not the American way. Millions of dollars worth of machinery is discarded annually not because it is worn out or less efficient than at first, but because new machinery is available which is more productive or can operate at a lower cost. I am not suggesting that the title business should emulate the automobile industry to the extent of getting out a new policy model each year. Annual models are the result of competition and we don't have a great deal of that in the American Title Association. But surely twelve years of experience with the present policy models should not be kept in cold storage indefinitely. The engineering of a new policy form will take time and much hard work by busy men, so I would urge on the Association and upon you individually, that

full support be given the committee in its efforts.

The form of policy submitted to the committee for consideration has been drafted by the chairman, Mr. James E. Rhodes, 2nd, and is substantially the same as he presented to the Springfield Convention of this Association in 1936. Many of you have studied it, in fact a goodly number of you are using it. It follows in general the lines of the contract worked out by indemnity insurance companies. I will not go into the details of the policy here as these will be taken up to much better purpose in the sessions of the committee. It is enough to say that it is simple and logical in arrangement and that it is the result of much experience and study. Whatever form is finally recommended, you can be sure your representatives have given careful consideration and have concurred in approving.

Regulation

There are many varieties and kinds of insurance, and all of them are tinged with a public interest, and as a consequence are liable to public regulation. When title men went into the insurance business they took unto themselves a new and additional set of responsibilities and headaches. In a large part of the country these headaches are still comparatively new. If the experience of older lines of insurance is to be duplicated by title insurance, we may look forward to an increasing amount of government regulation and an increasing insistence on standard terms and forms. To avoid arbitrary and unreasonable legislation, it is tremendously important that these questions affected with a public interest be considered by all parties in interest, as can be done in this joint committee; further, that the committee's recommendations be put into effect and, when the proper time comes, that they be submitted as the basis for legislation.

I would not have you infer from any of these remarks that it is felt that the insured's needs and desires have not been considered heretofore. Quite the contrary is true! Officers of this association and of this section have repeatedly solicited the comments and reactions of the insured to questions being discussed, and my experience has been that title companies generally welcome an expression of our views. Furthermore, a great deal of convention time has been given during recent years to listening to the representatives of various lending agencies and corporations. I have sometimes wondered that you continue to ask us. My point is that the findings and recommendations of a joint committee will represent a broader background and will with good reason carry greater weight than any survey that either the American Title Association or the American Bar Association might make singly.

The work of this committee should mark a significant milestone in the history of title insurance—summing up the experience of the past from the combined viewpoints of the insurer and the insured, and suggesting standards and objectives which will stabilize and extend title insurance and make it, without question, the only form of title evidence acceptable to the mortgagee.

Title Insurance Helps Us

Speaking for the life insurance company mortgagee then, I would say that experience has shown we can safely loan on other kinds of title evidence, but that we really need the speed, convenience and service of title insurance; that the cost of title insurance is sometimes a determining factor in deciding what form of title evidence to accept; that we want a logically arranged and simple policy contract; and that above all else we are interested in the integrity, stability and financial strength of the insurer—not mere size, but quality and adequate reserves properly maintained.

What you, the insurers, can do to help us, the insured, is to continue the fine cooperation that you have manifested in the past and to build your companies so strong, so fair and so reasonable that there will be no demand for other kinds of title evidence. Maybe that is a large order, but in this joint committee I believe you have ready at hand a most useful instrument and program toward that goal. Your representatives on this committee will be doing each one of you a tremendous service and are entitled to your active interest and enthusiastic support. Don't be like the brakeman they tell about who was one of the crew of a heavy freight train going up a long grade and having a terrible time of it. Finally they reached the top and the conductor said to him, "Boy, we certainly had a tough time getting up that hill!"

"Yes, sir," replied the brakeman, "We never would have made it if I hadn't kept the brakes on a little to keep us from slipping back."

MR. FRANK I. KENNEDY, CHAIRMAN: Thank you, very much, Mr. Nethercut.

I am sure we all enjoyed your paper very much, and I am sure we will enjoy reading it again in the published proceedings of this convention.

For the information of everybody here, I would like to compliment these joint committees by telling you that it took a lot of work to get fifteen men lined up for each organization and organized in each separate section and the first year was pretty nearly taken up with organization matters. They haven't done much but organize, but we hope they will have a chance to do some constructive work soon.

MR. WILLIAM H. McNEAL, NEW YORK CITY: May I say that I think I have heard the most informative paper or the question of Title Insurance that I have ever heard read at a Title Insurance Convention? I think Mr. Nethercut has touched upon more vital points than anyone I ever heard. His paper to my mind will meet many needs, not only on the sale of Title Insurance, but the execution of it, if given full and adequate consideration.

I was very much interested in the comparison of the cost of title insurance and attorney's opinions. I have examined, in my lifetime, thousands of titles and closings for mortgage companies. They must have their title examining and closing department, and likewise, the life insurance companies must have their closing department and title examiners. The work of the title examiner and closing department, etc., of the mortgage company and life insurance companies is supplanted by the work of the title insurance companies and its examining and closing departments; they can render to the life insurance companies, or the insured, a much quicker service than he has indicated need be, by relieving the mortgagee of the intricate detail of examining and closing titles. The life insurance company, I may presume, is a very highly organized institution, organized for the benefit of its policy-holders, for if it were not for the policy-holders, there would not be any money for lending on mortgages. Therefore, we go back to the fundamentals of the life insurance which is the writing of life insurance.

The writing of life insurance is for the purpose as he stated, of protecting the insured and its beneficiaries. One of the main features of the Mutual Life Insurance, of which there are many, is to render to the insured a higher dividend on accumulated surpluses and every dollar that could be saved in a life insurance company by reducing the time and expense element in the handling of title features will be to the benefit of the insured under the life insurance company. Therefore, as I see the situation and have thought it through, it seems to me that a great deal of money could be saved to the insured, if title insurance was more uniformly used at lesser expense. I think Mr. Nethercut will agree, privately, at least, that examinations of the title policy on his desk is much less expensive than the examining or reviewing of an abstract, the supervision and all the intricate details that go into making of a mortgage loan. For that reason, I think the life insurance going back to fundamentals could in a great degree increase their dividends by saving on these expenses of examining abstracts, reviewing attorney opinions, details of closing, requirements of titles, etc. I would like to have Mr. Nethercut give some consideration on that subject and, perhaps, at a future meeting give us some light on the difference that may be saved in the operating of mortgage departments.

I wish to repeat, Mr. Nethercut's paper has been a "gem."

"Reasonable Title Insurance Risks"

DONZEL STONEY
Vice President, Title Insurance and Guaranty Company, San Francisco, California

The term "reasonable title insurance risks" would seem to be a contradiction in terms, and that condition was more nearly true in the early development of title insurance than it is now when title insurance is firmly established. When our company first went into the title insurance business we were making abstracts as well as issuing policies. Many lawyers were examining these abstracts, and apparently every lawyer, fearing that his work might be thereafter criticized by another lawyer, set up as objections to the title many matters which they themselves did not regard as serious.

Our early experience was that where we were willing to insure a title, or had already insured a title, and some lawyer made objections thereto which we had eliminated, there was more or less argument and discussion. Apparently the purchaser of the property, when objections were made to the title by his lawyer and he thought that his lawyer might not permit him to make the purchase, became just that much more anxious to secure the property, so that in nearly every case a compromise was affected, and even the lawyer himself told his client that if the client received a policy of title insurance he would regard it as reasonably safe.

Furthermore, in our case it happened that my brother, who was examining most of the titles for our company, and Henry E. Monroe, who occupied a similar position with our competitor, had been members of the same class at the University of California. Flyspeck objections to titles had always been annoying to the title insurance companies, and they made a practice of sitting down and discussing the various so-called objections to title, coming to some conclusion with respect thereto, and each making a note in his own book that they had agreed either to ignore such objections, or to insist upon them. This eliminated a great deal of the difficulty and delay in closing real estate transactions.

Eliminating Unimportant Objections

We know that the foundation of the title insurance system is to so handle matters for our clients that they are not subjected to any real risk in connection with the purchases of land or loans upon the security of real estate. The elimination of unimportant objections made an increased facility of closing sales and effecting real estate loans, and added much to the service to our clients. Of course title insurance companies would not be justified in placing themselves in a position where they may be called upon to pay losses out of their own pockets. Our clients believe that when they purchase real estate and receive a policy of title insurance they are going to have no adverse title claims asserted, and further that whenever they have an opportunity to sell the property, no title objections will arise to delay, hamper or prevent the consummation of such sales. From this I take it that any objection to or defect in a title that might justify your insured in feeling that you are obligated to buy his property or an insured mortgage, as the case may be, is not a reasonable title insurance risk. Experience, however, teaches that a great many unimportant objections to titles may be and in many cases should be ignored.

The inclination and desire of expediting the closing of sales, or effecting mortgages or deeds of trust, has been a strong incentive towards elimination of frivolous objections, and towards reaching prompt and satisfactory conclusions on legal matters which initially may cause some doubt. Our business is one in which we are endeavoring to render services to the public and there arises a motive to prevent disagreements between title insurance companies as to what are and what are not proper objections to make to a title. You will realize that if in a community one title insurance company is willing to pass a title and another title insurance company is not, it is discrediting to our clients to find that two such organizations can not agree on a subject of that kind, and affects the confidence which the public have in the reliability of title insurance companies.

Cooperation With Competitors

The title insurance system is based upon a service to the public, and that service should be promoted just as far as conditions will justify. This service has been and can be much more effective where cooperation is developed between competitors than could have been done in the days when competition among title companies was warfare. Where title insurance companies in the same vicinity discuss legal questions with one another, agreements can be and have been in many cases effected so that one company is not setting up as title objections matters which the other company has decided to ignore.

Suits

Anything that presents a prospect of expensive litigation, or the pendency of such litigation, falls within the class of objections which a title insurance company ordinarily should not waive, and yet in an experience covering a great many years, we have met with suits without merit based upon utterly worthless claims that have involved large areas of land in which a large number of owners are interested, whether all of them have their titles insured or not. One of many early recollections was of a suit of that character which covered a large portion of the Mission District in San Francisco. This occurred before title insurance had assumed any prominence in California. At that time most of the titles were based upon abstracts and attorney's reports, and the business was very largely confined to bank attorneys. They very properly got together and decided they would not aid the blackmailers in clouding the titles of property owners, and agreed not to set up this suit as an objection in their reports to the various banks. The immediate effect was that the plaintiff who had been securing considerable sums for quitclaim deeds very soon reduced his demands to $5.00 a piece for such deeds. However as soon as the case could be gotten on for trial the claim of that plaintiff was eliminated.

We have now in San Francisco a suit involving considerable acreage in the Sea Cliff and surrounding districts. In the early days a man named Phelps filed a preemption claim upon certain properties in the outside lands, as was the case of a great many others involving different localities outside of the pueblo boundaries of the City and County of San Francisco. This claim embraced a portion of the Presidio Reservation and lands adjoining it to the south. A few months ago a conveyance of that claim, or somebody's interest in it, was recorded in this city. Thereafter an undivided interest therein was created by deed and a partition suit started involving several hundred defendants.

The history of land titles in San Francisco is based upon the fact that the title to the property outside of the pueblo was in the United States of America. After legislation in Congress and in our own state legislature providing for the settlement of titles in San Francisco, a patent was issued by the United States of America to the City and County of San Francisco for the benefit of itself and its citizens. The title to the private lands was to go to those in possession in March, 1855, and machinery was set up whereby such facts could be established to the satisfaction of the authorities of the City, who thereupon executed what has been known as city deeds to the various parcels of land, including the lands involved in this suit. The Phelps claimants did not, nor did any of their predecessors, receive any such city deeds.

After the fire of 1906 further legislation provided a method for the establishment of titles where the official records had been in whole or in part destroyed, and practically the whole area of San Francisco has been included in such proceedings, and the titles of the various owners settled and established. Under those circumstances the title insurance companies in San Francisco

have deemed it a reasonable insurance risk to insure against this claim, knowing however, that there is to be considerable expense connected with the filing of answers and defending the suit.

Ancient Objections

Such instances lead at once to the conclusion that the basis for eliminating many objections in policies arises out of the question of public relations, public policy and of substantial services to the community. For similar reasons companies, at least in Northern California, have found it justifiable to eliminate certain record objections of many years standing where the properties involved have been passed repeatedly for a great many years, both for sales and for loans, and where large tracts of land and many owners are involved. The motive behind this was similar, but was also strengthened by the desire not to discredit title insurance companies by upsetting titles that had always been believed to be good. As an example of the kind of objections which have been eliminated, we refer to cases where the early patent ran to the heirs of some individual who had died, and which patent did not mention the names of such heirs. The title could not be deemed marketable, but the public benefit obtained by ignoring this objection far surpassed the title insurance risk.

School Lands—Mineral Rights

Our attention has recently been directed to the question involving the 16th and 36th sections of school lands. A recent federal decision in the southern part of the state caused some consternation among some of our title insurance companies. That case seems to me merely to hold that where lands were known to be mineral at the time of the Government Survey, and where no initial listing to the state had taken place, that the matter is still within the jurisdiction of the Department of the Interior to decide that the land was mineral in character at the time of the survey and did not pass to the state but belonged to the Government of the United States. Our information is that at the present time there are only two sections of land as to which suits by the Government of the United States are now pending, although the Department of the Interior has spent much time in trying to recover mineral lands for the benefit of the Government. It seems clear to me that the Government realized that that condition did not exist in any of the other school sections, for while these suits were pending Congress passed an Act transferring title to all school lands, whether mineral or not, to the State of California for the benefit of the school department, but provided that any patent thereafter issued by the state should contain a reservation of all oils and minerals, and authorized the state to make oil leases or mineral leases for the same, the rents from which were to go to the school department. It also provided that on application by the State to the Government of the United States for patents, the question as to whether any particular land was or was not mineral in character could be determined.

Patents

It would seem as if we have now been provided with a means of having titles to these sections perfected. Up to the passage of that act there was no method provided for the issuance of patents to those lands. The courts have held that it was not necessary to have a patent, and in some cases it held that the Government could not be compelled to issue a patent as the act itself made no provision therefor. A very cursory consideration of the situation will bring to your mind that eliminating Spanish Grants in California there are two school land sections in every township of the State of California. I expect if we are going to require the procuring of patents covering these

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sections it would involve many thousands of such sections, many of which have been split up and are now the property of many different owners. Some of the title insurance companies in the north have decided that they will not inflict this hardship upon the property owners of Northern California, and will only make reference thereto in those counties where the local title companies are insisting upon setting up such exceptions.

Swamp and Overflow Lands

There is, however, a real risk arising in some cases involving swamp and overflowed lands. There is a provision of law in those cases for procuring a patent from the United States to the State of California as well as a state patent to the lands involved. In cases where both patents have been issued there would seem to be no serious question involved. However, in the past title examiners have been content to rely on the fact that the Government had listed the property to the state, and the state had issued its patent. Generally speaking, most of these properties have been listed to the state, but in many instances properties have not been patented by the Government of the United States. This may involve considerable acreage and a great many owners. Where there is no patent from the United States and no actual listing it would not seem to be a reasonable title insurance risk, and probably there have been numbers of patents issued on reports from interior title companies where the data from the Land Office was not checked up. The Federal Courts, however, have held that until the Government itself has issued its patent the legal title remains in the Government, and the latter is in a position to correct defects in descriptions by having a resurvey made and limiting the owner of the swamp and overflowed land to the land which they find by their survey was actually such swamp and overflowed land.

Brown vs. Hitchcock, 173 U. S. 473.

Clear Your Titles

It has long been the custom of the title insurance companies to close deals and issue their policies of title insurance where objections found by them involve merely record defects and not ownership in the property itself, holding back from the seller a certain amount of money until such time as by suit or otherwise the title objections were removed. In such cases the risk is very much minimized where the title insurance company retains more than sufficient money to pay the expenses, including attorneys' fees if the company attorneys are to handle the clearing up of the objections. Where that duty devolves upon the owner and his attorneys, sufficient money should be held to induce the owner to see that the objection is promptly taken care of, and we have always felt that the larger the amount retained, the surer it was that the matter would receive prompt attention.

You will remember under the abstract system where attorneys examined titles that it was not at all unusual for the closing of a transaction to take months, as the attorney did not permit the transaction to be closed until all of the objections were removed. The practice of the title insurance companies above referred to was one very important item in obtaining cooperation from buyers in switching from the abstract to the title insurance system.

Probably all of us have had some unpleasant experience in insuring a title which could be cured where adequate indemnity in cash did not accompany the termination of the objection. Some years ago we agreed to insure title

provided a suit in rem to quiet title under Section 749 et seq. of our Code of Civil Procedure was brought to perfect the record title. This was one of the sections in a proceeding in rem to quiet title against all unknown persons, and was based upon a possesion of twenty years by the plaintiff or his predecessors in interest, and also upon the provision of a five year payment of taxes. Many of our states have similar provisions, but I do not know whether that is true of all of them. The parties were so anxious to close the deal that both the buyer and the seller gave us an indemnity against that objection, and we had a letter from the attorneys advising us that they had been employed to proceed with the suit as soon as we sent them a description and the names of the parties defendant. This information was sent them promptly and some six years later in examining the title for a sale of a portion of the property we found that the suit had not been commenced, but that a neighboring owner had in the meantime commenced and completed a similar suit on his property and had established an easement across the property upon which we had issued our policy. Upon receipt of our report the owner thought we were obligated to clear his title. However, upon seeing our letters of indemnity he was satisfied that such obligation was not upon us, but asked our aid in securing a quitclaim deed to eliminate the easement claim. Naturally we rendered this service, and the quitclaim deed was procured without expense to us.

Reference to Section 749 et seq. of the Code of Civil Procedure brings us another question upon which title insurance companies of California have not been in accord. That is the question as to who are necessary parties to be named in such suit. I have personally examined a number of titles in the interior where such suits have been brought, and for a great many years our company has felt that it was not jurisdictional to name persons whose claim of title, if any, arose more than twenty years before, where such name did not thereafter appear in the title itself. In some cases I have gone through the list of named defendants and found many of them whom I personally knew to be dead. As far back as 1908 one of these cases came before the Court of Appeals in the suit of *Blackburn vs. Bucksport*, etc. R. R. Co., 7 Cal. App. 649, 654. The court in that decision, among other things, stated that it was not necessary in such an action for the plaintiff to have examined the title to the property, nor to include all persons as appear of record to have some claim or cloud on the title. Judgment of course affects only those claims which are more than twenty years old, or if others are named in the complaint, service must be made on them as in ordinary cases to quiet title. I have seen some suits in which have been included several hundred named defendants having claims over twenty years old. It has always been our practice that if a conveyance comes out of an owner with a defective description, and the new owner conveys out with the same description, that whatever he received he has conveyed, so that where there is a long chain of title containing a long list of defective descriptions it would not seem necessary to quiet title against any one except the first one who started a defective description. In practically every case the man is either dead, believed to be dead, or his claim is of such age as raises a reasonable presumption that he is dead.

Conclusiveness of Decrees

We have always felt justified in accepting a decree where some individual is named, whether his name can be found in the chain of title or not, without the mention of any other named defendants. Where the proceedings are regular on their face and the decree entered we have always felt that that decree, when final, is conclusive against all persons whose claims are more than twenty years old. We believe that to prove a record title in court all you would have to show would be that the title had passed out of the Government of the United States or the state, as the case may be, and then introduced your judgment roll in the in rem 749 suit.

The layman can not understand, nor should the lawyers, why it is necessary to prosecute a suit against a large number of persons presumed to be dead, knowing that a judgment against such dead person is absolutely null and void. We feel that a title insurance company is not properly serving the public where it insists upon such unnecessary requirements. On the other hand my attention has been called to some of these suits where the names of a large number of persons are set up as claimants, and where the suit has been subsequently dismissed as to some of the defendants. This would seem to us to be extremely bad practice, for the plaintiff sets up in the record of the title that certain named defendants claim an interest in his property, does not even allege that their claims, if any, arose more than twenty years before, dismisses as to them and leaves no determination as to the validity of such claims. Not very long ago one of these suits was commenced and brought on for hearing in one of our northern counties in which but a single individual was named as defendant, with the usual all persons clause in the complaint and caption. The Judge who had determined many 749 suits in the past remarked that it gave him great pleasure to see that the title company in his county had abandoned the practice of suing a lot of dead people.

On many occasions, title insurance companies are called upon to eliminate objections to titles where the interest of the public is not involved, but merely to avoid a hardship to a particular individual and to avoid trouble and annoyance to some lending institution. These often occur when mortgages are about to outlaw and there is no adequate time to cure possible record defects. By so doing we can save the loaning institution the necessity of commencing foreclosure proceedings, and the customer the expense incident thereto. In such cases we do assume some risk, but the risk is slight, and by issuing a policy insuring the mortgage only, it is further dependent upon the fact that the loaning institution may eventually acquire title by foreclosure. Under those circumstances each case must stand on its own bottom, and sometimes the motive impelling it is to prevent a client from being held up, as for example where a perfectly valid homestead exists and the objection is the question of the lien of a judgment. In such cases we have to assume the burden of investigating the facts to satisfy ourselves that the homestead is valid and that there is no probable risk.

Unfortunately at times companies have given too much consideration to the future business to be expected from a particular client, or towards gaining a client from one of its competitors.

Mechanics and Material Men's Liens Construction Loans

We all of us have from time to time had experience with the dangers arising from mechanics' and material men's liens. We are assuming a risk in all cases of construction loans. However where proper inspections are made immediately before recording, and proper records thereof preserved through photographs or otherwise, such risks may be regarded as insurable risks. This again is dictated by the question of public service as well as our own personal interests. If we decline to accept such risks, the builders and the general public would be seriously hampered in building operations, and that naturally would affect buying activities, home development, and the volume of title insurance business itself. In our state any insurance issued after a building has been started presents a very different picture. Only in rare cases could insuring such a title be regarded as a reasonable title insurance risk, as sooner or later a title insurance company would find itself involved in questions of completing structures, paying mechanics' liens, or buying mortgages, or paying substantial losses. And again in isolated cases where the personal equation enters into the problem, and satisfactory and proper indemnity is provided, we might feel perfectly safe.

It is true that in some places title insurance companies in cases of construction loans undertake to handle all of the payments in connection with the construction of a building. In order to do this safely they find it necessary to set up a department with competent personnel, and to receive adequate compensation for the services. In San Francisco we have never been called

upon to do this, but if any title insurance companies have properly equipped themselves for such services a more liberal policy would be permissible respecting the issuance of title policies even after the commencement of the building.

We likewise have all had experience with the request to issue policies of title insurance after the completion of the building, but within the time during which liens might be filed. No general rule can be made on this subject as in many cases such practice would be unsafe. However, in some cases after proper inspection and investigation of the bills incurred and paid, accompanied by knowledge of the character of the owner and contractor, the general rule might be disregarded for in any event the time of the development of the liability is very short.

Execution in Foreign Jurisdiction

When documents are executed in a different state or a foreign country, it frequently happens that the acknowledgment does not conform to the requirements of the particular state where the property is situated. Until the air mail was established, and even now in foreign countries, if documents had to be returned for proper acknowledgment, great hardship might result to the parties to the deal to be subjected to the necessary delay.

We all know that a deed, if signed and delivered, passes the title, and we have on a number of occasions closed a deal, recorded the papers, arranging to later get a quitclaim deed properly acknowledged to cure the defect. If the signature to the document is genuine, and you see that the money is properly disbursed, the risk is very small, and practically eliminated if you hold up some money to be paid out when the new document is received. A similar course could be pursued where trouble arose in a prior transaction and you knew that there was going to be no unreasonable delay in having it cured.

Tax Titles

I have never heard that any of the title insurance companies of California have insured titles based on tax sales. However, where tax sales have been made many years before, where the purchaser has had actual possession of the property for a great many years, accompanied by the payment of taxes, it might be a reasonable risk to insure the title after a suit quieting title, even where publication of summons was had, and the judgment had become final. In those cases we are taking the risk that the man may have been dead or insane.

At the special session of the Legislature here this year, an act was passed providing for a suit to determine these questions before the property is sold by the state. Like most new statutes inaugurating a new governmental practice we are always confronted by the question of its constitutionality. While in general this act proceeds along reasonable lines, there is one provision of the act which arouses a doubt in my mind, and which leads to a conviction that such suit might not produce a title we could safely insure. It provides that all of the defendants excepting those whose names and residences are known should be served by publication and mailing as provided in Section 412 and 413 of the Code of Civil Procedure, except that "the affidavit need not show due diligence, but need only state that the District Attorney does not know and has not been informed of the whereabouts of any defendant who can not be found." In other words, the defendant who has an interest in the property may be living in the same town, his name may be known, and everybody in town except the District Attorney may know where he can be found, and yet no personal service is required.

Subordination Agreements

It has recently been brought to our attention that a disagreement in practice exists in the northern part of the state involving deeds of trust and the subordination thereof to leases or to other instruments subsequently executed. We have always felt that a subordination agreement in the case of a deed of trust must be signed by the trustee who holds the title, as well as by the beneficiary. We have always felt that in addition to this the note should be produced as evidence that the beneficiary has not assigned his interest, and we have always made a practice of indorsing on the note itself a memorandum of the subordination. On the other hand we find that policies of title insurance have been issued insuring such subordinations where that document was signed only by the beneficiary. We have felt that the signature of the beneficiary alone might be construed merely as his consent to the subordination, but that as the title is in the trustee such subordination had not been effected until the trustee also had executed it.

Restrictions, Reservations, Forfeitures

In a recent talk with one of the attorneys of an eastern insurance company we learned that his company had recently been made aware of the fact that some title insurance companies in California in insuring property upon which they were loaning money had not set forth the fact that the property was subject to restrictions and reservations, and also the fact that forfeitures were provided for violations thereof. We have always felt that in omitting such restrictions and reservations, whether containing a forfeiture clause or not, was not an insurable risk. I know our company paid a loss where it omitted to note the fact that there was an upkeep charge on the property. I think we all know that many of the life insurance companies are not permitted to make loans on property where provision is made for forfeiture in case of breach of the restrictions. However there are some communities where restrictions are of great age, where such restrictions have been universally violated or ignored for a long period of time, and where the circumstances are such that they would justify the conclusion that the restrictions and the right of forfeiture no longer existed. Our life insurance friend felt that while his company had disposed of a great many pieces of property taken under foreclosure, that if there were left on their hands, properties containing a forfeiture clause, mention of which was not made in the policy, that they had a just claim against the title insurance company that issued the various policies.

Orders of Confirmation and Degrees of Distribution

Another form of title insurance risk that we all incur in order not to hamper business arises in connection with probate orders that have not become final, such as orders confirming sales and decrees of distribution.

Marital Status

We are likewise assuming risks with regard to the question as to whether parties are married, or the identity of the wife, and out of such situations trouble occasionally arises. My attention has recently been called to a case where property was acquired by husband and wife, and we afterwards learned that the married man had been married previously, had not obtained a divorce and his first wife is asking to recover her interest in the property by reason of her legal status.

We likewise assume a risk where deeds between husbands and wives are not recorded until after death. In such cases of course we get some report from the inheritance tax appraiser and make investigation as to the actual delivery of the deed. However, in most cases the information that we get as to the delivery is not conclusive, nor is the letter we receive from the inheritance tax department binding upon the state. If the value of the property is small, however, the risk is slight, and furthermore the rules of succession now with regard to community property minimizes the danger of loss in such cases.

Inheritance Tax

Under our law, provision is made in case of life estates, joint tenancies and homesteads for a rather summary proceeding to establish the question of death and inheritance taxes. In the northern part of our state the title companies have insisted upon the use of this proceeding to complete the record, and determine the existence of such tax, knowing that the finding of death may not be conclusive if untrue. However, some of the companies in the southern part of the state have been satisfying themselves with off-record investigations and death certificates. The Act further provides that these proceedings must be commenced in the community where the deceased resided when he dies. We frequently find such

proceedings brought where the attorney resides, although alleging the correct residence of the deceased in another county. Otherwise the proceedings are regular, and the state has investigated and declared that there is no inheritance tax, or, if any, we see that it is paid. In view of the fact that in some of our southern counties this proceeding has not been insisted upon, we have been rather inclined to gain the appreciation of the attorney whose proceedings are faulty by not requiring a repetition of the same proceeding in the right county.

Power of Attorney

Wherever we close a transaction where documents are signed by attorneys in fact under what is known as a general power of attorney, we are assuming some slight risk. That risk is generally limited to the question as to whether the one executing the power of attorney is still alive, and the fact as to whether or not he is of sound mind. I am informed that some of the title insurance companies have taken the position that they will not insure oil leases where the same are executed by attorneys-in-fact. I am not criticising the position that such companies are taking, but after reading the language of the Supreme Court in the case of *Kiekhoefer vs. United National Bank of Los Angeles*, 2 Cal. Rep. 2nd Series, 98, I am not in agreement with those who question the right of the attorney-in-fact to execute such leases under such general power of attorney.

Oil Leases

In the case of oil leases where apparently worthless property may suddenly become extremely valuable, it is reasonable to insist upon having the real owner of the property subscribe his name to avoid the question of whether the man is alive and sane, but not for the reason that our general power of attorney does not give the attorney-in-fact the power to execute the document.

Short Term Leases

We have further deemed it an insurable risk for the public benefit to ignore leases for limited terms where we have satisfied ourselves that the tenant has abandoned the premises and can not be found, and where the balance of the term is such that the defect would cure itself by a reasonable lapse of time.

On the other hand, we show an apparent inconsistency where we have been requiring unacknowledged satisfaction of court judgments on file to be supplied with a proper acknowledgment, or that a new satisfaction be obtained. But, in the latter case, the defect can generally be remedied without very much trouble.

Missing Persons

We feel very strongly that no title insurance company should take the risk of insuring a title based upon proceedings establishing death in probate by reason of seven years absence, nor do we feel that it is a reasonable title insurance risk to act upon the provisions of our law respecting missing persons. Until that statute has been interpreted and passed upon by the Supreme Court of the United States, we can not escape the conclusion that in these two cases if the man were not dead very serious complications would result.

Probate

Occasionally we run into possible difficulties arising out of the marriage of female owners of property. Property is acquired in the maiden name of the owner, and she thereafter marries. She dies and her estate is probated under her married name. In such cases there would be a complete gap in the record title so far as the indices are concerned. That would require a new probate proceeding embodying both names. On the other hand where an estate is in probate, and the fact has been discovered, and an order is made amending the caption to include both names, we have not felt that it was necessary to commence a new probate proceeding, particularly after distribution of the estate.

In the first instance time could be saved if the second proceeding has resulted in the appointment of a representative of the estate, by a suit against the administrator or executor, as the case may be, resulting in a judgment quieting title.

Water Rights

At our State Convention in 1937, Mr. E. L. Treadwell of San Francisco correctly expressed the views of all of the title insurance companies with regard to water rights when he stated that he did not see how a title insurance company could insure the same. When it comes to reclamation and other assessment districts I shall have to plead considerable ignorance. Nevertheless as recent legislation in California on this subject aims to enable a debtor to pay bondholders of the District less than the amount of indebtedness due from him, and compel the creditors to take less, it would seem that the only safe method of procedure would be not to insure titles unless all of the bondholders and the owners of all of the land in the district jointly approve any reorganization or rearrangement with relation thereto. This may not apply in the event of one of the many provisions now made in bankruptcy proceedings.

Porter Bruck, Los Angeles, California, President, and William Gill, Oklahoma City, Oklahoma, immediate Past President, American Title Association.

Overlaps and Encouragements

Our companies do not have many questions of overlaps and encroachments under our ordinary policies. These questions do arise, however, in connection with A. T. A. policies. Our attitude in that regard is that the lending company must be advised as to the actual fact by some recital in the policy, and provisions should be made by recorded documents from the adjoining owner that such encroachments

or overlaps should be permitted to remain until the building covering the same is destroyed or removed. A different situation arises where the encroachment is on public street. Even in that case, if the encroachment is very small we would be justified in insuring the mortgage against any damage that might thereafter arise by reason of such encroachment, but where the encroachment is substantial such a course should not be followed.

Estates

The case of the Estate of Goldberg, 95 Cal. Dec. 164, Advance Sheets, presents a situation where a decree of distribution over thirty years old was amended by a nunc pro tunc order, whereby an additional name was included in the list of remaindermen after the termination of a trust. It is true that the will so provided and distribution purported to have been made in accordance with the will, and that the omission of the name was undoubtedly a clerical mistake. Nevertheless it was something that would not have been detected unless the examiner of the title actually examined the proceedings in the estate.

I likewise have in mind a case where the Public Administrator of Alameda County was appointed administrator of an estate for the purpose of a suit to quiet title. In that case, in spite of the allegations of the complaint against him, he never took the oath and letters of administration had never been issued to him. This leads to the conclusion that it is not safe to issue policies of title insurance on property where the title depends on probate proceedings in another county without having those proceedings examined and a report made to the issuing company as to the regularity of those proceedings.

The fact that our companies occasionally suffer a loss or are put to the expense or trouble of clearing a title as a result of a liberal policy, should not result in its abandonment. Such policy has been adopted with the knowledge that at times you are bound to have some annoyances or losses, but the latter are comparatively small in amount and more than offset by the good will produced.

Do not assume, however, that you should assume title insurance risks such as I have been setting forth in all cases and for all people. Unfortunately or fortunately the world is made up of all kinds of people, and there are some who do not deserve such consideration from you, and who would take every advantage of anything you might do to help them out.

In the background of my conclusions harbors the fact that if all of the title companies in one county agree to ignore certain objections, there is a very remote possibility that any one else will or can raise the question. The prectice in California of not making abstracts of title has further minimized that likelihood. This situation, however, does not mean that a title insurance company in an abstract locality can not go a long way to accomplish the desired result.

The attorneys for title insurance companies are specialists, and are, generally speaking, better schooled in the branch of land law than the attorneys who do examine abstracts of title and make reports thereon. In fact you will find many attorneys who have any any amount of title examination, coming to you for information and advice, and by maintaining pleasant relationships with the legal profession, your difficulties will be very much minimized.

You may remember that in the State of Washington, where the Washington Title Insurance Company refused to insure a title, the Supreme Court of that state is an action for specific performance held that the refusal of the title insurance company to insure the title was strong evidence that the title was unmarketable.

We are continually running up against a situation where a buyer or lender does not care to discuss objections to titles. In some cases he wants a policy of title insurance from any one of the local title insurance companies. The fact is that if all of the title insurance companies in one locality would consent to insure a certain title, for all practical purposes that title becomes marketable in the common sense of the word, even if our courts have not as yet come to the point of deciding that it is marketable in the legal sense of the term.

Taxation of Abstract Plants

In the Court of Reason

Abstracters

vs.

Assessors

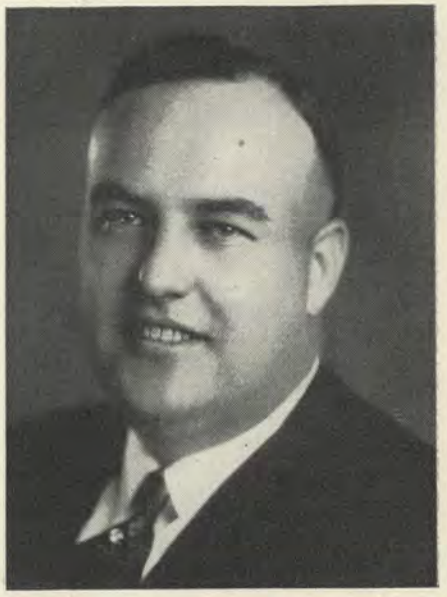
Proposition

Abstract books are not subject to taxation.

Argument and Authorities

An abstract plant consists of one or more indexes. The only necessary index is a property index. Such an index assembles, for each particular piece of land in the county, in a separate place, either in a book or in a filing cabinet, references to all instruments of record in the office of the county clerk, and to all suits in the office of the district clerk, affecting the title to such piece of land. Such index may be supplemented by certain personal indexes, such as a judgment lien index and one or more others assembling references to matters pertaining to persons rather than property, such as powers of attorney, decedent's estates, guardianships, insanity proceedings, divorce suits, affidavits of heirship and corporate charters. However, these personal indexes are not indispensable, as the indexes in the office of the county clerk and district clerk are themselves personal in nature. In this discussion we shall consider the property index as the real abstract plant.

To create such a plant the abstracter must make a list of every recorded instrument and every suit affecting the title to real property, setting down a description of the property together with the book and page where the instrument is recorded or the number of the suit. To these essentials he would also add the names of the parties, the character of the instrument or suit, and dates. Such work is mostly mere copying, and can be done by any painstaking person without much training. This list is the raw material out of which an abstract plant is created.



M. RILEY WYATT
San Antonio, Texas
Manager, Stewart Title Guaranty Co.

Segregation of Records

An Abstracter arranges this material so that all instruments affecting the title to a particular piece of property are in the same place, either in a book, or in a card cabinet. This doubtless sounds easy to the uninitiated, who assume that each instrument or suit affects only one segregated parcel of the earth's surface, such parcel having been properly and permanently segregated before any instruments were executed or suits filed affecting the title thereto. If such were the case there would be no need for abstracters. The county clerk would simply devote a page in

his index book to each parcel, and there enter all instruments affecting its title, so that any person could go there and straightway find a reference to the book and page where every such instrument would be recorded. Any typist could then make abstracts, and there would be no abstract books or abstract plant.

But from the beginning there goes on a process of division and subdivision and resubdivision until a parcel of land may ultimately find itself divided into thousands of distinct parcels, each owned by a different person. Moreover, one instrument or suit will often affect a considerable number of parcels, each having a more or less distinct chain of title—parcels widely scattered over the county in different surveys. Also, chains of title often cross and crisscross, divide into numerous separate interests which interlace with other such interests, such interests representing a shifting assembly of fee simple estates, life estates, remainders and reversions, liens of various kind, easements and restrictions, until it may require exceptional skill and study on the part of the abstracter to keep from getting lost in the maze of parties, interests and descriptions.

What the abstracter virtually does is to write a book in which he devotes a separate chapter to each and every parcel of real estate in his county, and he continues his writing day by day, week after week, from year to year. What is a book? The dictionary first defines it as "A number of sheets of paper bound or stitched together." A book need not consist of a series of sentences and paragraphs. There are books that consist of nothing but figures, or drawings, or pictures. Often an abstracter must draw a plat, using a protractor and scale, to determine, from the field notes in the instrument, exactly where a tract of land lies with reference to survey lines and other tracts.

The Purpose

And what is the purpose in an abstracter's mind in bringing into existence an abstract plant? Is he making something to sell? No. Absolutely not. What are the first beginnings of such a plant? In the early history of a county a prospective purchaser to a tract of land, unless, as is often the case, he knows its history for many years back, will go to the county clerk, or to some attorney, and the clerk or attorney will examine the records, which are then few in number, and write an opinion or simply tell the man the condition of the title. In connection with such examination the clerk or attorney will naturally make memoranda on pieces of paper. These pieces of paper are the very first beginnings of nearly every abstract plant. As population and records increase, and calls for opinions become more frequent, these memoranda increase and the clerk or attorney, finding use for them in connection with other calls for opinions, finds it advantageous to arrange them for convenience in referring to them. He is then an abstracter. The next step is to write them into a book, or on cards, for greater convenience, and then you have an abstract plant.

I should like to ask: Is there any difference in their nature between those first memoranda and a full-fledged set of abstract books? If so, in what does it consist? From start to finish—no, there is no finish—those books go on and on so long as private property in land persists—all through the process the abstracter is simply creating something for his own use to enable him the better to carry on his profession. He is doing only what a lawyer does in making memoranda of cases for use in conducting litigation or in connection with office work that makes it necessary for him to look up the law pertaining to particular questions. In course of time, with accumulated memoranda, he may buy a blank book, provided with an index, and arrange his memorando under proper headings, on separate pages, for his convenience. I know several attorneys who have produced a book, all written by their own hand, in which they enter Texas cases of particular interest as they appear from week to week in the advance sheets of the Southwestern Reporter. Would any one imagine that such books are subject to taxation? It is personal property. It is useful. It has value. It was not make with any expectation of selling same, and yet it has salable value. What difference is there between an abstract book and this book of law with reference to their fundamental nature as subjects of taxation?

Knowledge is valuable but not taxable. It is not taxable when carried in the mind, and no more so when reduced to writing by the person who possesses it for consultation, future reference or use by him. If it were possible for an abstracter to glean from the public records and store in his mind the necessary knowledge of titles and therefrom produce abstracts, it would readily be conceded that neither that knowledge nor the ability to prepare abstracts therefrom would not be taxable property. Should he as a precaution against lapses of memory, note down in writing for his own use and reference a digest or summary of the knowledge already in his mind, and thereafter refer to such notes in the preparation of abstracts, it would hardly be contended that such private notes were taxable property.

Private Notes

But is not this essentially the process of compiling an abstract "plant?" The abstracter examined records, gains knowledge of their contents and by use of technical skill and training analyzes the records, determines the material facts, the knowledge of which it is essential to preserve, and then makes private notes in writing of this knowledge. If an abstracter's notes are taxable, where is the line of non-taxability to be drawn? Consider for illustration, the notes which a scientist may make of his scientific observations, the formulas worked out by a chemist, the prescriptions collected by a druggist, the notes of surveys kept by a civil engineer for future reference, the notes of an author written down from time to time, preserving ideas borne in his own mind or gathered from reading the works of others, to be used as the material for a publication of his own, and the briefs of a lawyer and the records of Dunn & Bradstreet. They furnish analogies to the abstracter's notes or slips which we call his "plant". They may be exceedingly valuable property, but it may be safely asserted that they have never been made the object of taxation and no one would contend that they should be taxed.

In addition to the above take the memoranda that teachers make in connection with the work of their profession—memoranda containing information which they gather from various sources, and then arrange under different headings so as to be convenient for use in teaching their classes or in writing a book for publication. A teacher, to facilitate his teaching purchased two blank books, and wrote out with his own hand an English history and an American history. Were those books taxable in the writer's hands? Suppose he sold these books, were they taxable in the hands of the purchaser? Is the nature of an article changed by merely passing through a contract of sale? Are they taxable? Well, if an abstracter's books are taxable, why should not these hand-written books and the other cases herein referred to also be subject to taxation?

What difference is there, in the mental and physical nature of their work, and in the substance and physical character of the result, that distinguishes an abstracter from a lawyer or teacher with respect to the production of a book for his own personal and private use? All three gather information from sources that are public and open to all the world. All three classify and arrange such information so that it will be convenient for use in their respective professions. All three write down such information in blank books for just one common reason: because, as a great lawyer once said, the memory is a sieve, and it is necessary to write down information for which one will have use in the future in order to have it when it is needed, and not have to hunt it up a second time.

Abstracting, as well as practicing law is a profession. What is a profession? What is it that distinguishes a profession from a trade? A man employs a carpenter or plumber to do some work. He knows himself what he wants done, but lacks the skill and tools, perhaps also the time, to do it well. He tells the workman what he wants done. A man goes to a doctor or lawyer to get something done. Instead of his telling the doctor or lawyer what to do, the doctor or lawyer tells him what is to be done, and goes ahead

and does it. Carpentering and plumbing are trades. Medicine and law are professions. In which category does abstracting fall? Does the man or does the abstracter decide what is necessary to be done? You know. Moreover, usually a patient or client has a pretty fair idea whether the doctor or lawyer has done his work properly, but how many men outside the legal profession can tell whether an abstracter has done his work properly?

Decisions

There seem to be only five cases, up to the present, involving the taxation of a set of abstract books: two in Michigan, and one each in Iowa, Minnesota and the State of Washington. These cases are:

Perry vs. City of Big Rapids, 67 Mich. 146, 34 N. W. 530 (1887).

Leon Loan & Abstract Co. vs. Equalization Board, 86 Iowa 127, 53 N. W. 94 (1892).

Booth & Hanford Abstract Co. vs. Phelps, 8 Wash. 549, 36 Pac. 489 (1894).

Loomie vs. City of Jackson, 130 Mich. 594, 90 N. W. 328 (1902).

State vs. St. Paul Abstract Co., 158 Minn. 95, 196 N. W. 932 (1924).

Of these, the two Michigan cases declare that abstract books are not taxable, while the Iowa, Washington and Minnesota cases say they are. In this discussion we may ignore the second Michigan case, as it adds nothing to the opinion of the court in the first Michigan case. In that case there is also a dissenting opinion which covers the ground in favor of taxing abstract books so fully that there is little additional argument in this respect to be found in the Iowa, Washington and Minnesota cases.

"Private Manuscripts"

Whether or not abstract books are taxable must depend on their fundamental nature. In *Perry vs. City of Big Rapids* Chief Justice Campbell declares them to be "private manuscripts," and says that all civilized governments treat such manuscripts "as not partaking of the nature of property open to ordinary sale and disposal. The possession of them gives no right in the possessor to use them, or publish them, unless by the acquiescence of the originator." He adds: "Their value is only kept up by their completeness and continued correction." In these respects they are comparable to a lawyer's notes on past and current decisions, and to a teacher's memoranda on any living subject. However, he weakened his argument by calling attention to qualities which abstract books have in common with other kinds of property that are taxable, He says, "They are only valuable for the information they contain, and that information is conveyed by consultation or extracts." The same is true of most books. He cites *Dart vs. Woodhouse*, 40 Mich. 399, decided in 1879, holding that abstract books were not subject to levy and sale under execution; but in 1899 the legislature made such books thus subject, and in *Loomis vs. City of Jackson* the Court held that this did not make them subject to taxation. He says that "abstract books have no intrinsic value." I think they do. A gold coin has intrinsic value, while a gold certificate does not. Why? Because the gold in the coin is usable apart from the stamp that is on it, while a gold certificate is nothing but a piece of paper, like a bank check, useful only as a medium of exchange. An abstract book is usable because of the information it contains, while a gold certificate is not. The opinion closes its argument with the statement, "Any attempt to make value out of such a sale would be really a sale of knowledge, and not of property." This is correct except for the closing clause, which should have been, "as well as property." The sale of a set of Revised Statutes might also be called a sale of knowledge, necessary to one intending to practice law.

Dissenting

The dissenting opinion says that abstract books "are not like the manuscripts of an author." Why? Because the work of compiling them "is a mere mechanical one, involving no independent creation of the mind of the transcriber; it is not in any sense the work of genius, or the development of new thoughts or ideas. They are no more the creation or creature of the mind than is the iron or woodwork of the skilled mechanic, nor are they so much so . . . These abstracts have also a cash value, and pass from hand to hand, and are bartered and sold like other property. The plaintiff did not make these abstracts, but purchased them from the maker, as the lawyer purchased his office furniture from the skilled maker and mechanic. He must, it is true, keep on copying, to keep them up, but they are as valuable in the hands of another, who may desire to purchase and use them, as they are in his . . . Can it be said that these books in the hands of plaintiff are purely incorporeal, with no tangibility that the tax gatherer can reach?

In what respect does all this language prove that abstract books are different from the manuscripts of an author? It assumes that an author's manuscript is necessarily a work of genius, a development of new thoughts or ideas which represent an independent creation of the mind. An author undertakes to write a history. He gathers data from various sources, arranges the material, and proceeds to write. Does such work require genius? Would a manuscript thus produced necessarily contain any new thoughts or ideas? These questions answer themselves. What is meant by "an independent creation of the mind?" It would seem to mean thoughts or ideas not based on information from outside sources, but based on observation, such as the idea that warm air is lighter than cold air, and that people generally believe that which they wish to believe. The logic of this argument would make all manuscripts subject to taxation unless they represented the development of new thoughts or ideas.

If abstract books are no more "the creation or creature of the mind than is the iron or woodwork of the skilled mechanic," then the same is true of the manuscripts of the vast majority of non-fiction books, and such manuscripts would also be subject to taxation.

"These abstracts have also a cash value, and pass from hand to hand, and are bartered and sold like other property." What is meant by "cash value?" It would seem to be used here as meaning a more or less definite value in money. If so, the statement is not true. Abstract books do not pass from hand to hand, and they are not bartered and sold like other property. Consequently the value of an abstract plant is always problematical. Articles of personal property in general have a value in relation to the labor and material entering into their manufacture. They are made to sell. The value of an abstract plant depends on the use that can be made of it, and that depends on the current and prospective demand for abstracts, and on the existence or non-existence of other abstract plants. The burning of the courthouse or the discovery of oil in the county will enhance its value, and an additional plant will diminish its value.

The dissenting opinion says that plaintiff purchased these abstract books "from the maker as the lawyer purchases his office furniture from the skilled maker and mechanic." The mechanic makes furniture to sell. If he made furniture only for his own use, he would starve. The abstracter makes an abstract plant to use. If he disposes of it he will starve unless he gets some other way to make a living.

"They are as valuable in the hands of another, who may desire to purchase and use them, as they are in his." They may be more valuable in the hands of another, but what has that to do with the question of their taxability? The same may be said of the notes or memoranda made and used by lawyers and teachers in connection with their professional work.

Of course, abstract books are not incorporeal, purely or otherwise, and they certainly have tangibility which the tax gatherer can reach, provided the law gives him the necessary authority. But in Texas there is no statute subjecting them to taxation, and the common law does not consider private manuscripts or writings to be taxable. So much for the dissenting opinion in the Michigan case.

Iowa

Now let us consider the Iowa case. It undertakes to answer a statement by the Chief Justice in the Michigan case that was ignored in the dissenting opinion, viz: that the possession of private manuscripts "gives no right in the possession to use them, or pub-

lish them, unless by the acquiescence of the originator." The Iowa opinion says: "The Michigan cases attach great importance to the fact that the proprietor of a manuscript may control or determine whether or not it shall be published, and that without publication there is no value as a basis for an assessment or levy. We are unable to understand the application of the thought to the case at bar. In cases of manuscripts designed for publication, their value, in a general property sense, may be said to be in the published work or the right of publication, for it is then only that it becomes of interest to others than the author. It is when the manuscript is, by the author, put in condition for use, that it takes to itself value in a commercial sense. Before publication, or a transfer of the right of publication by the author, the manuscript is but a private memorandum or writing, without significance except to the author, like other private memoranda. When the author places it upon the marts of the world for use or profit, a commercial value attaches, and it becomes 'property' in the general sense. Before the publication, or the granting of a right to publish, the author's work is incomplete. In the light of a design to publish a work, nothing has been produced. These abstract books answer the original design, are complete, and placed before the public for use and profit. They were not made for publication in the general sense. Such a publication would defeat the very purpose of their production. Their value consists, chiefly, in their contents being kept from the public."

No Intrinsic Value

We have seen that Chief Justice Campbell largely based his opinion in the Michigan case on the proposition that abstract books have no intrinsic value. The attorney for the abstract company in this Iowa case appears to have assumed that everything said in that opinion was intended to support that contention, including the statement that possession of a private manuscript gives no right to the possessor to publish same. Anyhow, the Iowa court seems to have gotten the idea that the main reason for the Michigan court's refusal to recognize any value in abstract books was because they were not intended for publication. Of course, there is no connection between the question of value and that of publication, except that, without publication, it is very difficult to estimate the value of a manuscript. The value of a manuscript is always problemetical. Consider the sale of the song, Bei Mir Bist Du Schon, for a few dollars, when it turned out, on publication to be worth many thousands of dollars.

It is no wonder that the Iowa court says it is unable to understand the connection between the right of the owner of a manuscript to control its publication, and the value of a set of abstract books. But it is to be wondered at that the Iowa court allowed itself to be drawn into an abstruse and meaningless disquisition to show that there is a publication in the case of abstract books. Such expressions as, "property in the general sense," and "publication in the general sense," are simply nonsense. The writer of the opinion seems to feel that he has really gotten somewhere when he says, "These abstract books answer the original design, are complete, and placed before the public for use and profit." They doubtless do answer the original design, if that has any bearing on the question before the court, but they certainly are not complete—abstract books are never complete so long as instruments continue to be filed for record—and they are certainly not placed before the public for use and profit, or for any other purpose. They are private books in manuscript form, and the writer, in the same breath, says "Their value consists chiefly in their contents being kept from the public."

The opinion then says, "They are the means, in a sense the instruments, for carrying on a business, as much so as the tools or machinery by which the artisan plies his calling." Whom is the abstracter most like, an artisan or a lawyer? The abstracter and the lawyer both deal in information; that is their stock in trade. The artisan deals in material things.

In this case the court simply could not get away from the fact that the abstract plant had an exceptional value, due to the destruction of the recorder's office in that county in 1874, so that it had the only records for the period prior to April 1 of that year. The plaintiff had paid $6000 for the plant, and the court emphasizes its use as a means of profit to such an extent as to exclude any consideration of its real nature. The case certainly does not disprove that abstract books are private manuscripts. Rather, it proves that they are, and that is decisive of the question whether they are or are not subject to taxation.

Washington

In the Washington case the abstract books were largely in the form of abbreviations and ciphers, an understanding of which was necessary in order to make any use of them. The principal argument against their taxability appears to have been that, by reason of their form, they were of no value to the public or to any one who had not been initiated. The opinion pays no attention to their nature as private manuscripts, simply following the Iowa case in concluding that they had value, the only question being how much value they had.

In the Minnesota case there was "an index, with a secret key thereto," which appears to have been relied on by the abstract company as their main argument against the taxability of the plant. This failed to impress the court, which emphasizes its value rather than its nature, being evidently impressed with the opinion in the Iowa case, as it speaks of the books as having a recognized value, and being kept and used as the basis of a business for profit. It makes no attempt to prove that such books are not private manuscripts, in this respect following the reasoning of the dissenting opinion in the Michigan case.

Therefore, I feel certain that whenever this question is presented to the Supreme Court of my State that its decision will be in keeping with that of the Michigan courts: "Abstract books are not subject to taxation."

I feel that the question is of such grave importance that the various State Associations should assist some abstracter in making a test case of this point.

Report of Finance Committee

ARTHUR C. MARRIOTT
Chairman
Vice-President, Chicago Title and Trust Company, Chicago, Illinois

Keep your seats, ladies and gentlemen, for I am not going to pass the hat. I have never asked for monies at our national conventions, and I hope I shall never have to.

For many years, I have been in close touch with our financial condition. After my retirement from the Presidency, which honor you conferred upon me some few years ago, I became Chairman of your Finance Committee. If anybody else wants that job, he is welcome to it. Since I see no throng of people rushing to the speaker's table, I conclude I shall continue to have the post for a few days longer anyway.

Our revenues, in the main, come from three sources, direct dues, dues from state and regional associations, and contributions to the sustaining fund. Our gross revenue is pitifully low for an organization that is trying to operate on a nationwide basis.

I am happy to say we are solvent, and that all bills except current are paid. But it certainly is a struggle. The money received from dues is completely insufficient to carry on our activities. Nobody hates the idea of begging for money more than I do, but we have no alternative. We must resort to a Sustaining Fund. Numerous members contributed to it during 1938. Numerous others did not.

These are plain, unescapable facts. If we are in funds, your national officers and the various committees can take on more activities. When we are not in funds, we not only are unable to undertake these additional services, but are forced to curtail those in hand.

ARTHUR C. MARRIOTT, *Chairman, Finance Committee*
Vice-President, Chicago Title & Trust Co.
Chicago, Illinois

We need your contributions. We hope you will each make one—a generous one—when you return to your respective offices.

Some members have told me privately they wanted to contribute but did not know how much to send. I have answered that the amount is up to you. After all, it's our own money being spent for our own benefit and gain. Various yardsticks could be submitted, but I think one that has merit is to suggest a contribution on the basis of $2.00 for each employee in your office. Whatever you send will be used carefully.

If, on your return home, you sent a check based on this yardstick, we would be able to do more for you. I take it this report will be printed in Title News, and I hope all members not present at this convention will consider the remarks made as applying equally to them.

Not a penny of our money is being wasted, and I am sure anything sent the Association will be expended wisely.

E. B. SOUTHWORTH

The Treasurer Says

In going over our estimated expenses for the year 1938, we find that we are going to be short. We are not going to have enough money for this year, unless we receive some unanticipated receipts. I believe that any member that has not contributed to the sustaining fund should do so now, for it would help us out, and would be very much appreciated. On all items on the budget we are within the allowed expenditures, but we still are short. In other words, Jim has had to curtail a number of estimated expenditures in order that we might scrape through. The reason for this shortage is quite apparent, when you compare the receipts of this year as against last year's. Frankly, I think any time you do not contribute to the sustaining fund when it is possible for you to do so, you are hurting yourself, for every time we run short of money it means a curtailment of activity on the part of your Association.

The Clinic on Advertising and Publicity

(General Sessions)

Presiding: Paul P. Pullen, Chairman of Committee on Advertising
Director of Advertising, Chicago Title and Trust Company, Chicago, Illinois

MR. PULLEN: I have asked Porter Bruck of California to tell us something of what they have done on the Coast.

MR. PORTER BRUCK, LOS ANGELES, CALIFORNIA: I don't know that California has done very much in the way of Public Relations. I would like to think we had done quite a good deal, and with our Northern California colleagues we have had some small degree of success. At the last convention that Mr. Pullen referred to, (the California State meeting), I tried to get my points over orally; this time I concluded to resort to a few pictures I have here. I will set them up here, if I may. They are perfectly obvious.

FIRST PICTURE

This is John Public.

A great fellow—but what he knows about title insurance you can put in your hat.

He thinks title insurance is just another unjustified charge that is tacked

on his house and lot for no apparent reason.

He thinks of us, (if at all), as another headache because he doesn't know and hasn't been told of the real value of title insurance.

SECOND PICTURE

This is Ben Broker.

Another great fellow because ninety per cent of your business comes through him.

He is the man upon whom we depend to tell and sell our story to John Public.

Ben Broker probably realizes the value of title insurance, but he is selling property—not title insurance, so he rates us this way:

1. His own business.
2. John Public.
3. This.
4. That.
5. And the other.
6. Title Insurance.

THIRD PICTURE

Our continued prosperity depends on the good will of these two men.

One doesn't know—and one doesn't care.

FOURTH PICTURE

Well, so what?

We still get all the business to be had from these two men.

John Public must have title insurance and he must buy from us—

Ben Broker is going to remind John Public of title insurance even if he does think of us last. That puts everything up our alley—but does it?

FIFTH PICTURE

That is a mighty fine Monopolistic theory—but a short-sighted one!

Consider the case of these ex-monopolies.

1. Chain stores.
2. Banks.
3. The oil trust.
4. Public Utilities.
5. Railroads.
6. Insurance.
7. Blah.
8. Blah.
9. Blah.

SIXTH PICTURE

They had everything right up their alley—for awhile!

SEVENTH PICTURE

John Public has to be *told* as well as *sold* to gain his Goodwill.

Who's going to tell him about title insurance?

(A disinterested second-party *can't).*

EIGHTH PICTURE

It's up to this man.

His name is Mr. Title Insurance.

NINTH PICTURE

He renders a fine service.

He plays an important part in modern affairs.

He takes pride in working hard and knows his business, but he allows his clients and prospective clients to learn *(if they can)* about title insurance from a disinterested second-party.

TENTH PICTURE

Ho! Hum!

ELEVENTH PICTURE

As a result, Mr. Title Insurance has a mighty big problem child to *lick.*

TWELFTH PICTURE

He is too big for Mr. Title Insurance to handle alone but—

THIRTEENTH PICTURE

He can call in his big brother to help him—this big bruiser is called California Land Title Association.

FOURTEENTH PICTURE

A mighty man is he with a voice and strength of ninety-seven men—he can lick any problem if—

FIFTEENTH PICTURE

You give him the "Go-Ahead."

MR. BRUCK: That was the story we tried to get over to our people, the fact that ninety-seven people can do a far better job than one or two. We have developed a program. Mr. Sheridan in our advertising displays will show you something that will interest you, but the whole theory that we have used is based upon appeals to the public or part of the public on a general basis.

Our theory has been to sell title insurance and not necessarily to sell any one company.

I want to call on one or two people. Mr. Smith, of Oakland, California, has agreed to say a word or two.

MR. MORTIMER SMITH, OAKLAND, CALIFORNIA: Mr. Chairman, Ladies, and Gentlemen. We decided the matter of selling title insurance called for community analysis. You have to analyze your community before you know what method to use. If your community was fairly conservative, one method might be proper, or if your community was, say, something like Hollywood, you would have to choose the "Sally Rand" type. We had to put our heads together and we concluded at least in our communities that we were merchandising a professional service. We did find there were two types of public relations that would work.

One was to appeal to the long range clients, the other was to appeal to the clients using your product immediately.

The long range client is the general public and we found that to appeal through haphazard ways, is of no avail; you have to appeal to your community through the long range idea. That part of the community that is interested in everything that is built up through civic pride, and development, so we took space in the newspapers on occasions, say when we were celebrating the opening of a bridge. We took space when they had something special in the real estate field.

We would appear at the luncheon clubs, at the schools, showing motion pictures to the schools, hoping that some part of the message would take hold in their memories.

The long range policy takes more money and less effort.

The short range policy takes more effort and less money.

The short range policy is the policy dealing with the lender, real estate man, banker, for instance across the lunch table, and in your own institution to show him what you do. We hold every year an evening Commercial Law Class, there are always ninety to one hundred enrolled; and they enjoy it.

Our counsel has prepared a very fine booklet on Probate Law and Procedure. He delivered an address on this subject before the Young Lawyers Club at Oakland. They printed it. It was so welcome that they printed one thousand booklets and sent them out to members of the Bar Association. The State Bar Journal printed the booklet and we have received favorable comment from that score.

You must impress upon your people that they are salesmen. When you have clients come in, we must try to meet their views and desires.

MR. BRUCK: That was great. Mr. Porter has an idea.

MR. WM. S. PORTER, LOS ANGELES, CALIFORNIA: If this is an experience meeting, I want to testify.

The result of spending the least possible money. You have a wonderful display of advertising booklets at the convention which are very effective and we of California have, I think, contributed to it, but I think probably one most effective way for the direct results we want has been obtained from the type of educational work that has been carrying out messages to our customers. But I want to mention The American Institute of Banking. In that class is a large segment of the people that send a vast part of our business to us. They want to know about our business and offer to open their facilities to us, to tell them about our business. We found in California that it is a real opportunity to tell them. We have several counties in the portion of California where those classes on real property subjects are now being conducted. Every year those classes are open to title men who bring the message of our business and its complexities to those young bankers and tomorrow's customers of our companies because in every bank the youngest clerk who wants to know can only learn from one who has gray hair and long experience, and the American Institute of Banking is bringing that message to those young bankers.

The second group who have been just as cordial have been the Real Estate Boards. In practically every large city the Real Estate Board has a class in the winter months conducted by the

title men. The class understands each member must have a knowledge of certain things in order to get a real estate license, of course, this is educational only; no title company is ever advertised directly. We simply tell the safe way to conduct real estate transactions. It seems to me our members are getting even better results from these classes than the printed word.

MR. PORTER BRUCK: Thank you very much, Bill.

It is obvious to you from these talks that what we try to do is single out various groups of our customers and try to give them something to cause them to do business with us.

Here is one direct appeal to the real estate broker. This is a novel arrangement, I think. The purpose is this: First a letter goes to the broker saying such and such an ad will appear in a certain publication on a given date. Copy of the ad is enclosed. He is told that by answering the card furnished him he may have a supply of these little booklets showing certain data. These booklets are a comparison of rentals, land values, building cost, interest rates etc. over a period of years. He is told that these booklets will be delivered to him for distribution to his clients in his locality furnishing information naturally on his locality in respect to lands and buildings.

I think that at the time we left home we had 3,000 replies to the ad and requests for something like 60,000 books. The books are inexpensive.

We try to build up a direct appeal to the people living in a given community. In such pamphlets it is usually illustrated by some photographs and a general build-up of the place. In addition, our competitor company has produced a series of booklets which relate the historical background of the city or locality. Those are mailed out to school schildren, placed in libraries and otherwise distributed. They are received with a great deal of enthusiasm.

MR. WILLIAM GILL: Has any title company tried radio?

MR. E. B. SOUTHWORTH, MINNEAPOLIS, MINNESOTA: We had a short program for several weeks. I think there was no way of telling whether it was effective or not.

MR. WILLIAM GILL: Anyone else have any radio advertising experience?

A VOICE: Some ten years ago we had a radio program, more in the form of a musical program, merely a good-will offering. It was quite expensive. We did it ten years ago. I think it created good-will, to a marked degree.

MR. JAMES S. JOHNS, PENDLETON, OREGON: In Oregon, there is a station owned by our State College and they gave the realtors about ten weeks of time, fifteen minutes each time; after that they offered the title people the same, about ten minutes, I think; several of us wrote articles which were read by the announcers over the station just to build up good-will and so far as I know we got no actual definite results but it was intended as an educational proposition.

MR. RICHARD ROHRER, JUNCTION, CITY, KANSAS: I want to advertise the American Title Association. I wonder how many of the members actually make the use that they can and should make of it. I believe if we made more use of it the Title Association would also grow. I would like to tell you about my experience and that is this: I recently had occasion to get numerous quit claim deeds for a family. I went to one of the relatives who said, "Lord, you can't get a quit claim deed from all of them. Those people are scattered all over the United States. It can't be done."

I say right now when I need a legal document of any kind from anywhere in the country, I write a member of the American Title Association because I have never been disappointed or overcharged. In this case I sent an air-mail letter to a title man in a Western city and an air-mail letter to a title man up in Oregon and I received a letter from the Texas man the next day saying, "The man you want lives in an adjoining county and there will be some expense to get this quit claim deed. Are you willing to pay the expense of me going up to the next county and getting it? However, I have written him and he may come to my office." Before I had time to write him, another air-mail letter came with the deed all made up. The man had come to his office.

A few days later, I had a letter and deed from Oregon. In fact, it took me longer to get them from the two adjoining counties in my own state because I was looking after them myself.

I am going to tell you why it took so long to get them from the two adjoining counties. I don't know whether it could be done or not, but it would be a wonderful thing for the title man, if a Notary Public Commission in Kansas could take acknowledgements in the county adjoining in which he lives. It was necessary to employ Notary Publics in the adjoining counties.

If we would get before our people in our own towns the benefits that we can get from the American Title Association by using it, I believe our business would increase.

MR. WILLIAM GILL: I am curious to know how many states have statewide Notary Public laws who can take acknowledgments in any county you want to. Illinois, Utah, Oklahoma, etc. Dick, we have a State which gives a Notary Public authority to take acknowledgements in any part of the State. You might get that worked out in your state.

MR. HOWARD SEARCY, WAGONER, OKLAHOMA: We have a statewide Notary Public law and I wonder why it is a good thing. I never have found out why yet.

MR. N. A. TRAWICK, HOBART, OKLAHOMA: In answer to Mr. Searcy's question, if he ever made any loans or been in the mortgage business he will appreciate the state-wide Notary Commission.

Maybe I'll drive one hundred miles and get the old man and lady together and sign them up and I can take their acknowledgments; but if we were only confined to within one county, it is just too bad.

I think it is a darn good law!

Advertising Clinic

(Title Insurance Section)

Paul P. Pullen, Presiding

MR. PAUL P. PULLEN: I do want to have free discussion on Problems of Advertising of and for your sections.

I want to break this down into four points. If you want to talk about other things, feel free to talk about them.

First, is the California job. You may have the impression that I am enthusiastic about it and that is putting it mildly. I think that is a good job the California Land Title Association and their members have done and are doing. I wish we could do the same thing at the National Association, but we don't have the money to do it and the cost would be a lot more than on the Statewide basis.

The second is the matter of display booths.

We have taken booths at the Mortgage Bankers Association and at the United States Building and Loan League. That is a new departure and I want to get your candid opinion as to whether it is worthwhile or not.

The third is the matter of the booklets on Title Insurance which were prepared in California. It is a sort of Primer. We will take it up in more detail later on and get your opinion whether you think it is practical to adopt it nation-wide to all Title Insurance Companies, and how many would be interested in putting them out.

The fourth is the matter of publicity. What we could do in the matter of constructive publicity for the Association and for yourselves individually.

Now, on these booths. We would like to have a discussion whether it is worth while. I had a letter from Bill Gill of Oklahoma City, on the booth they had at the Oklahoma State Fair just recently. He enclosed a photograph of

the booth and said, "They (his company) were extremely disappointed about the enthusiasm shown."

I might start off by telling you of two booths we arranged. One was at the Mortgage Bankers Association at the Drake Hotel, and the other to be held next in November at the Palmer House, at the Convention of the United States Building and Loan League. Both of these booths are 9x10 which doesn't give us much space. As a basis of the booths, we had a large map of the United States about 4'x9', showing the towns, even most of the small towns. We used the map and tack system.

We have one color tack marking abstracts, and another color tack for those companies issuing title policies exclusively, with still another color to indicate members who furnish both these to show the building and loan people and the mortgage bankers what kind of service they could get in every place. There were 1925 tacks so it made quite an impressive display. Then we had four large placards carry an advertising message.

We hope that they will do some good. We don't expect a lot of orders, but we do hope it will publicize our business to the Building and Loan people and Mortgage Bankers. At the Mortgage Banker's Convention, they had rather a unique scheme. They had printed a list of all exhibitors and their businesses. They had a blank line after each exhibitor's name and the delegates could visit each exhibit booth and get their signature. He then had a chance at a prize.

MR. PULLEN: The large map had to be put together into two large cases, it was so large. It cost us $58.

MR. BRUCK, LOS ANGELES, CALIFORNIA: It seems to me a very sensible and helpful thing to do. It doesn't seem to me the expense is very great for the potential customers you would reach.

MR. SHERIDAN: We made no attempt at all to push ourselves on anybody. We didn't figure we were operating a pawn shop so we saw no reason to pull them in. When a man came in and asked a question, we tried to answer it.

The main fact was we had a map of the American Title Association that made a very graphic picture, I believe. I think, personally, if a man walked by and saw that map of the membership of the American Title Association it was worth what we had spent. The leaflets we did not push out at all. Any leaflet any delegate received, he secured by asking for them. In other words, we tried to maintain it as a dignified quasi professional exhibit.

MR. PULLEN: Anybody else have anything to say about this?

Now, I would like to help Bill Gill out and the rest of you. What is the experience of you individuals?

I might say, by starting it off, we have had some experience in Home Shows held in the Coliseum. We found no one attended these shows but folks who didn't have any other place to go or no money to spend on picture shows. Figuring we should have somebody to explain title policies, we had one of our title officers in attendance—but there was no one who came near the booth at all. After doing that two or three times we hired an attractive blonde who knew nothing of title insurance, to hand out circulars and she got much better results. We find it is a different matter to have a booth in Lawyer's Meetings and Real Estate Meetings in Chicago. We never had a one at State Fairs, but Bill Gill's experience is no different than our experience in Home Shows.

MR. ROYCE E. WRIGHT, EXECUTIVE VICE-PRESIDENT, TITLE GUARANTY CO. OF WISCONSIN, MILWAUKEE, WISCONSIN: We used to have booths at Home Shows and the only advantage comes from the patronage of those who are Building and Loan Association Members and Real Estate operators. Aside from that, the value was absolutely nil.

H. LAURIE SMITH, PRESIDENT, LAWYERS TITLE INSURANCE CO., RICHMOND, VIRGINIA: Our experience of booths at the State Fair was very unsatisfactory and have been abandoned.

Our experience of Home Shows are very unsatisfactory also, and have been abandoned.

We have had opportunities from time to time to have an exhibit in a Model Home, that had some unusual features to attract the public and we have gotten, as we felt, a great deal more good and a great deal more publicity from that.

We have shown exhibits at meetings of the Bar Associations, Real Estate Meetings, etc., but it is hard to analyze these. This week we have an exhibit at the Real Estate convention at Norfolk, Virginia, I doubt very much if there will be any sustaining good from the exhibits, but our people there will meet the realtors and the acquaintances and contacts will be of much more value than the exhibits.

MR. PORTER BRUCK: Perhaps some of you would be interested in hearing about our Home Show at Los Angeles. We had a rather unique plan. We had a large map of Los Angeles. On it certain little buttons to describe the map, off to the side pictures and locations of the movie people and important buildings downtown. We tried to build up the romance behind the picture and passed out pamphlets in conjunction with it. I think we handed out something like 50,000 of those during the four or five days of the show and had quite a number of people call us up and ask about the history of titles. I think it did definitely place the fact in their minds that we held a place in the sun.

MR. CYRIL H. BURDETT, NEW YORK CITY: The New York Board of Underwriters, made up of six or seven of the leading companies, sometimes go into this booth advertising together. Personally, my experience has been it didn't accomplish very much. To be sure many nice people go there but we have been unable to trace any definite results to it. I question whether the results are equal to the expense involved.

MR. FRANK I. KENNEDY, DETROIT, MICHIGAN: We had an experience in Detroit; they put on the show and even the "blonde" didn't produce any results. One of our men got an idea at the end of the show. They gave away a model home to the attendants of the show. We went to them one year and said, "We will issue a title guarantee policy to the winner of the show, or abstract to the winner of the home, whichever may be desired. We have done that for several years past and we have received publicity from the realtors' magazine. They ran a picture of a title policy the first year.

LEX McDANIEL, CHAIRMAN OF BOARD, KANSAS CITY TITLE & TRUST CO., KANSAS CITY, MISSOURI: We had a large booth and a small booth without apparent results.

MR. PAUL PULLEN: Next, we will take up the matter of this booklet. It is very attractively written, and it is very modern as you can see. Good, big illustrations after the modern manner as I mentioned in my report yesterday. We are working on this to see what can be done for national distribution, for anybody that wants it. The Abstracters Section clinic this morning gave hearty endorsement to the Jane Sumner booklet on Abstracts.

I would like an expression of opinion from any of you commenting on the educational booklet for one thing, and second, as to whether you would use this as an advertisement. It consists of a series of questions and answers.

MR. H. LAURIE SMITH: I think there is no doubt of its need. I don't think there is anyone who questions the need for it. While I am not intimate with this particular booklet, it is certainly very attractively gotten up, and I think by all means we should go ahead with what we have rather than wait around in hopes that we might do something better. The difficulties that would be encountered for making it suitable for general distribution I think can be overcome. We have to adopt our company advertising to different conditions and I believe so far as that point is concerned, it can be done. I am not clear how the distribution would be brought about.

MR. PAUL PULLEN: In the same town, if several can get together and agree on it, it could be put out in all their names.

DONALD B. GRAHAM, VICE-PRESIDENT, THE TITLE GUARANTY COMPANY, DENVER, COLORADO: Some of us had the idea that an educational program should go to the county newspapers and thought if

we could get that copy in the county newspapers and out in the county where the people really read their newspapers, we could accomplish something, but a survey three or four years ago has shown that that was just a little expensive for Colorado Abstracters, although one abstracter has been using it in his county newspaper. We think the copy is pretty good—we wrote it ourselves and I am just wondering how many people are reading the Real Estate Review. I am glad you approve of it, Mr. Pullen.

MR. PULLEN: The whole section approved of it.

MR. GRAHAM: If we could get a letter to that effect from the people who are paying for it, it would help us out a lot.

The method we used to get it in our newspapers was to pay for it. We put it in not as an ordinary advertisement, but paid the county newspapers so much an inch for running that sort of thing. Occasionally, they are glad to get it, but if you are not carrying much ordinary advertising they won't do it for nothing, and you can't blame them, and most of us outside of the City of Denver don't spend any money with the newspapers. We can't.

MR. DON PEABODY, PRESIDENT, GUARANTY TITLE & ABSTRACT CORP., MIAMI, FLORIDA: I am convinced that the weekly newspapers are the best papers to advertise in, for the people that read a weekly paper read every word in it.

MR. PAUL PULLEN: I will ask Royce Wright of Milwaukee if he will tell us how he has kept his company's name so successfully before the public.

MR. ROYCE WRIGHT, MILWAUKEE, WISCONSIN: I see the time is very short, so I will be brief. After all, I am hesitant in the face of glamorous California and others, but on the subject of publicity, we work on one or two fundamentals which probably are along the same line as a number of you operate. I keep in close contact with the Real Estate Editors of the local papers. I give them items from week to week as the editors never know up to the last minute whether they will have eight or sixteen columns, for when he has an unexpectedly large amount of copy our stuff may not go in. At other times, it will appear, and we get a lot of publicity.

Then, we found too, a great many Trade Publications, such as the Realtors Bulletins, where copy is prepared by some advertising man, and apparently he is always glad to have on file some extra publicity material to slip in when he is short of copy; that is the source from which we have gained publicity.

We made up a set of forms used in the issuance of title policies. We give a copy of that to each graduate of the University; these have been of value to brokers and salesmen who are handling FHA mortgages throughout the State, familiarizing themselves with title and mortgages; one company has fifty-seven employees and each one has a set in his kit. They talk to the banks and talk title insurance for us at the same time they sell FHA mortgages.

Clinic on Advertising and Publicity

(Abstracters Section)

PAUL P. PULLEN, Chairman

MR. PEARSON, CHAIRMAN, ABSTRACTERS SECTION: On Monday you heard a general resume of advertising that was so delivered as to appeal to both Title Insurance men and Abstracters. This morning we are to be favored with a specialized program for the Abstracters in the way of a clinic on advertising, publicity and public relations conducted by Paul P. Pullen, Chairman of the advertising committee of the National Association and advertising officer of the Chicago Title and Trust Company. Mr. Paul P. Pullen. (Applause)

MR. PULLEN: I hope you will make this your meeting, because all I want to do is just to call your attention to some of the advertising exhibits which make up the largest exhibit, I am sure, that the Association has ever had. It is made possible, of course, only by the cooperation of everybody who sent in samples of their calendars, blotters, and publicity, newspaper ads and everything of that sort.

Wasn't the Exhibit Raided!

I hope that all of you will get up and say what you think. I am going to call on some of you who have advertising here to explain why you used that particular form, what it cost, and what results were obtained. Now, we might take a look at some of these exhibits and go a little more into detail. Take a look at some of them. They now look like a Christmas tree after Christmas! We had a swell exhibit the first few minutes of the first day—paper knives, rulers and pencils and other novelties. Somebody discovered the pencils had a pair of little dice in them and those went first. It really was a swell looking exhibit, but it looks sick now. I can't blame you for taking them away because they are all very attractive. I had my eye on a couple but somebody beat me to it, so there was not much left for me.

On that next board you have two or three abstracts, one in the upper right hand corner, from Utah. Take it—it is rather a model of neatness. If you haven't examined it you will be interested to do so.

There wasn't any special effort made to get abstracts for the exhibit, because while a good abstract is its own advertisement, of course we had in mind other forms of advertising. We are very glad to have those and maybe in other years it might be well to have an exhibit of abstracts themselves, either in connection with the advertising exhibits or entirely separate. There seems to be quite a lot of interest in that.

I was at the Wisconsin Title Association meeting in September and we took an exhibit of foreign titles that we have. We also put in the last three prize winning abstracts of the Illinois Abstracters Association and the abstracts created as much interest as did the National Title exhibit. Everybody was interested in the abstracts themselves and they were very good looking ones.

Here (designating) are some more forms of stationery and some other abstract forms. I say there was no effort made to get any display of them. Members sent them in so we put them up. Now, quite a lot of companies used maps and here is one I spoke of yesterday. This is a county map that is about as cheap a map as you can get, yet good looking. You can't go into color of course. Here (designating) is one three color job and here is another three color job. Of course, those cost more. This is for large distribution, some schools use the maps altogether. There is a pretty good representation of maps.

On newspaper advertising, either the abstracters didn't send it in to the committee, or they have been doing very little newspaper advertising. We have advertising campaigns on display here, as you probably notice.

Blotters

With reference to the blotter advertising, which you probably recognize as being the Association's blotters, the smaller size seems to be more popular. We first thought of the large, but a good many use small size envelopes and some that have used these had to buy special envelopes, so by request in the future, blotters will be small instead of large.

Excellent advertising is that of the Citizens' Abstract and Title Company of Milwaukee. It is a measurement chart, gives all of the data of tables of land measurements—also gives section, quarter section, etc. The same Company in Milwaukee puts out a list of recordings in Milwaukee County, and in City of Milwaukee in some cases.

Advertising in Real Estate Magazine

CLAUDE WHITE, JEFFERSON COUNTY ABSTRACT, REAL ES-

TATE & INSURANCE CO., GOLDEN, COLORADO (PRESIDENT, COLORADO TITLE ASSOCIATION): In the temporary absence of Don Graham (of Denver) who is in another meeting, I will bring up the matter he mentioned yesterday and which was deferred until today. It is on the Real Estate Review, a Denver Publication. Last October we had considerable discussion on the matter of rates with the Real Estate Board in Denver. We had several discussions at their luncheons, in which the abstracters were represented, and had much discussion. A little bit later one of the members of one of these boards had been getting out this little pamphlet, Real Estate Review, going to all real estate operators in the principal cities and towns of Colorado. It was purely an advertising proposition with him and was paid for by the advertising that he got in there. He came to us with the proposition of using that medium to educate the public, claimed the trouble with the members of the real estate board who objected to our methods and prices was that they didn't know what our service was or what it cost us and what it really meant to those who used it. We made a canvass of our membership around the State and got enough of them to subscribe to this publication and we have used a great many articles that appear in the American Title Association Publications. Some have been good ones. We censor everything that goes through that medium, pass on it before it is printed. It goes out to all abstracters and real estate operators in the State. In addition we asked each abstracter from every county to see that these reached the candidates for State Legislature because we anticipated the possibility of some effort, perhaps more or less organized effort on the part of real estate dealers, to put us under control of public utilities commission or some such governing commission in order to regulate prices and, in fact, we feel, to take our independence away from us. We have this now going to all candidates for legislature and after election is over and it is decided who is elected we will continue to send it to the members of the Legislature, next year. We are trying to get them into the hands of every man who is interested as a dealer. We want to present facts—only facts.

However, it strikes me as it did all members of our State Association, that if you reach the dealer that contacts the public and get him convinced that our service is worth what it costs and is more or less indispensable that possibly it will do some good.

This has been purely an experiment on our part and if there are any members who have tried anything similar to this we would be very glad to get their experience on this. As we say it is an experiment and if we are wrong we don't want to continue, and if some other method has been tried and proved more beneficial, we will be glad to get the benefit of that.

MR. PULLEN: Has anybody else done anything similar to this? I would like to hear from you. Hasn't anyone done a job in his community similar to this? The Real Estate Review is what we are referring to. The headings of these articles all are "Protect Your Title."

MR. WHITE: Again I might say that it is issued every week and is quite expensive.

VOICE FROM FLOOR: What is the circulation?

MR. WHITE: We are not positive, but our estimate is that it should be in the neighborhood of 3,000 per week. That is what we plan to get, but I think we are getting more than that, because they are very liberal in giving additional copies, but it costs. It is quite expensive, but we feel it should be effective.

MR. PULLEN: How many are there to be in that series altogether?

MR. WHITE: 32 weeks is what it runs for.

MR. PULLEN: You haven't prepared them in advance?

MR. WHITE: No, we usually meet Mr. Graham and Mr. Hughes in Denver, (both of Denver). We usually meet about once a month and select enough to run for probably 6 weeks. After the proof has gotten to Mr. Hughes and Mr. Graham, they proof-read it and criticize it. So, sometimes people who are not familiar with title work will get out a statement that appears all right to them, but an abstracter can see something that will not be good for the public to see. We censor all carefully and prepare them six weeks in advance.

Direct (Leaflet) Advertising

MR. C. E. PAINTER, PAINTER ABSTRACT & INSURANCE AGENCY CO., TELLURIDE, COLO.: Mr. Pullen, I thank you for your courtesy in announcing that I have at the convention for distribution reprints of an advertising leaflet. It is a poem by an old time abstracter.

I do not believe that it does me any good to advertise in my local newspaper. I have been in the business over 55 years and everybody in my section knows me; some of them think I charge them too much. I charge them all my product is worth—maybe a little more. This reprint of a poem I send out in the ordinary course of my business. Sometimes my secretary puts them in all letters with blotters and this particular little leaflet. It has a picture on the outside of Mt. Roosevelt. Some rather criticize that because originally it was Mt. Wilson when I went to Colorado. But through the administration the name was changed to Mt. Roosevelt. It is one of the highest peaks in Colorado.

That is my policy, to try to reach the public through these reprints and circulars. So I think that sort of advertising benefits me.

MR. PULLEN: Of course, it has the advantage of being sent out without any extra expense when inserted with other outgoing mail.

GEORGE F. VAUGHAN, DEAN OF LAW, ARKANSAS UNIVERSITY, FAYETTEVILLE, ARK. (PAST PRESIDENT, AMERICAN TITLE ASSOCIATION): Mr. Pullen, I can look back over the record of a quarter of a century in connection with my organization. This part of the program appeals to me because if you look at the proceedings of the year 1908 you will see that your speaker had an article on the use of printers' ink in the abstract business. From that time for three or four years as a side line in my work, I was connected with the Beach Abstract Company at Little Rock. I served the profession with specimens of advertising, sold it to them and among the most useful form of advertising was a form of letters, and now and then the advertising picture that you are speaking of from Colorado. Speaking from personal experience, spread over the years, and my observation as lawyer and examiner of titles, I think it tremendously advantageous to the public as well as the advertising people to carry on constant educational campaigns. The slogan I had at that time, "You need an abstract,—get ready for the next deal," was purely educational and I made a success of it and if my practice in the law hadn't been so engaging I would have been in that work yet.

Educate the Public

So, I want to lend my personal endorsement in preparing and using advertising; it is a tremendous advantage. It seems incredible to me that in 25 years the public wouldn't by this be thoroughly educated to the importance of an abstract. The gentleman who has just spoken is doing a good work by patronizing this form of advertising because there will be somebody coming in and owning property that will wonder if he is ready to pass title. If he has an opportunity to sell or borrow money and if you have the title worked up in advance and all the necessary work done, the time is minimized, the transaction is lubricated and everybody is happy. I am a thorough believer in printers' ink, even while I didn't have the opportunity of following that maiden dream of mine.

I have a county in Arkansas in which there was a point jutting out, like the point of Texas, in an adjoining county. A stream divided it and one time at a session of the Legislature, 1907, before anybody knew it there was a bill changing the boundary line and putting that strip in the adjoining county. I used that as a fine article on title advertising. Someday you will wake up and see a slice of land taken away, and had a picture drawn. Now, that has attracted attention. I ran that in the local paper as a full page ad. (Applause)

In the Schools

LOIS NORMAN, OVERTON ABSTRACT COMPANY, MANGUM, OKLAHOMA: Concerning the Colorado

Magazine program, that educational campaign is especially good in one place; I don't know whether you used that or not, in commercial departments of the school. Have you sent it to the commercial departments of schools?

MR. WHITE: No, we haven't yet, because this really was directed at a civic group. We thought if this proved beneficial to much extent that we might print some additional of our own, perhaps make it more educational,—possibly reach the schools. That is a good point.

In the Schools

MISS NORMAN: I might say, in connection with educational work in the schools, you have in your commercial departments in schools, (if you will look in your little books), a paragraph about so big (3 inches) concerning abstracts,—a thing that is as vital as abstracts to boys and girls. As a matter of fact, many of your commercial departments will be delighted to have you come to school at least once a year, or more often, and talk. I have done that in our schools in the County. You have no idea how much they appreciate it and as an educational campaign. We have been in business since 1897. Some of those earlier children are now our customers. That is a splendid place to start advertising. (Applause)

Our Responsibility

MR. CORNELS, BECKHAM COUNTY ABSTRACT COMPANY, SAYRE, OKLAHOMA: Mr. Pullen, at this time I want to lend my endorsement of what the gentleman of Colorado has brought to our attention. I think that is one of the most valuable things presented to this convention. The public in Oklahoma, I fear are not interested in our business. It is one of the most responsible businesses that men can engage in, because of the fact that titles and money invested in homes is safeguarded by reliable abstracts so I think it is important that that matter should be brought to the attention of the public. There is going to be, perhaps in the next Legislature, some agitation for different systems, but we want to sell them on the idea of the system we now have and the way they have been working, uniformity of abstracts, uniformity of records, etc. We can bring that home to the public. It will help immensely in our business and that is what we ought to do. Colorado is carrying on a laudable proposition and I think it should be endorsed by the convention.

Legal Forms

Let me say another thing about uniformity of records. I carry on advertising in the way of furnishing legal blanks. Every time I send one of those legal blanks out it makes for uniform record and if all abstracters would furnish legal blanks to customers such as attorneys' blanks or real estate men, we would have an increase in uniformity of records.

MR. WHITE: Might I ask that gentleman if he would be so kind as to write a letter to the Colorado Title Association. It will help us a great deal with our membership in converting them to this advertising.

MR. CORNELS: I will be glad to do that.

MR. J. W. ENSIGN, ENSIGN ABSTRACT COMPANY, SALT LAKE CITY: I was in Denver early this summer. I picked up one of these Reviews. It was handed to me in one of the Skagg's stores, I believe. They seem to have it on distribution once a month or once a week. I thought it was a fine document. The impression it made on me was it was trying to get together with the real estate men and operators of the City of Denver. This paper had some articles about titles to real property.

The advertisement of a number of companies appears. The advertisement of a number of realtors appeared in it but the main burden of that was the advertising of property for sale. It was classified into residential, high priced and low priced; industrial and other properties in their order. It began with the highest priced and came on down to the lowest priced. It was an orderly exhibition of properties for sale. Each tract was described, the address given, the name of the realtor who handled it was given.

I thought, without discussing it with anyone, it was an attempt to get together with the real estate man. I didn't know it was published by the Title people, but it struck me as a fine thing. I sent for a copy and I thought I would put it up to the Real Estate Association and Abstract Association of Utah and see if they can't put over something of the nature of the distribution had through Skaggs' stores. Skaggs' stores is a chain store system of our State.

Co-operation With Real Estate Operators

With those remarks about the title of real estate for sale and the advertisement, it seemed to me it was an effort to get together with the real estate man. In our State we have that detestable vice of discounting their abstracts. If we could adopt some such system as that to work with, the real estate men who take the discount and the lawyers and render them a sufficient service to take the place of that discount we might eventually be able to eliminate it. We have passed a resolution in the State Association that every effort will be directed toward the elimination of that discount.

I appeared before the real estate Association a number of years ago in our City and I had looked up a number of decisions to show that one who retained a discount from an abstracter and didn't pass it on to the client almost was guilty of embezzlement. When an agent is employed to dispose of a piece of property it is his duty to get the best price and make the best deal for his client and, if he can save anything through rebate, discount, service charge or in any other manner, it, according to my view is his duty to turn that over to his principal. In our State they do not.

I think the method that Mr. White has suggested here of getting along with the real estate man and giving him some service to take the place of that discount might be a way of breaking that discount system down. (Applause).

MR. WHITE: In order that there will not be a misunderstanding we are not publishing this; we are paying for our space in the publication. The publication is gotten out by a member of the Denver Real Estate Board who is a finished advertising man. In other words, that is a specialty. He gets out this publication; but we have hopes someday of getting out some similar one on our own hook. I believe more and more the public is demanding of us to know something about our business, how we come to get an abstract, where it all comes from. All they see when they come into our office is a finished product, just as we see an attorney go into court. All we see is that attorney up there. These people haven't seen the midnight oil he has burned to prepare himself so that he can make that plea. I think more and more in our day the public is demanding to know where our abstracts come from.

JAY C. JENSEN, SALT LAKE ABSTRACT COMPANY, SALT LAKE CITY: Mr. Chairman, inasmuch as this gentleman, Mr. White, from Colorado has asked for our endorsement, let me say, I am thoroughly sold on the idea of educational campaigns in any form. I think that it has been expressed here by many speakers this morning and I believe that we are perhaps a hundred percent in favor of educational campaigns so I move, Mr. Chairman, that we as a body, the Abstracters' section of the American Title Association, endorse the educational campaign being put on in Colorado and go on record in favor of educational campaigns of whatever nature the various states feel proper in their own section to use.

MR. CORNELS: I second the motion.

MR. PEARSON: You have heard the motion made and seconded. Any discussion? If not, everybody in favor say aye. (Motion carried)

The Sumner Book

MR. PULLEN: I mentioned yesterday a very fine booklet which seems to furnish the ammunition for an educational campaign or movement such as you have just endorsed. This has been prepared by Miss Jane Sumner, secretary, Gracey-Travis County Abstract Co., Austin Texas, and is a series of questions and answers regarding abstracts and the need for them.

It is our thought to see whether it can be put out applying to all states. That is a bigger job than it sounds but the same thing was done by the Trust division of the American Bankers' Association in the form of questions and answers on wills, and an-

other one on trusts. There is just as much variation among states on wills and trusts as there is on abstracts, so it doesn't seem to me it is going to be an impossible job (although it will be a long slow job) to get this in shape so all of you can use it and so that it can be distributed to you through the association's central office.

This booklet has a hundred questions and answers. I will just read one or two. I will read subdivisions here. (Reading certain questions from booklet). Now some of them are like this: Here's number 76—

> I have a large tract of land near the City limits, want to sell it off and a plat recorded; will it be all right to sell it off by field notes or wiser to have a larger tract subdivided and plat recorded?

They can get the answer from the book.

I think there is a very good field for it. You will probably hear from Jim Sheridan as to how it works.

Getting on, I would like to have an opinion as to whether you would need or be interested in using it and about what quantities, and whether you think we should go ahead with it. Anybody have any ideas or opinions?

MISS NORMAN: That might answer the question as to our County. We have a daily newspaper and we furnish a take-off, a daily report to this newspaper, of all transactions, deeds, mineral deeds, or transfers of property. The people come in and they say, "You certainly have been busy. I see where you made some transfers." Those people are interested. They will come in and ask if we had a booklet of this sort and when they ask we give them an abstract. I think a book of this sort would be ideal to hand to them and they will read it. These people who live outside read those things and the questions you think are silly are big things to them and they have one piece of property. Personally, I think that is a splendid thing to help us in educational campaigns.

Based on Actual Experiences

MISS SUMNER: Might I make one statement of the booklet? Every question that is in this booklet and several hundred more were taken over the telephone or across my desk over a period of several months before I put them together. They are actually questions asked me (and the most frequent questions asked me) and that is how I came to do it. It started from a little 4-leaf pamphlet we put out on which we had about ten questions and answers. After that, it went over so well we decided to do this other. (Applause)

MR. PULLEN: I think the whole association owes a debt of gratitude to Miss Sumner to have had the energy and foresight to get up this booklet. After the Association has canvassed the matter through officers of our state associations, and if it can be rewritten to make it suitable for national use, we plan to offer it to you. Copies will be available through the central office, if we are successful in working it out.

MR. N. J. SMITH, TULSA, OKLAHOMA: Mr. Pullen, I understand you are the manager of the advertising department of Chicago Title and Trust Company. I would like your views. Which is the most effective form of advertising, through newspapers or direct mailing?

MR. PULLEN: Of course, in all ways we advertise our title guarantee policies. We think that our chief contacts (and we work on that theory) rest with real estate men and mortgage men and not the general public. In metropolitan area of Chicago there are 5 or 6 million people and it would be a tremendous job to try to educate them on title insurance. We think whether the lawyer or real estate man recommends a title policy or not carries a great deal of weight with the person actually buying the property or loaning the money.

J. R. DOSS, PRESIDENT EUFAULA ABSTRACT CO., EUFAULA, OKLAHOMA: I am in favor of the book. Those questions originated in the minds of people who wanted answers to those questions. I think the book is bound to be fine, and I hope the National Association can work it out for us. If they do, I want all our Oklahoma members to take some copies.

More Endorsement

MR. CYRIL H. BURDETT, LAWYERS TITLE CORPORATION, NEW YORK CITY: Mr. Pullen, this matter of questions and answers in very popular these days and very fitting in this association. I recommend it to all of the State Associations. I know there will be a great response. It seems to me that nothing better con be devised.

MR. L. V. RHINE, GREENE COUNTY ABSTRACT CO., PARAGOULD, ARKANSAS: Our association members have discussed this very question and I think all of them are highly in favor of it. We feel that way, that the State Associations are not probably large enough to handle the problem of public education and the National Association could be of great benefit to us by putting out this general information and I know our State Association is highly in favor of it.

MR. SHERIDAN: I will ask you to ignore the fact that the author is in the room and if there is anybody that doesn't approve of it will you hold up your hand. This in order to bring out all ideas.

MR. J. C. CREEL, PRESIDENT, C. A. WILKIN & CO., PARSONS, KANSAS: Without being in any way critical of this book, but just expressing a personal point of view here, I admire all that has been done toward telling our story. I do wonder if we can't devise some way of telling our story in fewer words—in the simple language the man of the street can understand. I have tried out many of these able descriptions of abstracting on our public with very poor success.

MR. SHERIDAN: On that point, Mr. Creel, and since we have started to lampoon Miss Sumner, I had the same thought, as also did Mr. Pullen. We plan to submit the product to an advertising agency for complete rewriting in the layman's language.

And Still More

MR. S. A. MAYO, MAYO TITLE GUARANTY COMPANY, LAKE CHARLES: We could get these out to the folks of our County, into West Louisiana area, to the folks with whom we have business, with some special little point of that kind. I will try it if the National Association will put out booklets.

MR. PULLEN: Any more points that you would like to discuss on advertising—if you have a pet theory or hobby that you would like to throw in.

But

MR. FRANK MASON, NOWATA, OKLAHOMA: I have been an abstract examiner for a good many years, profession, I prefer calling it. I used to fall an easy victim to calendars and pencils and every conceivable advertising matter. Of course, I would buy them. I have learned better now through my experience and observation. I would rather save my money and buy shoes for little children. I haven't any children, but I have grandchildren. I will tell you folks that advertising matter is costing the abstracters of Oklahoma too much and from what the neighboring states are saying it is costing them too much, too. I think it should be discarded. How much advertising do the lawyers do? Not any! They would be disbarred. If the abstracters don't stand on as high a plane as they should,—I think they do though—I am both. I know whereof I speak. I tell you, ladies and gentlemen, it is deplorable that the abstracters are ready to fall for anything, just anything to increase business. Now, another thing, if you are going to get out advertising matter to educate layman, why it is all bunk. You can't do it! But the idea of educating the public as to what to do and how they should be executed and all that—it is an impossibility. It can't be done! Quit this throwing your money away.

MR. CYRIL H. BURDETT, NEW YORK CITY: I ask the gentleman what he would suggest as an alternative to advertising. How he can run his business so the people will know what he is doing?

MR. MASON: By your earnest, active and efficient service.

MR. BURDETT: That is one element, but not all.

MR. HOWARD SEARCY, WAGONER, OKLAHOMA: I am not an official of the Oklahoma Title Association, although I have been, but personally I believe that a good many simple ques-

tions and answers made in the language that the people on the street and farmer can read and understand is one of the best things we can do and while I am not able to endorse it for the Oklahoma Title Association, I am for it, personally, and I believe the Association is for it.

All Practical Questions—and Answers

MR. CORNELS, SAYRE, OKLAHOMA: Referring back to this booklet proposition, there may be a little danger in that as I see it and I am speaking for myself—and without having read the book. If you get to furnishing legal opinions you get into difficulties and this we should avoid.

MISS SUMNER: They are all questions of fact and in each instance where they might be construed as questions of law it is merely stated "see your attorney for his opinion on doing this and that and the other." I am an attorney and I work with a firm of attorneys as well as in the abstract business. That point came to my attention very quickly when I started making a list of those things. Every question in there is a question of fact and not of law.

MR. CORNELS: Just in reply to the lady, I wasn't criticizing her work, I don't know all about all of the details, but I am merely cautious that we don't get into a mix up. Questions of fact are all right, but if we get to taking in the law, we are beyond our authority.

MR. PULLEN: So far as the book is written, Miss Sumner has done a very good job on that.

MR. JENSEN: Mr. Pullen, in our business and so far as I am personally concerned, I would very much rather do business with a person informed than a person ignorant of what he is trying to do, and I favor anything we can put out in the way of an educational campaign that is going to make our customers better acquainted with things they are trying to do, so when they come in and want an abstract, they will know what they are talking about; they will know what they are asking for and won't be kept in the dark. So far as I am concerned I don't approve of attorneys and abstracters trying to keep people in the dark. I would rather deal with enlightened people knowing what they are trying to do and I think a booklet of this kind would help to enlighten them. So far as Utah is concerned, we pledge our support of it and of any educational, advertising or publicity program the national organization asks us to undertake in our section. We want enough of these booklets so we can distribute and we pledge ourselves, and are in favor of this booklet. (Applause).

MR. MASON: Oklahoma is an abstract state. There is not a business transaction carried on in this state that is not backed up with an abstract, that, is, a transaction amounting to anything at all. It is not necessary to educate our people. It may be necessary up in Utah and other places, but not in Oklahoma. In Oklahoma they realize the importance of an abstract and they know what an abstract is. They don't have to be educated on that line.

Arkansas Speaks in a Firm Voice

MR. GEO. N. GREENHAW, PRESIDENT GREENHAW ABSTRACT CO., JONESBORO, ARKANSAS: Gentlemen, I happen to be an attorney in addition to owning an abstract business. I want to tell you that, of course, a lawyer can't advertise, but everyone knows the lawyers are surely, certainly and definitely approaching extinction as to very large numbers. Now, we are defenseless and I suppost that is best, but the abstract profession is not defenseless. I want to be charitable with this fine gentleman from Oklahoma. I think he lives here where they pump money out of the earth and have to be sure of the title. Boy howdy, if I were pumping money out of my back yard or one of my farms I would be conscious about the abstract, but you see that is local and it is decidedly in the minority and, for goodness sakes, back this National Organization of ours up. If you don't believe in what they say, don't say anything against it, because you are in the minority. Now, I tell you, it is alarming. The big folks are getting larger and the smaller ones are getting smaller. You know that is true and after a while we are going to reach the clashing point like a carbuncle on your neck and it is going to burst whether you want it to or not. (Laughter).

Now, folks, don't misunderstand me. It is by nature that the layman wants all the lawyers put out of business until his son gets drunk and commits a murder; you folks in Oklahoma know I am telling you something. If the man is a good lawyer when he is defending and can save a man from severe penalty he rates a high fee.

The fellow that is buying the abstracts doesn't want to pay you what it is worth and the fellow that is selling something else to take the place of your abstract,—he is inclined to not arise to the defense of your abstract profession.

Necessity for Abstracts

Now, listen, if these fellows handling our association can put on anything that will make folks think more of the necessity for an abstract, think in terms of the tremendous responsibility resting upon that abstract,—and make your public feel toward an abstract like I did the surgeon that performed a mastoid operation on me, that is fine—the surgeon said he was getting down close to my brain, and I want to tell you I wasn't worried whether he was charging $400 (which he did). Let me tell you an Arkansas story whereby I can illustrate my point very forcefully. (Applause).

I live down at Jonesboro. We are on Collis Ridge which divides the Mississippi delta section from the Ozarks section that all you people hear so much about. A good many years ago we had lots of murders, used to have more than we do now,—as long as good lawyers could save them they had more murders. When the lawyers got to where they couldn't shout so strong the murders decreased. Anyway, we had a very bad murder but the man had money and I want to tell you we are down there where folks make money. We are in a rich country—they brought this fellow in and there was to be an associate counsel that lived in Jonesboro and another living in the small town down in the rich bottom section. The murderer was out on bond even though he was scheduled to hang and they were discussing the fee,—so this man said, "Well, the fee is $2,500." The murderer said, "My, that is a terrible fee." And this country lawyer said, "Why, you darn fool, if we don't defend you they will hang you and your money won't be worth anything; and if we defend you we are going to turn you out free."

Need More Business

I believe these officers of ours can sell our services to the public. We can't now, but we must, we are on the chain and we are sliding. I know it, and if you don't know it you go find it out. Why, I have met men in this convention who have lived in cities with one abstract plant and are now putting in competitive abstract plants. I am in a town where we have three. We need more business.

Don't fail to back these national officials with anything they can furnish us, for instance this booklet, that will cost us in terms of cents per unit. If we try to do it ourselves it will cost dollars. I can't afford the dollars, but I can the cents and if it doesn't do anything good I will take a chance. Let's back it. Arkansas is going to back them up and you folks ought to. Not only on this but everything else they offer to us. (Applause).

MR. PEARSON: Thank you, Paul, for conducting the clinic this morning. My observation is that the abstracters section is very much interested in a booklet. I suggest a rising vote of thanks from all of you to Paul Pullen. (A rising vote of thanks was given).

Open Forum

HARVEY PEARSON, Chairman, Presiding

MR. HARVEY PEARSON: Some time ago, your Executive secretary sent out some questionnaires for suggested topics for discussion, and a few of those came in that are in addition to some of the set ideas. We will now have Open Forum discussion.

Two of those I would like to have discussed at this time. We have one suggestion wanting discussion upon "Valuation charge and rates." I will

ask James S. Johns of Pendleton, Oregon, to speak on this.

MR. JAMES S. JOHNS, PRESIDENT, HARTMAN ABSTRACT CO., PENDLETON, OREGON: In regard to the question of Valuation charge and rates:

I listened with a good deal of interest to Mr. A. M. Frazier, Regional Counsel of Home Owners Loan Corporation talk. Is he in the room? (He is not in the room). I am sorry he isn't in because I wanted to tell him about the other government official who came to Western Kansas. I don't live in Kansas, but he went to Kansas and talked to a group of farmers about "erosion." And he talked to them about fifteen minutes and an old farmer in the back of the room said, "My cow died." The official continued to talk another fifteen minutes and the old farmer again said, "My cow died." He continued to pursue his subject and the farmer kept interrupting his talk and saying, "My cow died." Pretty soon the man sitting next to the farmer said, "My neighbor said his cow died." "Well," he said, "What has that to do with the subject of Erosion?" He replied, "His cow died and we don't need anymore of your 'bull'." And you have all heard my talk years ago.

I don't like to say anything behind a man's back that I won't say to his face. Really, he did have a very just complaint and he took it out on you Texans more than on anybody else. He seems to get abstracts done at all sorts of prices and qualities, but did you notice he didn't make any complaint on all the charge? If you had all charged as much as the man that charged the most, he would have been satisfied or so I believe. Now the difficulty seems that some are unable to make a charge large enough so that you can be reputable title people, but you have to run a dairy, or drive a locomotive to make a living. So I would suggest now as I suggested all over the country years ago, that you get together and hold regional meetings and agree on the minimum charge that you will make.

You are giving a lot of service away for nothing. We are not expected to do so anymore. You are doing a lot of free work. I used to go to regional meetings and I asked how many charged for the caption sheet. Very few did. How many put in a beautiful plat and charge plenty for it? Very few put in a plat at all, so when we found out they liked beautiful plats, we gave them beautiful ones, and charged for them—and people liked it.

There is one charge in abstracting that I have been able to justify in my conscience, and to my customers, (and this is highly important), and that is the charge based on the valuation of the property.

Most abstracters, I admit are paragons of ability and seldom make a mistake. We make some mistakes in our office and so far we have paid for them, but before we pay, our customers give us the money to pay for them.

Now, the basis of charge seems to figure out a dollar a page or a dollar and a half a page, and one place in Illinois, I remember, they figured out the cost was two dollars and fifty cents a page, but you can get together with others of our industry in your section on what your page charge should be; how much your certificates should be; how much you should charge for plats, and that sort of thing, and you should do that. We should make a reasonable charge for our work, which I would suggest should be the highest price anybody makes in that community, for the work.

But, in addition to this, seriously, you have another problem.

We all make mistakes. You make an abstract on a vacant lot which is worth $100.00 and you leave off $10,000 judgment and you have a liability of $100.00—that is all the liability you have got. You leave off the judgment of $10,000 on this hotel building and how much liability have you got? Ten thousand dollars? Maybe some of us are such good abstracters we won't leave off a judgment of $10,000. We have left off judgments before, however, and the human factor will always work.

I expect some of us are awfully good at leaving off taxes. Sometimes, I know, it is not our fault. Sometimes, it is the fault of the tax collector in his office. You leave off the taxes on a $100.00 lot, maybe you are out $1.82, but if you leave off the taxes on this hotel building, you are going to be stuck a lot of money.

From the point of view of the purchaser of our product, I will tell you that I have put into practice everything I have learned from my travels all over the United States about charging. The only charge I have been able to justify to my customers is the valuation charge. That is one thing they can understand. I am very serious about that. They do understand the valuation charge and they know what they are paying for. They are paying for our responsibility which is an entirely different thing from the charge for stenographic work, and work keeping up our indexes, etc. That is the only charge we have ever made on which we have never had a complaint. We have had to explain it but never had a complaint. I don't care how you make your valuations, I don't care what basis you start on, just so you and your competitor agree.

Immediate Past President William Gill and Executive Secretary J. E. Sheridan hard at work at the convention.

The basis we in Oregon adopted—the basis on which we charge is like this. We do the abstracting and make a charge for that just as you would do, and then, in addition to that, we take the assessed value and double it, figuring that the assessed value is about half of what the real value would be. Then we charge one dollar a thousand valuation charge on that. We figured that the certificate charge of five dollars would cover the first one thousand dollars of value. If it was assessed at five thousand, that would mean ten thousand and we would give the first one thousand free and add nine dollars on the bill for valuation. I am telling you seriously

that is the only charge we ever made on which we never had any complaints.

I want to tell you that before we put in the valuation charge, we levied an assessment on our stock holders of a considerable amount of money; we put in a reserve fund and as we made these valuation charges we put a healthy portion into reserve, that reserve fund accumulated satisfactorily.

Now, why should we assume great liability for nothing? Why should you assume liability for nothing? If you charge professional fees and base them upon a reasonable basis like that you will be considered professional people.

Now, folks, that is my story. It has worked. The valuation charge has worked every place it has been tried. There is one other feature to the valuation charge. All abstracters are interested in title insurance. If we are not, we are going to be. You know that when you get all your property abstracted, you are going to have many instances of earnings something like a stenographer fee, release of mortgage or new deed and you will get $6.00 out of it, and the lawyer will get the fee for examining it; and as the abstract gets larger necessarily the lawyer fee gets bigger and your fee gets smaller. The cost of abstracting goes up and your fee gets smaller. The people are more and more interested in title insurance. It is easier to sell them title insurance and with title insurance, your fees don't go down, your fees stay up.

So from every point of view that I know , it is a subject for consideration and study by and between you and your competitor as to putting in the valuation charge.

MR. HARVEY PEARSON: We thank you very much, Mr. Johns.

MR. PEARSON: I think any one of our members will appreciate, as we hear these discussions, that we are not only selling abstracts, but seriously that we are assuming definite responsibilities. It is just cold hard facts that you don't want to do business all year without figuring out a system of charges as against your probable losses so that you can wind up at the end of the year on the right side of the ledger. Your customers don't want to see you lose money to give them the service they need.

In the future, we abstracters must study these two classifications—valuation charges and title insurance. I don't say when they will happen, but that is what this business is working to in the future, I believe. If you are prepared to assume that liability, you in fact, are giving title insurance to a certain degree.

MR. HIRAM BROWN, PRESIDENT L. M. BROWN ABSTRACT CO., INDIANAPOLIS, INDIANA: I want to say, I think we are doing the work at much too low a price, so keep that in mind when I read the few notes I have.

We have had some little experience in closing loans for customers or clients, having averaged approximately 25 loans per month for several months. Loans we care for and which are not insured under F. H. A. we term "straight" loans. All loans closed which are insured under the F. H. A. plan are known as F. H. A. loans.

Exclusive of so-called "Construction" loans, our fees are low, being based primarily upon local competitive conditions.

In handling F. H. A. loans, after the note, mortgage and affidavit have been prepared, we are also required to figure out and set up in the disbursement sheet the tax deposit, the hazard insurance deposit and the F. H. A. insurance deposit. The accuracy of all these is practically underwritten and guaranteed by us, together with final distribution of the loan funds. For this unwritten guarantee, we receive slight compensation.

In the operation of our Escrow Division, on all loans which are new construction loans and where construction is completed and all claims (presumably) paid at the time the loan fund is disbursed, we require delivery of a list of all unpaid claims for labor and material. All claimants are contacted and the amounts due verified. We then call for execution of a "Construction Affidavit" by the owner and general contractor, as well as a waiver of liens, signed by each claimant and the general contractor at the time we pay each claim. All this work is included in our charge although in some cases as many as fifteen or twenty checks are written in the final loan distribution.

With reference to the operations of our Escrow Division insofar as "Construction Loans" be concerned, we are putting into effect a new schedule of fees. This schedule provides an additional charge of $10 for each additional payment after the first or base payment. We find that usually some three or four disbursement payments are necessary to complete fully a construction loan.

In some cases, we have undertaken to handle the closing of some loans outside of the county in which we are domiciled. In such cases, and naturally, there has been necessarily a division of fee between the local abstracter and our own firm, which naturally reduces our own compensation.

The gentleman who talked this morning, advocated anything from barbering to engine driving as a substitute of title work. I take a total opposite view of the case, I think the abstracters, like the shoe-makers should stick to his last, but charge for what he does.

Report of Committee on Federal Legislation

CHARLES H. BUCK, *Chairman*

President, Maryland Title Guarantee Co., Baltimore, Maryland

Your Committee sent to the mid-winter meeting held in New Orleans, in February, its report, calling to the attention of the Association three major pieces of legislation. That legislation was the so-called "Farmers' Home Act," also known as the "Bankhead Jones Farm Tenant Act," the Act creating the Low Cost Housing Authority, which is charged with aid to states and municipalities in slum clearance operations, and the Act passed to amend the National Housing Act. Title insurance and abstract business has been created as a result of each of those Acts, so that perhaps by this time all of the members of the Association are familiar with the provisions thereof.

National Housing Act

The amendments to the National Housing Act appear to the Committee to be of such importance to the title industry, it seems proper to put in the record the following excerpts from a digest of the provisions of the Act:

"The amount of principal obligations of insured mortgages which may be outstanding at one time is limited to Two Billion Dollars, but with the approval of the President may be increased to Three Billion Dollars. After July 1, 1939, no mortgages are to be insured except (1) those covering property approved for mortgage insurance prior to completion of property, (2) on property the construction of which was started after January 1, 1937, and completed before July 1, 1939; or (3) on property previously covered by an insured mortgage.

"The limit of Sixteen Thousand Dollars and 80% of appraised value at time of acceptance for insurance is made applicable to dwellings for not more than four families.

"There are new provisions (1) for insurance up to Fifty-Four Hundred Dollars on 90% of appraisal (as of date mortgage is accepted for insurance) on urban, suburban or rural property hav-

ing a single-family residence and mortgagor is owner, and occupant, with approval for insurance before beginning construction, or (2) which construction was begun after January 1, 1937, completed before the bill became law, and has not been sold or occupied since completion, or (3) on not to exceed Eighty-Six Hundred Dollars represent-appraised value and 80% of balance of appraised value, when appraised value ed by 90% of Six Thousand Dollars of does not exceed Ten Thousand Dollars, on single-family property subject to the limitations above described. Maturity of such mortgages is limited to twenty years except those representing 90% of appraised value of property, which might be accepted for insurance until July 1, 1939, if maturity satisfies administrator and does not exceed twenty-five years. On mortgages limited to Fifty-Four Hundred Dollars and not over 90% the premium charge is to be ¼ of 1%.

"There is also provision for insurance of mortgages covering farms on which farm houses, or buildings are to be constructed or repaired.

"Section 207 is expanded to provide for insurance of mortgages up to Five Million Dollars on the basis of 80% of appraisal on projects (1) of public housing agencies and limited dividend corporations, and (2) private corporations or trusts engaging in rehabilitation work in slum areas and submitting to regulation in connection with their projects as to rents, sales, rate of returns, etc.

"A new section 210 provides a plan of insurance of mortgages of from Sixteen Thousand Dollars to Two Hundred Thousand Dollars at 80% of appraisal, and not more than One Thousand Dollars per room, for multi-family dwellings or groups of not less than 10 single family dwellings where there has been approval for insurance before beginning construction.

National Mortgage Associations

"National Mortgage Associations may now begin business when only one-fourth of capital is paid up in cash or government securities. Tax exemption is granted these associations and their obligations, as to all states and local taxes, except on real property."

Bankruptcy Act

Major amendments to the Bankruptcy Act were made by the House of Representatives' Bill No. 8046, the Chandler Act, approved by the President on June 22nd, 1938. The Act is the first general revision of the National Bankruptcy Act since 1898. The amendments seem to be so extensive that a study of the Act is recommended. Mr. S. A. Clark, Solicitor of the New York, will discuss with you the provisions of this Law at this convention.

It is interesting to note that under the Merchant Marine Act of 1938, the United States Maritime Commission is authorized to engage in ship mortgage insurance, under procedure similar to that in use by the Federal Housing Administration for the insurance of home mortgages. Under this Act, mortgages on ships could run for twenty years and represent not more than 75% of the value of the property pledged.

National Economic Committee

By Senate Joint Resolution No. 300, a temporary National Economic Committee was created. The Committee is to continue to the beginning of 1941. "The purpose of the Committee would be to determine the causes of concentration and control of industry, and their effect upon competition; the effect of the existing price system and the price policies of industry upon the general level of trade, employment, long-term profits, and consumption, and the effect of existing tax, patent, and other

CHARLES H. BUCK, Chairman
Baltimore, Maryland
President, Maryland Title Guarantee Company

governmental policies upon competition, price levels, unemployment, profits and consumption." The Committee is given broad powers and is expected to make recommendations to Congress with respect to legislation, upon the subjects studied. The appointment of the Committee seems to indicate trends toward further regimentation of industry.

Revenue Act of 1938

The Revenue Act of 1938 should be studied. Attention is directed to the provision that insurance companies are subject to a rate of 16½% on all net income, and to the provision limiting prying by the General Public into compensation paid officials of corporations, to those salaries in excess of Seventy-Five Thousand Dollars yearly. The Committee feels reasonably certain that the last referred to amendment will preserve the privacy (as to salaries) of all officials of title insurance companies.

Appropriations

It seems proper, in a report on Federal Legislation, to call attention to the appropriations authorized by the Congress. The public debt of the United States is rapidly approaching Forty Billion Dollars. The Federal Government has continued each year since 1929 to spend more than has been collected in taxes, thereby "piling up" the debt. Federal officials do not seem to realize that some day we must "Pay the Fiddler." Net appropriations for the fiscal year 1939, which began on June 30, 1938, aggregated in excess of Nine and One-half Billion Dollars. Included in this Nine and One-half Billion Dollars were appropriations for relief and work relief, and for assistance to agriculture of approximately Four Billion Dollars. Consider the great powers delegated to the few individuals who distribute the nearly Three Billions appropriated for relief. Charges have been made in the press, over the radio, and in other public and private discussions that political considerations largely induce these appropriations and, that in the administration of the enormous funds appropriated for the relief of distress among the people, politics is rampant.

The questions of Federal appropriations, the balancing of the Federal Budget, and the relation thereto to relief (for the farmer and the city dweller) are so tied with our future and continued prosperity, that it behooves all people to consider what is to be done about it. Is the answer to be: Continued excessive appropriations — permanent relief—mortgaged future—and ultimate repudiation; or is it to be: "Pay as you go"—more cooperation between Government and Industry — "shoulder to the wheel"—better business and greater prosperity than we have ever known?

Possibilities in the Abstracters Field

A. M. FRAZIER
Regional Counsel, Home Owners Loan Corporation, Dallas, Texas

I feel a little bit more at ease than I did at first. Mr. Cornels of Oklahoma admonished you that you must keep the lawyers on your side. When I came here I thought that it might be well to try to keep the abstracters on my side. From the number of lawyers I see who are edging over into abstracters' business, I think you must conclude that probably the practice of

law is about as unprofitable as you say abstracting is. At any rate, I am not in a position to raise any fuss with you in this respect. I am like one of our borrowers who came in complaining about one of the field service men who had dealt a little too harshly with him and said the fellow said something to him he didn't like, but he let is pass by. I asked him why he didn't get back at him and admonish him. He said, "Well he was like the Irishman that was about to die, the doctor told him he had a day to live. His friend Mike came in and said, 'Pat, I hear you are about to go.' 'Yes,' he said, 'I am just about to go; I have only a little while more to live.' He said, 'Well there is one question I want to ask, have you renounced the devil and all his works?' He said, 'No, Mike, I am not in condition to make any new enemies.' So I am not in condition to make any new enemies.

I wish to express my appreciation for the honor bestowed upon me. I have always enjoyed attending the Oklahoma Title Association conventions, or most any other one that will let me. I get a lot of good out of them. I am sometimes ashamed because I feel that perhaps I cannot contribute as much to the meetings as the invitation should require.

Lawyers generally deal with the subject of abstracts and title evidence purely from the legal aspect. A lawyer who is not also an abstracter knows far less about the proper construction, the art and science of construction of an abstract than any member of the Association. Therefore, if he would say anything worth while to you he must diverge from that subject. So my talk today will be along very general lines, perhaps a shot gun affair. Before I conclude you may think the gun was loaded with mustard seed, but don't be too quick to judge because what I have to say will be but a reflection of what members of the Association have told me.

I sent out a lot of letters, a kind of S. O. S. to leading members of the Association and asked them for ideas for discussions. They put words in my mouth, so to speak, in order that I might touch on some subject that really would be interesting. I know that I might talk more entertainingly, perhaps, if I would stick by the peculiar problems that come to me, but that would serve no good purpose. Or I might tell you about many strange conditions we find in land titles, but you probably have found more, and the talk would be of very little benefit. My earnest desire is that when I have concluded I may have said something that will be of some justification for my appearing on the program.

The Good Old Days

It don't take Solomon to know the abstracting business is just a little like the old gray mare, "It ain't what it used to be." There are many of us who realize that fact now, but we try to vision the good old days and wonder if they won't return. No, they won't return. Never will they return, that is, as they were before. Since 1870, that is to say, during the 60 years following 1870, this world has undergone two great radical chances in both economic and social set ups.

As the result of the World War (which was the culmination of one period), we have closed another,—an era that is not going to be revived. We are groping, trying to find new ways of progress and we haven't hit upon any very satisfactory program yet.

Diversification

Taking it by and large, measured by our experience of the past, there are too many abstracters. For a long time I had to do with C. C. C. work as a side line and before 1929, I addressed, I would say, hundreds of groups of farmers, mainly talking diversification. I always ask this question of every audience, because I thought it was important. Is there any man here who is living at the place where he expects to die? I never had an affirmative answer, but I did have one answer from one man and that was an old doctor about 78 years old living in town and

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Regional Counsel, Home Owners' Loan Corporation

he couldn't have gotten away even if he wanted to. Most of those fellows were expecting to brush up the place, sell it, and move off to some dream farm that he had in his mind. That made trading active in my county which was a rural county. There would be from 7 to 10 million dollars of turn over in land titles each year, generally during the fall. It made a lot of business, a lot of business for lawyers and there was justification for all the abstracters that we had. If a man would go down there now and offer to buy a farm and pay cash they would prefer charges of insanity against him, so we have ended that era.

Most of the work you now have comes by virtue of new lending programs by governmental agencies. Most of it is done through governmental agencies because others wouldn't or couldn't do it. And we still have too many abstracters, too many in all professions.

About 8 years ago, we passed a law in Texas to cause all barbers to be registered. At that time there were 20,000 in Texas registered. Today I am told there are only 14,000 registered in Texas. In other words, nearly a thousand a year are abandoning that trade, either for some other field of endeavor or are trying to compete with people who are well trained in the field they try to enter.

There are too many telephone girls. I was talking to an executive who helped found the hand dial phone. In this particular city we had 600 girls in the central office. With the extensions that have been made and with the multiplied business, if we were using the old instruments we would have 2,400, but we only have 400. There are too many telephone girls.

And Too Many Attorneys

And too many lawyers. Today my son is undergoing an examination for a law license. It is a four day examination of ten hours a day. Someone said, and rightfully, that it no longer is an examination; it is a physical marathon because the lawyers have tried to keep the young fellows from "butting in." How different is that from the story of ex-governor Ferguson. He said when he went to get his law license that the court appointed two lawyers to take the applicant over, examine him, and find out whether he should have a license. He said he retired to the office of one of them. They sat down to a table. One of the old fellows sadi, "Jim, have you got the price of a good quart of whiskey in your pocket?" He said, "Yes, that is a dollar and a half." "Yes, that is right. Suppose you go across the street to the corner saloon and bring back a quart of good whiskey." He did and they took a drink. The other said, "Well, this applicant has always shown a very thorough appreciation of obligation, I move we don't take up any further time; I move we certify him." He was licensed.

There weren't enough lawyers then, but there are too many now. There are too many school teachers. I have been on a school board for 17 years. We have 10,000 too many school teachers in Texas, and more than 100,000 in the United States. Yet, we have 10 teachers colleges in Texas turning them out faster than you can pop popcorn with a modern machine. Recently in Harpers it was said we have 1,600,000 more people under 10 years old than five years ago.

I attended a convention of the Texas Cotton Association, and saw a big concern exhibit a mechanical cotton chopper which chops from 2 to 4 rows at a time, the company advertising the machine, was showing pictures of a

plantation where there would be hundreds of darkies chopping cotton, and he showed the pictures of the same farm where there wasn't a single darky. And this is the way he closed. He said, "We expect to release 60 million hours of ardurous labor of hoeing and chopping cotton and all those laborers to more profitable employment." To what more profitable employment are you going to send a bunch of darkies than cotton chopping? Too many cotton choppers to the farm.

I have sent out these inquiries I referred to earlier. I am going to use some of their comments. Take Tom Dilworth, sitting over there. I will say for him that he is too modest. He organized his company in 1886 and all the time since that date it has been one of the great institutions of its kind in Texas. There is another man here whose abstract business was organized at the same time. That is Harry W. Bryan from Van Buren, Arkansas. Question him and Bob Burns and a few more folks at Van Buren and you will find that they have been teaching us, making us understand that Arkansas is one of the greatest states in the union.

Here is what Tom told me: "It does seem to be becoming very apparent that the abstract business per se is contracting; it is only a matter of time before it will cease to be profitable in itself. To justify adjustments is not however as easy as it might seem,"—and then he tells us what he is trying to do.

I have a letter from another member of the Texas Association, who happens to be a lawyer and it has just about got the best of him. He writes me this, "I personally have felt that the abstracter should make a specialty of his business and not enter upon the business of his customers. At one time I thought it would be profitable to build up a complete title service. The depression has made me give this idea up and I am taking as my main means of livelihood the practice of law."

I realize there is a difference here in interests. Some of the big cities are doing a title insurance business and some fellow out where I have been living can't do anything but an abstract business. Unless you represent some of these people and write insurance for them, I guess there will continue to be lawyers, doctors, teachers, abstracters and cotton choppers.

But we are not going to have all those in the title business unless you change your way, supplement your business some way. Those who survive manifestly will be the most efficient. In other words, the survival of the fittest. You are going to find, however, that the abstract business, like the gentleman who wrote me, may be less profitable or much more than heretofore.

It may be like the East Texas lawyer who lived in a big thicket and loved to hunt bear. One of his friends asked him, "Do you hunt bear for pleasure?" He said, "No, I hunt bear for a living. I practice law for pleasure." Some of us may have to continue to practice law and make abstracts for pleasure and do something else for a living.

Talk about the barber supplementing his business without encroaching on yours. The other fellow doesn't have any scruples about encroaching upon us. It is every fellow for himself and the devil for the hindmost. I know a barber who was nearly put out of business. He saw his daily income shrinking. He hired a fellow to run a popcorn popper for him next to the sidewalk. I asked how he was getting along. He said the thing was making him $40.00 a month. He hasn't given that up yet, he has no scruples about encroaching on the peanut vender down the street. He took the $40.00 and got along very well.

In a drug store in the office building where I office, a fellow has a little glass case where he sells dry goods, hose, ties and things like that. Of course, he is encroaching on the department store down the street. I asked him, "You sell any merchandise out of this thing?" He said, "$2,135 last year." I said, "You are going to keep it?" He said, "You bet your bottom dollar I am going to."

Side Lines

I have heard the radio program where a fellow called up a drug store, asked for a crosscut saw and some back bands for his horses, and was surprised they didn't have it. There are some things I may not be right in bringing in before you; but for a dollar and a quarter you can make a tax assessment search and rendition for foreign investors who have to take over property, a tax delinquent report. Nobody is better qualified than you.

Photostats

You have a photostatic copy service furnishing photostatic copies of original instruments that become necessary. I have a good illustration of that.

I once had a will case. The will was written by a dying man; written in pencil, on the back of an ordinary bank check and after he died his collateral kin wanted to contest the will; they said it wasn't his handwriting. So many people had been to look at that will on the back of that check that it became so blurred you couldn't read it and I was afraid some one would steal it. I had it photographed. It was the shortest will I ever saw—eleven words. You know how that was preserved. By the time we got through the original was worn out. Somebody has to do this service. We had this will very much enlarged, that is, an enlarged sheet about 4 by 6 feet. The original was the recognized writing of the deceased.

We had to pay real money to get that done. I don't know anybody better than an abstracter to do that. We had to pay $25.00 for an enlargement and then had to pay a man $50.00 a day to attend court.

Chattel Mortgage Reports

Another field is furnishing chattel mortgage reports, blue print work, furnishing record for filing suits. And people want to have occupancy reports, who is in possession of the property they are going to foreclose on; what interest do they claim? We are calling on abstracters to do that. We expect to pay them and if we have a hundred foreclosures in a town it will pay the abstracter's rent for one month.

Insurance Lines

I know one abstracter who makes more money writing fire and indemnity insurance than he does in the abstract business. You can't tell him he is encroaching on anyone. He is taking home the bacon to Fannie and the children. Another is going to continue helping oil companies secure acreage, by making aerial surveys. Most lease men come back from abstracters and you can tell what they are by the questions they ask.

Aerial Surveys

There is one abstracter who has an airplane. He suggested aerial surveys and aerial surveys are going to be important from here on out. We have learned a lot of things that can be done with airplanes, kill boll weevils, make surveys, make maps, assist highway commissioners and county commissioners.

Jack Rattikin has a good idea with his airplane, so if you have any of that work to be done, there is one abstracter in Texas who can do it.

We do criticize the abstracters sometimes, and sometimes you think we are pretty tough fellows. My opinion is that most of the mortgage lending business is going to be by a few large companies. Take our institution (Home Owners Loan Corporation) for instance, we did put out a little money in a few different states, Oklahoma, Texas, and New Mexico, seventy-one thousand loans, but in that seventy-one thousand loans we called for more than two hundred thousand abstracts. Filing becomes an important question, and uniformity of appearance, and of size is an important factor for us (and for you) to consider.

Uniform Prices

On the question of uniform prices: I hope the day will come soon when we have uniform prices because we have to deal with auditors; we are audited three times a year; even the Comptroller General's Department at Washington audits us. If we pay one abstracter so much and pay another another price, we have to explain to the auditors why we did it. I get the auditors sort of shut up on many but we have it from other sources, so I will tell you about it whether you like it or not. If there are many of you in the abstracting business who are going to continue in that business you are going to have some other business, too.

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