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CODE OF ETHICS

FIRST:—We believe that the foundation of success in business is embodied in the idea of service, and that Title Men should consider first, the needs of their customers, and second the remuneration to be considered.

SECOND:—Accuracy being essential in the examination of titles, Title Men should so arrange their records as to eliminate the possibility of mistakes.

THIRD:—Ever striving to elevate the title business to a plane of the highest standing in the business and professional world, the Title Man will always stand sponsor for his work and make good any loss, occasioned by his error, without invoking legal technicalities as a defense.

FOURTH:—The examination of title being to a large extent a personal undertaking, Title Men should at all times remember that fact, and endeavor to obtain and hold a reputation for honesty, promptness and accuracy.

FIFTH:—The principal part of business, coming from real estate dealers, lenders of money and lawyers, it is obvious that relations with these men should at all times be friendly. To further this friendship we declare ourselves willing to aid them in all ways possible in meeting and solving the problems that confront them.

SIXTH:—We believe that every Title Man should have a lively and loyal interest in all that relates to the civic welfare of his community, and that he should join and support the local civic commercial bodies.

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CHARLTON L. HALL

President, American Title Association

Manager, Washington Title Insurance Company

SEATTLE, WASHINGTON

Proceedings of the Thirty-Fourth Annual Convention
—of the—
AMERICAN TITLE ASSOCIATION
June 26, 27, 28 and 29, 1940—New York City

Address of Welcome
and
Observations on Title Industry

GEORGE McANENY
Chairman

Chairman of Board, Title Guarantee & Trust Co., New York, N. Y.

It is a unique pleasure, for me, to stand up here today exercising the privilege of extending a welcome to you. It is a long time that you have been wandering in the wilderness before you decided to come to your own chief city to see it for yourselves and to mix with its inhabitants. We have been waiting for you for thirty-four years. I say "we" generically, because I am quite willing to admit that thirty-four years ago my thoughts were largely upon other things.

But time passes and pictures change, and may I admit, frankly, that out of this little list of experiences Mr. Marcy has told you about, I was grateful to him for saving the proudest of all to the last. And that is my happy association today—an association that I share with my good friend Harold Hoyt —with the administration and the affairs of New York's Title Guarantee and Trust Company.

In the Gay 80's

The New York Company has been the old bellwether of the industry for a long, long time. It was organized, as some of you—I won't say "recall"—but as some of you may since have noted, in 1882, something like fifty-eight years ago. It was the pioneer, excepting that it inherited and took over a remnant of a plant of a little company in Philadelphia; but that was a feeble infant indeed and had just commenced to cry when the new and larger body adopted it. We incorporated, and we went forward—again I say "we" generically—as the first organized proponent of title insurance in the United States.

A great deal has happened since, and the title industry has gone through many phases. Some of them have been severe, some perhaps the more severe because so many of the title companies had undertaken, in the prosperous years of our economic history, the mortgage business as well; and when the troubles came, and the rains descended, some of the title companies were obliged to bear the onus of some unavoidable though honorable failures in the mortgage field.

But the title business has been, as it has unfolded, a revelation to the people of the United States and to those who depend for the development and stability of real estate either for their own subsistence, or for the subsistence of their neighbors, and their communities.

We Have Served

I have thought at times that the people of the country, excepting in the narrower fields of expert administration in intrastate matters, and in the narrower fields of real estate finance, have failed to understand how great a boon this institution is and has been to them. They have failed to understand perhaps that as real estate is the basic thing of value in all of our property rights, throughout the land, the stability and security of real estate must therefore come first in the processes of national stability; thus it underlies almost every other industry and every other division or foundation of wealth. Our part in insuring the status of real estate should appeal to them mightily and certainly should be more worthy of their study than apparently it has been in the past.

Here in New York we have made certain progress as you know, and our plants are wide open to those of you who wish to inspect them, to follow not only our eccentricities perhaps but some of the things we have worked out and achieved that will be worth while as an example elsewhere.

Our plants are here and our problems are here. You will hear more about them today from the set speakers who are to follow me during the course of this session. For my own part, I center more upon the point that we need a wider and a better and a more intelligent and expert system of publicity for our works and our services, and for the practical results of the competence that we assert we contribute toward the solving of the problems of real estate.

I am going to welcome you here, may I add, not merely as one title man among many, but to welcome you really to our City itself, with, I trust, some measure of authority.

You have come here not only because you no longer have been able to resist the impulses of thirty-four years, but you have come in this year of 150 years because the eyes of the nation are attracted anew to New York in the celebration of the 150th anniversary of the founding of the American constitutional government, and the inauguration of our first President, all of which occurred in this ancient City.

New York Bids You Welcome

You have come here because we have offered as our demonstration of interest and emphasis at this great event the holding of our World's Fair. You come here, I trust, practically all of you, to take into account the revelation of the wonders of progress—progress not only in our political accomplishments (I say "political" in the narrow sense of the word), but our progress in industry, in commerce, in culture, in the development, not only of the arts and sciences, but of the ways of living that are exemplified in this great exhibition.

You have come here because not only have we offered, at the Fair, our own products—the products of America—for your view, but because the nations of the earth are here, also, with a marvelous exposition of what they have done, of what they have contributed towards civilization and of what, even in

a troubled world, they shall, I trust, continue to contribute.

Mr. Marcy has spoken of my early relation to the Fair. I served as its first President and Chairman of its Board, and then having become wearied and steeped in the honors of world's fairing, I gave up my active side, and they made me the Honorary Chairman of the Board.

But my interest has remained very keen, and I am moved to revert, perhaps, just a moment, to those incidents of history that made New York indeed the first capital of the United States—though so very few of our people, throughout the land, know that it was—to revert, in short, to the things that moved us to hold a Fair.

The Continental Congress came here in 1785, after the war had been won, and while the sessions devoted to disentanglement of our domestic affairs, and the Union of the States, were chiefly attracting the attention of the people. They came here in 1785, and then, after the period of Constitution-making had ended and that great and immortal instrument had been adopted by the States, they designated New York City as still the national capital.

Little Old New York

We had rather an unusual old City Hall in Wall Street, built in 1699, and this was converted by the City to the uses of the Federal Government, as the first capital building. There, in April of 1789, the new Congress met and organized. From thence was sent the messenger to Mount Vernon, advising Washington that all of the Electoral votes had been cast for him, and hailing him to come to New York for his inauguration. The assembling date had been set by earlier enactment of the Continental Congress, for the fourth of March. But on that fourth of March not more than half a dozen Senators and Representatives had appeared. Gentlemen were still struggling through the mud, in various parts of the thirteen states, in their efforts to get to the Capitol City, and, accustomed to the easier going days of the old regime, would probably have been late anyhow. It wasn't until the twentieth of April that a quorum convened, and that it was possible to cast the Electoral vote and to send the tidings to Mount Vernon. And so it was that, rather accidentally, the thirtieth of April, rather than the fourth of March, became the date for the actual launching of our government and the first inauguration of the President.

Then, there followed that twenty months of time before the capital marched on to Philadelphia, and then to its final place on the banks of the Potomac. And during that period of twenty months, the process of working out of the government of the United States, in statutes and precedents, proceeded; the putting together of that great fabric that made our government of today, through a succession of stages of historic progress.

Hamilton, a New Yorker himself, standing down there in that old building on Wall Street, urging his basic financial program, his sweeping economic suggestions, his whole scheme for structural organization—it all happened down there. When, on the twentieth of August, in 1790, the government did move on, we were, so to speak, an accomplished fact. The Executive Departments had been organized; the Supreme Court had been organized; the Foreign Service established; this great body of legislation laid down for future guidance—and New York, therefore, still points with pride to the fact that within her environment the government of the United States was born.

So We Celebrate

Now, we decided to celebrate all of this, after a hundred and fifty years, in the fashion that you know—to stand as hosts not only to our sister states but to the world in inviting everyone to come to this great Fair. I shall not go

GEORGE McANENY
New York City, N. Y.
Chairman of the Board—Title Guarantee & Trust Co., New York City

into the detail of it, of its plans or its organization, because you are going to see that for yourselves, but you will find there an abundance of exhibiting material that calls to mind the title industry. You will find there an abundance of evidence of what can be done for the profitable realization of real estate; of what has been done not only in New York City but throughout the land. You will find these things in the midst of all of your enjoyment of what the Fair offers in the way of entertainment, and of inspiration, and surprise. You will find, I am sure, these practical opportunities to study the things that are nearest to your own hearts when business is the theme.

New York City, of course, needs no particular word of introduction. It is a world's fair in itself. It is replete with wonderful and interesting things, and at every turn you will find evidence, if you look with sufficient keenness, of the sort of progress for which the title industry and its institutions are so very largely responsible.

Your Neighbors Live Here

New York, with its aggregation of wealth—and it is now rated by the assessors at something like seventeen billions of dollars of real estate value—New York, with its great public works, which have of late years been expedited, improved and brought within an impressive general scheme—New York, with its busy people; New York, the political, let me say, and surely the financial capital of the United States; New York, the city that is yours, you from every part of the land, just as surely as it is ours. There is hardly a State of consequence that hasn't a State Society in the City of New York made up of men who have come here from the West and South and the Middle West and New England, who have made their homes and pursue their business careers here. We are an extraordinary conglomerate of the people of the United States, as well as those who have come to us from foreign lands. Only ten per cent of our population can even claim that their parents were born in the City of New York.

We have gone through some extraordinary transition periods, always aided by proper attention to that magic word of "Title". By way of illustration, I am rather tempted to relate to you a little triolet of instances, to which I have referred before in other places but never, I am sure, to a company as distinguished or as discerning as that which I face this morning. So I go forward with full hope that you will see the point!

Canny Peter Minuit

The first of these instances occurred in the year 1626, in the little Dutch colony at the toe of Manhattan. The only titles held there were those of usurpation from the surrounding Indians. Then, following the first white settlers, came the Dutch West India Company, which, as the established proprietor, had sent out the first really live governor, Peter Minuit, himself Dutch only in the sense that he was a Fleming, a Belgian, and therefore a Netherlander.

Peter Minuit was commissioned to buy all of Manhattan Island from the Indians, and brought with him, as trading material, a chest of trinkets and other things of the sort that appealed chiefly to the Indian taste and sense of acquisitiveness. It is told that he commenced his negotiations, in quest of honest titles, within two or three days after his ship had landed; that the powwow with the representative Indians present proceeded all through the night, and that as a part of his persuasive influence, Peter saw to it that there was a very plenteous supply of fire water at hand. It was along towards morning that the bargain was struck and the title to possession of all Manhattan passed to the Dutch West

India Company for the consideration of equivalents of the rousing sum of $24.

Not "A Scrap of Paper" to the Red Man

Well, when the day broke, some of the Indians realized that they hadn't driven a very good bargain. Even in that day, some there were who felt that these hills and acres might be worth more than $24. Some of them protested that they had only intended to sell the hunting rights, or a few sites for camps and villages; but the supreme chief of the lot said—I paraphrase freely—"No, we are honor bound; we have signed this thing, and we are going to abide by it." And they did; but to our own everlasting interest and, shall I say, possibly, concern, they also and thereupon gave the first name to the island from which its present name is derived; they called it, in the gentle Minnisink tongue, "Manahattas", which meant, gentlemen, "The Place of General Intoxication!"

It was in such a scene that our first real titles were born. New York has tried, intermittently, since, to live down that name, and I think today it may be said that it is a pretty good town, and pretty sober and upright in its dealings with its public!

But I am going to pass to another significant incident in this series, and this concerns that same capitol building, in Wall Street, where the Sub-Treasury now stands—the old City Hall that was converted by the city to the uses of the United States. The City Council was virtually host to the Federal government at this time of many beginnings, and in undertaking to finance the conversion of the City Hall to "Federal Hall", they found that the proper making over of the old building would take about $32,000 of money, in the then "York pounds", the currency of the day hereabouts. They employed as their architect Major L'Enfant, who, a little later, became the architect of the City of Washington, and whose bones lie in Arlington, facing the great city that he created.

The City Gambled

Well, the City borrowed $35,000 from the Bank of New York, our first banking institution, and the second in the country, which had then been operating, under its original charter, about five years. They pledged to the bank, as security, the first returns of certain taxes to be collected in the near future. It became apparent, however, early in the day, that there weren't going to be any taxes of that kind that were collectible, and the City, in its perplexity, petitioned the State Legislature and secured the right to conduct a lottery to raise the money to pay its notes. They did; they conducted two lotteries and they got enough money in to pay off the debt to the bank; but there wasn't enough or only about $1,000 or so available for fees for Major L'Enfant. So the Council voted to the Major, in lieu of cash, a certain ten acres out of the common lands of the town, to be deeded to him and his heirs forever. The Major looked up the lands and then wrote a somewhat stiff note saying that he hadn't any interest in them, that they were out in the wilderness, and that he would rather do his work for nothing than have anything to do with them; and he did.

I found, recently, in the minutes of the old City Council the history of this incident, and this, it so happened, revealed the metes and bounds of that old tract, and curiously—or at least out of curiosity—I asked our Company's Title Department to trace these down and see if they could find the property that Major L'Enfant spurned. Finally they traced it, and they found that it lay between Second and Third Avenues and Sixty-Seventh and Sixty-Ninth Streets in the Borough of Manhattan. I asked them for the present value of the land, and it turned out that after a few whirls of New York City development, it amounted, today—land and improvements—to eleven millions of dollars.

Now, I won't claim for a moment that if Major L'Enfant's family had held onto this they would have gotten all of that return. There are many vicissitudes in a hundred and fifty years; but it looks good, nevertheless, as a story, and it is the truth, that that tract today, to its heirs, would be worth, if the Major and they had held on to it—as a good many of our earlier green grocers and gardeners held on to theirs and became great lords of real estate—eleven million dollars!

Then I pass to the third instance in this little succession—and a most impressive one—in which the modern day title industry figured a lot.

Columbia Believed in New York

There was a certain doctor, Dr. Hosack, of the faculty of Columbia University—first of Columbia's predecessor, old King's College—whose chief interest in life was botany; and he, realizing that there was a great dearth of botanical specimens at the service of his profession, petitioned the City Council to sell him a certain tract of land in Manhattan comprising about 170 acres, for $4,700. He got that land, he went ahead with it, and then a little later on he petitioned the Legislature to buy him out and itself to continue support of the Garden, as a contribution toward the medical industry of the State. After a great deal of hemming and hawing and an absurdly high appraisal—it was appraised, for instance, as high as $70,000 or $80,000—it finally was purchased by the State for $57,000, with the side remark on the part of all concerned that it wouldn't bring at a private sale much more than $6,000 or $7,000. Even in those days it would appear, there were rumpuses about high appraisals, and the legislators who voted this money got it rather hotly and heavily in the course of the deal.

And then in 1814 Columbia itself petitioned the Legislature for help in a time of need. It needed money; it was still a struggling young thing. The State finally compromised by giving Columbia the deed to that same botanical garden. It represented a state investment, as I said, of about $57,000. Well, that was all very good. But Columbia held onto this land. At one time it was proposed to move its colleges from downtown at Park Place and put them up there, but they never did that. They held on to the land. As the City moved up farther and farther and nearer and nearer to this interesting point and the first indications of growth in value came, they sold some of it, around the edges, but for the most part they decided to keep on holding.

With this rather lengthy introduction, may I reveal to you that the land of which I speak, the old Botanical Garden of Dr. Hosack, is now bounded by Fifth Avenue and Sixth Avenue, Forty-Seventh and Fifty-First Streets. In other words, that this is the land that, under the general caption of the "Columbia Leases," early became a household word; a description certainly well known to real estate; and that it happens today to be the site of Radio City, of Rockefeller Center, valued, with its improvements, at well on towards $300,000,000.

When Mr. Rockefeller bought the bulk of these rights from Columbia, he bought the lease-hold rights, and then added a number of separately owned holdings, on the borders, to complete his tract; for their properties he engaged to pay to Columbia something like $3,000,000 a year.

Our Part in It

This perhaps is the most extraordinary instance of the development of real estate values not only in the City of New York, but in the country. When Mr. Rockefeller made his contracts, his attorneys naturally were consulted and they proceeded at once to secure adequate title insurance. There was a mortgage of $65,000,000, represented by a bond issue, that the Chase bank took and that it sold gradually, as the situation matured, to the Metropolitan Life Insurance Company, and that mortgage, of $65,000,000, stands also secured by the personal guarantee of Mr. Rockefeller. The business of searching those titles and making possible the complete and prompt assembly of the parcels involved fell upon two of our title companies, one of which was my own.

Our Responsibility

And so it has been with every great enterprise of this kind within the City. Where the facilities offered by the companies for the quick and safe assembly of many properties have produced results that, in the old days, only long and tedious search and negotiation could have secured. The assembling, for instance, of the lands for the Pennsylvania Terminal here, including the site of this Hotel, which formerly held a colony of colored shacks, one of the city's distinctly slum areas. All of this was torn down when the Pennsylvania came in with its station, and when this

Hotel was put up as an auxiliary to the station's service.

The assembling of the Grand Central properties, the assembling of a dozen others that have been marked in recent public notice, all bear their testimony to the efficiency and the competency of the title work that went into them.

And so, no doubt, it is throughout the land. Wherever your influence is felt, wherever your work lies, the people must learn, I repeat, those who deal in real estate values, that at the basis of all materialistic development there does lie the stabilization of real estate, in which title insurance is so great a factor, and in the improvement of its values. They must learn, and they have learned to a certain degree, that, it is the business of title abstracting—the twin businesses, I may say, of title abstracting and of title insurance—that has in fact proven one of the chief and one of the most dependable agencies in the development of modern real estate.

God Is in His Heavens

And so we go on and, in our operations, measure in a sense, the growth of the country itself. We have gone on through all kinds of periods, troub'ed and otherwise, through periods of depression that have struck us almost periodically, and we shall go on, through whatever troubles may arise from the present vastly disturbing situation in the world. To this situation we are bound to feel our own reactions. No one can hope for any alternative. What, as time passes, it is really going to mean to us, we don't know. We have got to wait to see what is to come and how and to what degree our own country and government may really be involved; and our own business interests.

But our hearts, let us agree, are fit for anything, and the record of our present day success, of the present splendid standing of the title insurance industry is, for the moment, enough for us, enough, I trust, for our own satisfaction, and bound to serve as a measure of assurance to the rest of the land.

Now you have come here to celebrate, and to be celebrated. You have come here to conduct your regular program of business, devoted to discussing the details of our industry and to its problems. I trust you will have a thoroughly enjoyable time. I trust that you will in particular find the sun shining on Thursday, when you are to be taken about our twenty-four dollar island, and then on to that wonder town on the Flushing Meadows that we call the World's Fair.

As you are speeded about on that boat, which the Mayor has generously put at our service—and he hasn't done that very often, I assure you; we are a privileged class—as you go journeying for five hours, perhaps, around our Manhattan waterfront, you will see at first hand our new system of drives and public works, the distant pictures that our skyscrapers make, our great business and residential communities; and some of our modern housing enterprises. And so, before you leave, you may perhaps get an even better idea than you have known of what New York means.

As you pass down the river you will see the towers of that Radio City that I have talked about—up to the present time perhaps the proudest single development that we can classify as real estate. As you pass a little further down, and turn round the Battery, you will find, if your eyes will rest just a few feet off the shore, and toward the Custom House, that spot where real titles were first created in New York, and the land earned its own unhappy title. Then when you go on up the other river and come to the Fair, and you see its spreading buildings, the example it offers of the growth and stability and even the splendor of our United States, then I trust you will find the top notch of your appreciation of the City, and feel some sense of satisfaction that you have come here to honor us and represent the title industry at this meeting.

I greet you with great pleasure, and, I think I may add, with an affectionate realization of what your presence here means to us. Let us be hosts to you in every way, not only in the exposition of our plants, but as advisers in anything that you may wish to do. Fortunately, you are in the hands of a most able Entertainment Committee, and I cannot doubt that you will find they have fully done their duty. And so I wish you indeed, in every way, a happy visit, and I thank you for listening to me in my part, for the moment, of spokesman for our State Association, and the New York Companies! (Applause.)

PRESIDENT RATTIKIN: Thank you, Mr. McAneny, for your very interesting and informative address of welcome. I am sure that all of our members of the American Title Association who live outside of the State of New York will find the City most interesting. Even though we have been thirty-four years getting to New York, why, we are now prepared to genuinely enjoy it to the fullest extent.

Report of the President

JACK RATTIKIN

President, American Title Association

Vice-President, Home Guaranty Abstract Co.

Fort Worth, Texas

Your Association has been guided during the last year by an able and competent Board of Governors, presided over by your fine and capable Vice-President, Charlton Hall. The financial affairs of the Association have been handled efficiently by your Treasurer, E. B. Southworth, and Arthur C. Marriott, Chairman of the Finance Committee. I have learned to appreciate more than ever the enormous amount of work done by your Executive Secretary, J. E. Sheridan. He has done a fine job and deserves our appreciation. The Chairmen of the various sections and committees have all done splendid work. All of these gentlemen will make full and complete reports of their work to you during the convention. Our membership has grown considerably this year as is evidenced by the large increase in the American Title Directory. In my opinion we have made substantial progress in both our State and National Associations.

In lieu of a report on organization activities which will be fully covered by others, I wish to address my remarks along another line. In the light of events that have taken place in recent years in world affairs, we are most interested, not only as members of our organization, but as individuals in our personal welfare and the future of our nation. As individuals, more than anything else, all of us want to know how are we going to get ahead, how we can earn more money, have better homes, and enjoy more of the good things of life in the years to come. That is only human nature.

No one will deny that America has come far in a remarkably short time, as nations go. No one will dispute the fact that our American system has created a system of living for the average man which makes us the envy of all other people. But there has been a definite pattern to all of this progress that we have made as individuals and as a nation—a well marked road. It has been a simple pattern of progress with all of us working and growing together as we have progressed, resulting in the production of better goods at a price which more people can afford to pay, and thereby creating the highest standard of living of any people in the world.

Home Ownership

Even though we are sometimes disappointed in home ownership, it is said that more than 14,000,000 American families own the homes in which they live. There are 42,000,000 savings accounts in our banks and more than 64,000,000 holders of insurance policies.

There is a radio for almost every family in America and a motor car for three out of four families.

We now have a higher standard of living than has ever been known before. But nothing is as good as it should be. America today yearns for more and better things. It is out of such yearnings that progress has come to the nation as a whole.

Our Progress

But I am wondering if we, as members of the title industry, have contributed our share to this progress. Many of our members are still making abstracts and still handling titles in the same manner as in 1907 when this organization was formed. It is true that we have progressed to some extent, that title insurance has grown by leaps and bounds in those years, but it is almost unbelievable when we think of the progress that has been made in other lines of industry. We are thrilled at the progress we have made in other lines such as transportation and the tremendous scientific development of all of the things we now enjoy, which we never even dreamed of a few short years ago.

Philosophers, poets, and charlatans have painted roseate pictures of the future of man—the philosopher dreams of man's future, the poet sings of his heart's desire, the politician and the demagogue play on man's longing for better times, but industry is at work fashioning the needs of this year and even for the decades that are to come.

Twenty-five years ago in the United States there were few Industrial Research Laboratories worthy of name. Fifteen years ago there were less than five hundred, but today the count totals well over sixteen hundred. Here we see a group of chemists fashioning our textiles into clothing made from mineral productions which may be as pliant as silk or as warm as wool. Everywhere industry's frontiers are changing. The farmer's soy beans become automobile steering wheels; sour milk has been made into aeroplane propellers; gasoline has been obtained from the sands of the sea; and sugar has been made into building materials. Magic from a never-never land, magic perhaps, but actuality of today—productions of the test tubes of chemistry—the wheels of industry.

We Americans do not face our future blindly, nor do we look for too much. For unlike those who only sing of their dreams, we can speak with knowledge, for we know the millions of dollars, the great energy, thought and patience that American Industry is putting into the business of improving the American way of living. The future of America is bewildering, but it is bewildering not because there are no frontiers, but because there are so many.

Our Future

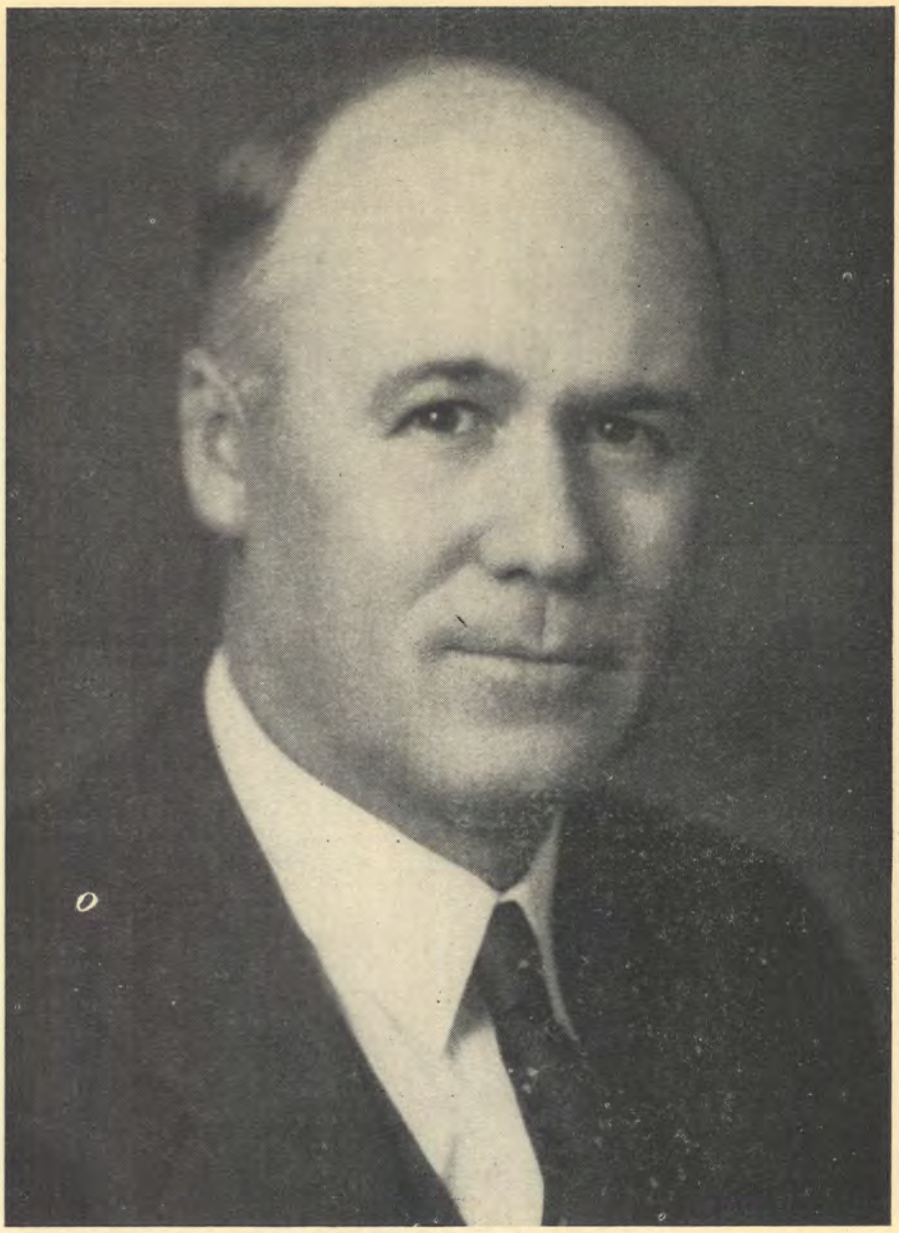
Then what of our future, yours and mine? It, too, is bewildering. The right of the ordinary man to own property and to enjoy its use, so long as such use does not interfere with the property rights of another to like use of his property. This right is the one privilege granted to all Americans in the basic structural frame work of the American form of government, that government today of which many of us have thought too seldom and appreciated too little.

Fundamental in the American system are the human rights which the individual attains while his material advantages improve and progress. It is no accident that we have these and other privileges, such as freedom of religion, freedom of assembly, freedom of speech—precious heritages—yet not appreciated by many of our people.

Today with our country involved as it must necessarily be, because of world conditions, we need a sane, sound and thorough love *for* and appreciation *of* the United States of America, lest we forget, in times of stress and confusion, the good things that have brought us thus far as a people, and start running with the unintelligent and disloyal group who seek to destroy.

Protect It

We should stand in reverence and salute Old Glory as she passes by, not because it is the flag of our country, but because it is the emblem of freedom and liberty which we enjoy under a democratic form of government. In times like these, when the world is ruled by force under the iron hand of cruel and unscrupulous dictators, and when it looks as if we will be the only surviving democracy, we should look carefully to our defenses. With all the progress we have made as individuals and as a nation, it will come to naught



JACK RATTIKIN
Fort Worth, Texas

President, American Title Association, 1939-1940

if we do not make immediate plans and take immediate action for their protection. In my opinion, we should take whatever action is necessary and expend whatever sums may be needed to immediately build up our national defense. We should lend a helping hand to those of our friends who are giving their life's blood on the field of battle to protect their's and our rights from those who seek to destroy us and to rule the world by force.

The progress of civilization is hanging in the balance, and perhaps we cannot prophesy with confidence, but it is for this generation of ours and for that which will follow soon to give the answers to the tremendous questions that face our civilization. Faith must not be lost. With courage and confidence we must face the immediate future.

In the final analysis the tragic war going on abroad is the result of greed and a desire of those who would take away the homes and lands belonging to others. In Margaret Mitchell's famous book, "Gone With the Wind", Scarlett O'Hara's father says to her, "Land is the only thing in the world that amounts to anything, for 'tis the only thing in the world that lasts—'tis the only thing worth working for, worth fighting for, worth dying for". In the end Scarlett goes back to the land of her father to find peace and contentment. We love this land of ours and we mean to protect it against those who would destroy it.

God Bless America

The future of America depends on men and women, who build and protect it, not just with stone and brick and guns, but with courage, love and patriotism. The real greatness of our nation is built around the firesides of our homes, and it is from these homes that will come the defenders of our civil and international rights. Let them be trained and ready to defend it at all costs. Let us individually and as members of the title industry, pledge allegiance again to our country to preserve those principles firmly established in our system of government which guarantee to us freedom, liberty, and the pursuit of happiness.

Past and Present Trends in Real Estate

ABNER H. FERGUSON
Washington, D. C.

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

Mr. Chairman, Ladies and Gentlemen: I am happy to have the privilege of attending this Convention of the American Title Association and I am proud of the honor you have conferred upon me by asking me to address you.

When Mr. Sheridan some time ago invited me to come here I promised him in an unguarded moment that I would waste a small part of your time by speaking to you.

Since that time world events have taken on such a serious and tragic character that it seems at first blush almost futile, if not useless, to speak of things that concern only individuals and associations of individuals.

When perfectly innocent nations, who can boast of a civilization and a culture thousands of years old, are wiped out by the mere nod of one ruthless ruler then it seems that we should be devoting our time to other things than talking about real estate, real estate titles, and real estate mortgages.

This is, as I say, our first reaction, but of course it can not be. We must carry on. We must see to it that at all hazards at least our civilization and our democratic institutions are preserved come what may and cost what it may.

My Tribute to You

I am particularly glad to be with you today because it gives me an opportunity to say to you what I have wanted to say for several years, and that is to express to you my sincere gratitude and appreciation for the invaluable help that your Association through some of its officials gave us at the very start of our mortgage insurance program. Mr. Sheridan and Mr. Werner were in constant consultation with us in the early part of 1935 for almost a week, assisting us in preparing our regulations covering the question of the kind of title evidence which we should require. Their work was so well done that, although it sounds incredible, those regulations as written in 1935 are still in force and practically unchanged. We have had no trouble whatsoever with them and the credit for it is due to you.

This fine spirit of cooperation has continued without a break from that time on and I have no hesitancy in saying that, in my judgment, it has played no small part in any success that the Federal Housing Administration may have achieved. There exists between this Association and the officials of the Federal Housing Administration a feeling of friendliness that can only result in helpful and successful cooperation.

Must Have Sound Title

A sound title is the keystone of a sound loan and the soundness and stability of our whole mortgage structure is based fundamentally upon the dependability and character of titles.

Great strides have been made in recent years toward the standardization of the forms of title evidence. Increased confidence has therefore been developed in the protective value of abstracter's certificates, attorneys' opinions, title certificates and title insurance policies, for which your organization deserves a large share of the credit. There is no doubt that a lot remains to be done in this line and I am glad to learn that this is one of the questions on the agenda of this convention.

Fee Standardization

I am harboring the hope that also some progress may be made in the standardization of fees, as it is certainly true that in some localities the cost of title evidence is substantially higher than similar charges in other localities. Whether the high ones are too high or the low ones are too low, I do not pretend to say, but I do feel that your charges should be made as uniform as possible and based upon a fair return for the services performed. It seems to me that this would redound to your own benefit in the long run. I am sure it would be a step forward in stabilizing and possibly reducing the cost of home acquisition.

The Federal Housing Administration is in its childhood at the present time in so far as quantity production of title evidence is concerned. While we have insured 525,699 mortgages on individual houses for a total amount of $2,233,990,888, there have only been conveyed to us because of default and foreclosure 1,653 houses in exchange for debentures in an amount of $7,807,609. Of these we have sold 932 with a net charge against the Mutual Mortgage Insurance Fund of $522,665.

However, we are not living under the delusion that this amount will remain static, and, therefore, we are just as much interested in sound titles as if we had ten times the amount of houses that we do have. We want you to be assured that all the members of this Association are welcomed to call on us at any time, both in our Washington office and in our field office.

I should like, this afternoon, to give you some random thoughts in reference to the past and present trends of real estate.

Trends

Up to 50 or 75 years ago real estate was about the most stable asset we had in this country. Then, starting around 1875, we began greatly to expand both geographically and economically.

The great West was being developed

and our frontiers were being extended in every direction. The pioneer was on the move. New worlds were being conquered every day and the fundamental base on which it all rested was real estate. Millions of acres were given away by the Federal government—to railroads for the encouragement of development, to states for the establishment of schools and other public institutions, to private citizens for the establishment of new homes in new empires.

All this pioneering laid the groundwork for a growth, both in population and in wealth, so rapid as to astound the world. Every new move created a fresh demand for that commodity which was essential to all growth—real estate—and each demand brought about a new and increased price level with the inevitable result that fabulous fortunes were made by those who were in on the ground floor. You can go down the list of our long established fortunes and you will find that real estate speculation is the prime basis of practically all of them.

The unfortunate fact though, is that the story is not always one with a happy ending. On the contrary, we have many tragic instances of dire and dismal failures. As an example, I only have to call your attention to the Florida boom of a few years ago and the tragic real estate panic in 1890.

Speculating in Land

I think it might fairly be said that speculation in real estate has been more violent and has produced a more decided effect in one way or another upon the body politic than any other force that has operated in America. That it should be so is perfectly logical and such rapid growth could not be possible without it.

Happily, this period which created an Eldorado one day, often to become a ghost city the next, is largely passed and we are now in an era when, all other things being equal, we can contemplate a modicum of stability in our investments in real estate even if we do have to forego that reputedly exhilarating sensation of getting rich over night.

There are several other trends that have appeared in comparatively recent times. One of them is the development of vast suburban areas about our larger cities.

Trouble

This movement has brought us the slums that blight practically all of our cities and furnish a problem that continues to enlist and baffle the best minds in the country. I suppose these slums are only a part of the general scheme of this mundane existence. I say this because they have been brought about largely by the invention and development of the automobile and this development has been made possible by government subsidies in the form of elaborate systems of highways. These fine highways and the lure of the automobile have attracted former residents of these blighted areas to the country and the suburbs.

Decentralization

In addition to this home movement there has been a slowly growing tendency of manufacturing and industrial establishments to desert the cities and this has further intensified the problem.

Then, as another result of this constant movement in real estate operations under the impetus of the automobile and that other industrial giant —the movie, we have the decadence of

ABNER H. FERGUSON
Washington, D. C.

General Counsel, Federal Housing Administration

the small town. It is tragic indeed to contemplate the extent to which towns of 2,000 population or less are gradually dying of dry rot because modern transportation has so nearly eliminated the distance to larger towns and cities.

I am confident that the slum problem will be solved ultimately, but the solution does not seem to be evident today. Of two things, however, I am confident. The first is that the owners of these properties and the holders of liens on them must take a realistic view of their actual value and make up their minds that they can not be salvaged at the price which they formerly had. The second is they must realize that they face a loss and decide to take it now and get the properties put on an income basis. The longer they wait the more evil the day is going to be. The municipalities, too, must take a realistic view of the taxable value of this kind of property.

Tenancy

We have another trend which is full of implications. This is the present trend away from ownership and toward tenancy in farm properties. This change is taking place at such a terrific rate that it is fast becoming one of our major national economic questions. It is, in fact, so intimately tied in with other grave questions confronting the farmer that I do not undertake to offer any solution of it.

When we passed our frontier days and finally grew up we found that real estate investments could not safely be made with the same reckless abandon of the frontier days. We found that the mere fact of stability made mistakes more serious. We could not so easily counteract losses from one bad speculation by undertaking another.

We found that the loose and unsound methods we had been using in real estate financing could no longer survive. It was graphically brought to our attention in the tragic collapse of our mortgage structure in 1932.

Weaknesses

During the past six years there has been a lot of constructive thinking about our prior mortgage financing methods with the result that five glaring weaknesses have been found. They are:

1. The short-term unamortized mortgage under which neither the mortgagor nor the mortgagee expected the contract to be performed and the obligation to be paid when due, and which carried with it exorbitant renewal expenses.
2. The low percentage first mortgage and the unsound and expensive second mortgage with its attendant evils and abuses including outrageous bonuses which were hidden away in the cost of the property.
3. High interest rates.
4. The absence of liquidity for mortgage loans which brought about a badly frozen condition in many otherwise sound institutions.
5. The haphazard appraisal methods then in vogue under which the ratio of the mortgage to the value of the property was almost the sole factor considered and little or no attention was paid to the worth of the mortgagor, the character of the neighborhood, and many other factors going to make the mortgage transaction sound as a whole.

Remedial

During the past four or five years very definite trends away from these methods have sprung up and amazing progress has been made toward remedying these defects, particularly in the field of home mortgage financing. Today the short-term mortgage is almost unheard of. It has been largely superseded by the long-term, amortized mortgage under which a home owner pays for his home out of income—the

source from which it should be paid—rather than out of capital, or not at all as was the case under the old system.

The low percentage, first mortgage, and its attendant evil, the expensive and unsound second mortgage, has practically ceased to exist so that now when a man finances his home he has only one mortgagee to deal with and his financing costs are reduced to a minimum and are paid once and for all. He is not held up every three or five years for additional tributes in the form of renewal and other fees and charges.

Present Low Interest

Interest rates are the lowest in our history and are stable throughout the country. This is a far cry from the good old days when the so-called 50 and 60 per cent mortgages demanded interest rates at from 6 to 10 per cent and the outrageous second mortgages demanded interest and other charges of from 20 to 30 per cent.

Lack of Liquidity

We all know, and I am quite sure that the title people know better than anybody else, that one of the principal contributing factors to the collapse in 1932 was the lack of liquidity in mortgage loans. Today we have established liquidity. In fact mortgages are being dealt in almost on an over-the-counter basis. Up to December 31, 1939 almost $700,000,000 of insured mortgages had changed hands and almost $300,000,000 of this amount changed hands in the year 1939 alone.

This element of liquidity brings to my mind two observations which may be of interest to you. This distribution of insured mortgages from mortgagees in one state to mortgagees in another state makes it highly desirable that titles and title evidence be so standardized that all evidence of title may be readily accepted by prudent lending institutions everywhere.

One of the most significant and important trends of the last five years is that toward a more refined analysis of mortgage risk, instead of the old-fashioned appraisal which consisted chiefly of an examination of the physical property.

Scientific Appraising

We have today an appraisal system under which an application for a loan is examined on the basis of common sense instead of inherent fallacies. We have shifted the entire burden of proof from the fiction of an intrinsic and immutable value in the real estate to the soundness of the transaction as a whole separate and apart from the emergency protection afforded by the collateral. Instead of assuming foreclosure in other words, we now insist that the transaction justify itself apart from that unfortunate eventuality. The borrower's income and general credit standing are important elements in this new system which takes into account not only the security of the collateral, which through monthly amortized payments constantly becomes relatively greater, but also the neighborhood, transportation facilities, schools, shopping centers, the industrial and economic future of the area—in short, every conceivable factor that may affect the continuing value of property over a period of years—the only real value incidentally that any home property can have.

Under these new conditions I confidently believe that mortgage lending can be more safely undertaken today than at any time in our history. While I do not want to go off the deep end by predicting miracles for these new methods in the event of another major depression, yet I believe defaults will be so much less serious than in 1932 that private lending institutions will be able to handle the situation without the intervention of the government as was necessary in 1932.

With our mortgage system thus improved you might conclude that the path of the mortgage lender was now strewn with roses. Unfortunately this is not the fact. It is not the fact because we still have on the statute books of many of the states, laws which are old, archaic and obsolete.

Our Statutes

I shall content myself with mentioning three such laws which are of the utmost importance to the maintenance of a sound and stable mortgage system. These laws are now being given careful study by a subcommittee of the Central Housing Committee in Washington, of which I happen to be Chairman, for the purpose of trying to bring about the enactment of uniform laws dealing with the subjects of:

1. The adoption of a short form mortgage and an economical expeditious and simple method of foreclosing mortgages;
2. Mechanics' and materialmen's liens; and
3. The collection of taxes.

A study of our many foreclosure laws brings to light some very interesting facts. In the first place the cost of foreclosure in the different states varies widely and it is difficult to see any economic or logical basis for this difference as the end achieved is the same. Since this is so it would appear from an economic point of view that an average cost in one community over that in another represents an economic incubus carried on the structure of home financing with a loss represented by additional cost borne by every borrower and with a gain enjoyed by no one except those who get the fees incidental to the high costs. In a day when the cost of home financing is less than ever before it is difficult to justify exorbitant foreclosure costs. It is even more difficult to reconcile a foreclosure cost of $400 in Illinois with a cost of $50 for the same service in Massachusetts. Lenders, borrowers and everybody else in these high cost states suffer economically from such disparity.

The Price We Pay

The implications and conditions like these on high-percentage mortgages are obvious. In the face of such costs and the danger of deterioration of the property due to delay in obtaining possession under most of our laws, no prudent lender can proceed without an equity at least sufficient to absorb both.

Next we have the mechanics' lien laws. It has long been recognized that existing mechanics' lien laws now in force in the various states differ greatly from each other with respect to the right to the lien, and its extent, duration and priority as well as with respect to the regulation of payments by the owner of the property to the general contractor. In a great many states the mechanics' lien laws impose upon the owner of real estate or upon the construction mortgage lender the responsibility of seeing to it that the general contractor and others pay debts incurred by them in the construction. This adds tremendously to the cost of financing and to the cost of the construction itself. It discourages lending for new construction and, what is basically even worse, it builds up an unsound credit system at the expense of the owner. These laws have not eliminated the irresponsible contractor, but have in fact encouraged his continuance.

It is perhaps too early to mention any of the details of what may be proposed. It is hoped, however, that a comparatively simple law may be developed which will fully protect the claims of actual mechanics and which will regulate methods of disbursement on construction loans in such manner that claims of materialmen are reasonably protected without undue burden upon the contractor or the mortgage lender.

Tax Delinquency

We are also making an exhaustive study of the real estate tax delinquency question. This is, I think, one of the most vitally serious questions we have to face today. When you read the statistics as to the percentage of properties that are delinquent in some of the states you can readily see why some of our cities are bankrupt. This is too large a subject to undertake to discuss here, but I think the primary trouble will be found in the fact that there are too many organizations set up to collect taxes and too much inefficiency in the management of collection offices due in large part to the fact that they are dominated by political influences. In addition to this, many of the laws are totally obsolete and ineffectual.

I know you are deeply interested in what is ahead for the real estate market. To answer this question would require a much more accomplished crystal gazer than I am. In fact it is dangerous in these times to hazard a guess as to what is ahead for anything.

Market of Future

Last month when things began to take on such a serious aspect in Washington and our Government entered upon an elaborate defense program, I thought that private home building

would rapidly and materially fall off. However, this has not been the fact—certainly not, if applications for FHA insurance can be taken as a criterion. For the week ending May 18, which was the first week that the effect of Germany's invasion of Norway could be reflected, applications amounted to $29,700,000, and, with the exception of the week including Memorial Day, these have not varied more than $2,000,000 in any week since then.

There doesn't seem to be much question but that a temporary up-surge in business generally will result from the expenditures incidental to the defense program. This will of course result in increased employment and higher national income which in turn will reflect itself in all kinds of spending, including a demand for real estate. However, I have never been able to convince myself that prosperity based on war activities was a prosperity that did any permanent good. I think we are in for a long period of belt tightening.

We are living in the greatest crisis that the world has ever seen. Monday, June 17, 1940, was probably the most tragic day in the history of the world. Our Commander-in-Chief has ordered "full speed ahead". Let us not fiddle to the tune of partisan politics while Rome burns, but let us all, of whatever creed or poitical belief, stand shoulder to shoulder so that it may be definitely understood that we intend that America and American institutions shall be preserved.

Treatment of Restrictions in Title Underwriting

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At the outset I desire to pay a brief but heartfelt tribute to the titlemen of America, and I can think of no more appropriate place in which to do so than here in their midst. I am speakin from the standpoint of the representatie of a large investing institution, which, of necessity, has to rely upon the local titlemen for its protection in connection with its mortgages on real property all over the country, and could not transact its business with any degree of safety or security without the services and protection of the local titlemen or title institutions.

It is merely a commonplace to say that all problems relating to real property, whether of law or of administration, present themselves in three phases, the ownership of real estate, the occupation of real estate, and security liens on real estate. Value depends on two factors, the location of the real estate in relation to its use, or the physical productivity of the property in relation to human sustenance, and this value is apparently the primary factor in inducing one to become an owner of real estate, an occupant, or a lienholder, but back of this factor of value is that of the title to the property itself, for unless the prospective owner, occupant or lienholder can be assured as to the status and stability of the title which he will acquire to the property this factor of value is valueless. This element of title is, therefore, the fundamental factor in any real estate transaction, and cannot be overlooked by any one interested in real estate who desires security as to his ownership of property, his occupation of it, or his lien rights in it.

Basically Alike

While evidences of title that are regarded as acceptable in real estate transactions may vary in the different localities, according to the practice of each individual locality, the method of determination of the title is substantially uniform everywhere, in that the determination is basically from the records, supplemented by outside evidence as to matters which are no of record. Taking the records as the basis the evidence submitted to the party in interest may be simply a certificate of a competent attorney made as a result of an examination of the records themselves, an opinion based on an examination of an abstract of the records, a policy of insurance based upon the opinion of the title underwriter after

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an examination of the records or an abstract of title, or registration under statutory provisions in certain states.

A Tribute

The correctness and the realiability of the evidences of title submitted by titlemen to investing institutions, whether the certificate standing by itself, the opinion accompanied by an abstract, the policy of title insurance, or the certificate of registration, is a fact to which I desire to bear witness. An experience of many years with these different forms of evidence of title has impressed me profoundly with the care, the conscientiousness and the integrity with which the titlemen of this country have been doing their work, a task which is largely non-spectacular drudgery. While an individual may, if he so elects, take his chances as to the title to property in which he is in any way interested, the institution which is investing its funds on the security of mortgages of real estate is, as a general rule, required by statute to have its liens prior to all other liens on the property which secures the loan, and so the titleman is the key man in connection with all such loans, for unless his investigation shows a good title to the propert offered as security, all negotiations for such loans must fail.

If the only trouble in the administration of the mortgage loans of the large investing institutions, particularly the life insurance companies, were title troubles, it might be said that such loans would be practically free from all trouble. Title problems may arise from title to time after such loans are made, but most of those which do arise are discovered before loans are actually made, and the mortgage has to depend upon the alertness, honesty and integrity of the titleman to avert the potentiality of trouble on account of such problems. But for this attitude on the part of the titlemen, mortgage loaning would be upon a very unsettled, unsatisfactory and dangerous basis.

Title Insurance

The insurance of the title represents in many ways a decided advance upon the other methods of evidencing the title to property, particularly the method of evidencing by certificate, or by abstract and opinion. It is an evolution from those two methods, and represents a change from an individual to an institutional basis with the security which incidentally results from such a change. The individual attorney certifying the title from the records, or passing opinion upon an abstract, cannot be expected to report upon certain non-record matters about which a prospective owner or mortgagee should be informed, nor can he guarantee boundaries to property as shown by a survey, but as institutional title service is de-

veloped in connection with the insurance of titles the title insurer can equip itself to perform reporting services relating to non-record matters even if it does not assume responsibility under the policy for the effect of non-record defects, and it can also guarantee boundaries as shown by surveys as an incident of title insurance coverage. These factors of themselves, apart from the financial responsibility and continued existence of the insurer constitute a justification for the insurance of the real estate title.

In appraising the superiority of the policy of title insurance over the certificate or the opinion of an attorney, it is necessary to take into consideration the effect of the limitations on the liability of the title insurer under the exceptions which it inserts in the policy. These exceptions may be classified under two headings, the general exceptions and the special exceptions, general exceptions referring particularly to the exceptions which the insurer places in its policies as to all risks which it underwrites, and special exceptions relating particularly to the exceptions which it inserts in the individual policy as to the particular risk assumed under that policy.

Exceptions

The exceptions of a general nature which are usually inserted in title insurance policies may be considered under two headings, which for purposes of convenience may be classified as explanatory exceptions, and exceptions relating to non-record matters. The explanatory exceptions are those relating to and indicating certain hazards which do not come within the scope of the coverage of a policy of title insurance and which, for that reason, may be considered as surplusage, for their omission would add nothing to the coverage of the policy, and their insertion takes nothing from it. The exceptions concerning non-record defects relate to certain hazards which are not required to be of record at the time when an examination of the record title is made, but which are real hazards against the effects of which certain classes of insured, particularly non-resident purchasers and mortgagees, need protection and the insertion of such exceptions in the policy may detract substantially from the coverage needed by these classes.

The special exceptions relate particularly to the reservations which the title underwriter may deem necessary to insert in the policy as to the risk insured under it, and are determined in each individual case after an examination of the record title to the property. They usually arise from some particular hazards apparent on the records and which cannot be removed, or from a defective state of the records. Perhaps the risks in title insurance are more individualistic than those in any other line of insurance, and so these special exceptions have to be formulated very carefully in relation to each risk presented for coverage. As these exceptions are so individualistic they are not subject to general observations, except to say that they should not be of a frivolous nature if the title insurer desires to extend adequate protection under its policy.

Without citing or quoting the explanatory exceptions contained in any particular policy of title insurance now in general use, it may be said that the typical example of such exceptions is the provision which exempts the insurer from liability on account of the consequences of any law, ordinance or governmental regulation, including building regulations and zoning ordinances, which may limit or regulate the use or enjoyment of property. The limitation on the use or enjoyment of property by such an exercise of the police power is fundamentally the exercise of a paramount right over property rather than the assertion of an adverse title. The title to the property may not be lost as a consequence of the violation of any such laws or ordinances, although their violation may be penalized. The function of title insurance is to protect against the assertion of an adverse title within the scope of the policy coverage, and not to protect against the assertion of a paramount right by governmental authority. For this reason it may be stated that protection against the assertion of paramount rights does not come within the general scope of the coverage of the title insurance undertaking, and that the insured would not be protected against this hazard even if the policy contained no such exception, so for this reason such an exception is wholly unnecessary in the policy except as a matter of explanation.

In substantiation of this proposition it may be stated that it is regarded as established law that, in general, zoning ordinances or resolutions do not constitute incumbrances on property which affect the marketability of the title, and that contracts for the sale of property are ordinarily regarded as being made in contemplation of existing ordinances and resolutions affecting their use, the nature of the improvements which may be placed on the property, etc. A leading case on this point is that of *Lincoln Trust Co. v. Williams Bldg. Corporation*, 229 N. Y. 313, 128 N. E. 209, a case in which property was to be conveyed "free from all incumbrances" except as to certain matters which were specified, and the defendant refused to consummate the contract because of a resolution of the City of New York which regulated and limited the height and bulk of buildings on the lot. It was held that the resolution did not constitute an incumbrance on the property, and specific performance of the contract was decreed.

Local Ordinances

Because of the care which may be taken in passing upon applications for building permits in determining whether or not the proposed improvements are in harmony with existing zoning ordinances and regulations relating to the locality, the problem of compliance with such ordinances may not be a pressing one for mortgagees, but at the same time an important function of the title insurer as an element of service, particularly for non-resident clients, may be the matter of ascertaining as to compliance with these ordinances, and no one is better equipped to furnish information along this line than the local title institution. The insured cannot with propriety require the title insurer to insure against the effects of violation of zoning ordinances and regulations, but an insured can look to the insurer for information as to whether or not existing improvements are in apparent compliance with these ordinances and regulations.

Off the Record

The other sub-division of the general exceptions relates largely to non-record matters, and concerns potential attacks upon the title which would come within the scope of the coverage of the title insurance undertaking unless specifically excepted from the coverage in the policy. As illustrations of this class of exceptions may be taken the exception as to mechanics' liens not of record, that of rights of parties in possession, and that of matters relating to survey.

It is admitted that under the title evidence system where the interested party accepts a certificate or opinion of an attorney as to the record status of the title it is only the record status that is certified, and there is no protection against the effects of matters affecting the title which are not of record, except the custom of the locality, but the title underwriter claims that the title insurance system is a distinct advance upon the certificate or opinion system, and so methods should be devised by the title insurer to afford the additional protection to the insured which the other systems cannot extend. Unless the insured is willing to cooperate with the insurer in connection with methods devised by the insurer to extend this protection, the insured is not justified in demanding such protection and the insurer is justified in declining to furnish it.

Mechanics' Liens

In application of this principle it may be said that the title insurer should be at liberty to formulate its own methods in cases where it is to protect against mechanics' liens not of record, and that in some cases it may be justified in charging a reasonable additional premium for such protection. The matter may not be subject to uniform treatment in this respect, for in some cases an inspection of the property may show little or no potential hazard in extending the coverage, while in connection with new construction work the hazard is real, and so the highest degree of caution may be necessary in order to protect against it.

Parties in Possession

The rights of parties in possession of property may appear to involve little

Left to right, E. B. Southworth, Minneapolis, Treasurer; Charlton L. Hall, Seattle, President; Frank I. Kennedy, Detroit, Vice-President; James E. Sheridan, Detroit, Executive Secretary.

potential hazard to the actual title to the property as shown by the records, but the cases of *Alabama Title & Trust Co. v. Milsap*, 71 Fed. (2d) 518, and *Bothin v. California Title Ins. & Trust Co.*, 153 Cal. 718, 96 Pac. 500, show that this is a real hazard. In the former case occupancy of property by a tenant of an owner of the property who had executed a deed which was held to be an equitable mortgage was held to be notice of the rights of the equitable mortgagor in the property, and recovery against a title insurer which had issued an owner's policy to one subsequently claiming ownership of the property was denied, because of an exception in the policy relating to the right of claim of a party in possession not of record. In the latter case title to a portion of the property was lost by adverse possession, but the title insurer was held to be exempt from liability by reason of an exception in the policy relating to tenure of present occupants.

These cases show the necessity for accurate knowledge by prospective owners or mortgagees of the rights of those who may be in possession of property if any such exception is to be inserted in the title policy. The cases in which the exception is to be inserted may be subject to selection by the underwriter. It is submitted that if the exception is not generally used but is inserted only in selected cases this is all the more reason why full knowledge as to the rights of parties in possession should be furnished, and the insurer should furnish this information in these cases as an incident of its title service.

Survey

An exception relating to survey requires little discussion. Referring particularly to urban properties it may be said that all conveyances of such properties, either by deed or by mortgage, should be made only on the basis of descriptions made from surveys, and that the title insurer is justified in declining to guarantee boundaries unless satisfactory surveys are furnished.

Zoning Regulations

Some of the special exceptions which are inserted in connection with individual cases are of a general nature, but, nevertheless, because of their peculiar application to the individual case these exceptions cannot be framed in general language without leaving certain factors as to the status of the title to the particular property indefinite in the extreme in some respects, and these are matters as to which knowledge as to the status of the title is highly desirable to anyone interested in the property. The matter of taxes and assessments which may be pending and outstanding against the property comes under this heading, but the element which is the subject of consideration here is that of building restrictions and limitations on the use of the property which are of a private nature because imposed at some time by some owner of the property in connection with a conveyance of it, or by agreement of some sort between or among those interested in property in a particular locality. The general effect of these restrictions on the development of property may be practically the same as the effect of zoning ordinances and regulations, but they differ from such ordinances and regulations in their origin, in that they are of a private nature while the zoning ordinances and regulations arise from the exercise of public police power over the property.

Being different in their origin, zoning regulations and ordinances, and private building restrictions and restrictions on the use of property are also different in

their legal effect. It has already been shown that it is established law that zoning ordinances and regulations do not constitute an incumbrance on the title to the property so as to affect its marketability from the legal standpoint. It may be stated that it is equally well established that any restriction of a private nature which affects the full enjoyment and use of the property, provided the restrictions impose greater limitations than those imposed by law, affect the marketability of the title as a matter of law although such restrictions do not prejudicially affect the market value of the property, and that this is true without reference to the beneficial purpose of the rstrictions. It is, therefore, a matter of importance in title underwriting that proper reservation be made in the policy in all cases where such resrictions appear as a matter of record.

Private Restrictions

The general purpose of private restrictions as to the nature of improvements on property and the uses which can be made of property, and the nature of the occupancy, is to protect both the individual piece of property to which the restrictions attach and the neighborhood in which it is located, but, nevertheless, such restrictions in some cases may represent simply the whims and prejudices of an individual owner somewhere in the chain of title and the attempt to project his prejudices into eternity. The protection of the property and of the neighborhood for a reasonable time for the benefit of those who desire to enjoy the property is laudable as long as this does not conflict with the public interest, but the attempt to fasten one's prejudices on posterity is entitled to little consideration. These restrictions bear something of an analogy to contracts in restraint of trade, and some restrictions partake of the nature of such contracts when reservation is made in connection with the sale of property that business of a certain specified nature shall not be conducted on the premises, the purpose of such a restriction usually being to protect the business of the vendor of the property.

Although the fact that a condition or provision in a deed which is a matter of record may, *prima facie*, cast a cloud on the title to the property and make unmarketable as a matter of law, a court may decide that the condition or provision is inoperative, and in this connection the case of *M. R. M. Realty Co. v. Title Guarantee & Trust Co.*, 280 N. Y. S. 22, affirmed 270 N. Y. 120, 200 N. E. 666, although rather extreme, is worthy of a little more than passing notice, both because the court held that a provision in an ancient deed was inoperative, and because the question of title insurance was also involved in the case.

In this case it was shown that on January 2, 1827 the City of New York granted a water lot to be made land and gained out of the Hudson or North River to one Samuel Boyd, with a provision in the deed that the grantee, or his successor in title should build wharves or streets and a bulkhead, and keep them in repair. The deed contained a reverter clause in event of default in the performance of the covenants. No compliance with the provisions was ever made, and later the City made it impossible to comply with them because of further grants in front of and to the west of the property. In 1925 the Title Guarantee & Trust Company wrote an owner's policy on the property making exceptions as to the restrictive covenants, easements and agreements contained in the old deed of a century before. In 1928 the title was rejected by a prospective purchaser as unmarketable, and the title insurer endeavored to get a formal release of the covenants and conditions without success. In 1932 the title was again rejected by another prospective purchaser on this account, and action was brought against the insurer for damages and for a reformation of the policy, but judgment was ultimately rendered for the defendant on the ground that the plaintiff had a good and marketable title to the property because the City had made compliance with the provisions impossible and had waived and abandoned its rights on account of lapse of time and the acts specified.

On the whole the matter of the effect of zoning ordinances and regulations is not such a disturbing factor in real estate transactions as is that of the effect of private restrictions and limitations on the use of property. It has already been shown that shown that zoning limitations do not affect the marketability of the title from the legal standpoint. If it happens that they affect the saleability of the property and the necessity for a change is shown the same authority that enacted the ordinances or regulations may recognize this fact and make any changes that the exigencies of the situation may demand. The situation is not the same with private restrictions, for, as has already been noted, such restrictions render the title unmarketable unless this factor is taken into consideration in connection with a sale of the property, and although the restrictions might be declared inoperative by the courts, or might be released on the records, these are remedies which cannot be relied upon to relieve the situation and such restrictions are often matters of serious embarrassment in connection with the marketing of property. A protective restriction of today may constitute a practical prohibition of the sale of the property some time in the future.

Effects of Restrictions

The effect of restrictions upon the actual title to the property may be considered in two phases. If the restrictions simply impose limitations upon the nature of the improvements on the property, their cost, position on the property, and the uses which may be made of the property, etc., without providing any penalty for violation of the restrictions, they may simply constitute an easement on the property and ample remedy in event of violation, or prevention of prospective violation, may be afforded by the equitable jurisdiction of the courts. The situation is different, however, in cases where the party imposing the restrictions has provided that in event of violation the title to the property shall revert to him or to his heirs or assigns. Such a provision on the records constitutes an actual threat to the title, for it shows *prima facie* right on the part of the reversioners as indicated to allege a violation of the restrictions and claim a forfeiture of the title to the property.

While the courts recognize their power to modify building restrictions in cases where it can be shown that radical changes in conditions justify a modification, it may be stated that in many cases they seem reluctant to make any such modification. The procedure in presenting the issue to the courts may be along two general lines. In the first place, the owners of property in the same locality all of which is subject to the same restriction may prevent by injunction a violation of the restriction by one of their number, or the owner of property which is burdened by restrictions may bring action for relief from the burden by modification of the restrictions.

Exercise of Equitable Jurisdiction

A good example of the exercise of equitable jurisdiction in preventing a brench of restrictive covenants s the case of *Vorenberg v. Bunnell*, 257 Mass. 399, 153 N. E. 884, 48 A. L. R. 1431. This is a conventional case, in that it involved an attempt to disregard the restrictions in a deed executed more than half a century before and devote property to a use which the covenant in the deed was intended to prevent, and it illustrates the principle that if a zoning regulation is more liberal than a restriction in a deed the restriction will prevail unless abrogated. Property had been conveyed in 1872, and the conveyance was made subject to certain restrictions regarding the materials to be used in the walls of buildings erected on the property and certain businesses were prohibited on the property, the intention being to preserve the locality for residential purposes. The property was conveyed again in 1924, and the purchaser desired to erect a public garage on it, such a use of the property being permitted by the zoning regulations in force at that time. An owner of property in the neighborhood which was subject to the same restrictions brought a bill in equity to restrain the erection and maintenance of the garage,, and the case was submitted to the Supreme Judicial Court on report. The court decided that the injunction should issue.

The case of *Fidelity Title & Trust Co. v. Lomas & Nettleton Co.*, 125 Conn. 373, 5 Atl. (2d) 700, is an ex-

cellent example of an attempt of an owner of property to relax restrictions which had resulted in becoming burdensome to the property and preventing further development. This was a case in which certain requirements as to the cost of dwelling houses and private garages to be erected on building lots was inserted in the deeds, and it resulted within a few years that houses and garages of the type intended could be built for much less prices. The owners, therefore, brought suit for a modification of the restrictions on this ground, but modification was denied, as the mere fact that buildings of the class intended could be erected cheaper at that time was not a ground for relief. Explaining the basis upon which such an application might be granted, and the nature of the cases in which relief had been granted, the court said:

"It is only when there has been a radical change in the conditions existing when the restrictive covenants were created which completely defeats the objects and purposes of the covenants so that they are no longer effective, and their enforcement would not afford the protection which was in contemplation of the parties, that equity will hold that the restrictions are no longer enforceable."

"Most of the cases in which general relief from restrictive covenants has been obtained involve situations where, since the time when the restrictions were established, there has been su cha radical and permanent change in the use and occupancy of premises in the neighborhood—as from residential to business purposes —as to defeat the objects sought to be achieved by the restriction."

The court commented upon the difference between cases in which relaxation of the restrictions was asked and those in which injunctive relief against violation was requested, as follows:—

"In an action for removal or relaxation of restrictions the issues are not the same as in one seeking to enforce them by enjoining breach thereof, and the judgment is more drastic. Injunction may be denied because of conditions existing at the time, while as to a judgment which affects the covenants for all time it is to be considered as quite possible that another change may occur subsequently which would remove or materially affect the ground upon which the judgment was based.—It should be granted with caution and only when the motivating considerations are not only ample but so settled and lasting that it is manifest that the purpose of the original restriction has been permanently frustrated. The change must be 'so great as clearly to neutralize the benefits of the restrictions to the point of defeating the object and purposes of the covenants.' "

The deduction which can be drawn from cases of this nature is that the courts rely almost wholly on the facts as shown in each case in making their decisions.

Left to right: Jack Rattikin, Fort Worth, Immediate Past President; Charlton L. Hall, Seattle, President.

Some of those who have imposed private restrictions upon the use and occupation of property have evidently not been content to leave the matter of the effect of these restrictions and their relaxation and modification to the courts, if the exigencies of the future demand relaxation or modification, but have attempted to penalize the violation of the restrictions by future owners by a provision in the conveyance that in event of violation by the grantee, or any successor in ownership of the property, the title to the property shall then be forfeited and shall revert to the grantor or his heirs, who may enter the property and claim a forfeiture of the title. Such a provision as a matter of record is, of course, a menace to the title the exact effect of which cannot be determined by the examiner or title underwriter, but, suffice it to say, that this fact may render the title to the property unmarketable from the legal standpoint and unsaleable from the practical standpoint. It would be an ideal solution of the problems which arise on account of such restrictions if the courts would declare them void *ab initio* as a violation of public policy, but this solution is something which cannot at the present time be relied upon by title men in passing upon their effect.

Reversions

A casual examination of the law in the attempt to find cases in which reversion has been allowed by the courts because of violation of such restrictions discloses almost an absence of cases involving this issue in courts of last resort. There may be many such cases, but if so they do not seem to be easily found. In the case of *M. R. M. Realty Co. v. Title Guarantee & Turst Co., supra*, it was shown that the deed from the city to its grantee contained a reverter clause in event of default in the performance of the covenants in the deed, but the provision was held inoperative in view of changed conditions. Two cases may be cited in which reversionary rights have been recognized because of a violation in a deed relating

to the use of property, the prohibition in both cases being the sale of intoxicating liquor on the property.

In the case of *Cowell v. Colorado Springs Co.*, 100 U. S. 55, 25 Law Ed. 547, a conveyance of property had been made to Cowell by the Colorado Springs Company, the deed containing a provision that intoxicating liquors should not be manufactured, sold, or otherwise disposed of, on the property, and declaring that in case this condition was broken the deed should become null and void and the title to the property should revert to the grantor. It appears that the grantee disregarded the condition and soon after he went into possession began to sell liquors on the property. The grantor brought an action of ejectment, and recovered judgment. Two questions were considered on appeal, the validity of the condition, and the right of the grantor to maintain an action for ejectment on breach without previous entry. Both were determined in favor of the grantor. The validity of the condition was upheld, and it was also held that entry on the premises prior to the commencement of the ejection action was unnecessary. The element of estoppel was a factor in the case, for it was held that inasmuch as the grantee had taken title with the condition in the deed, he was estopped from contesting the validity of the title conveyed by the deed.

The other case is that of *Sioux City & St. P. R. Co. v. Singer*, 49 Minn. 301, 51 N. W. 905, the situation being similar to that in the *Cowell* case, but its determination being affected by a statutory provision in force in Minnesota. The Plaintiff in this case had conveyed property with a provision in the deed that intoxicating liquors should never be sold or vended as a beverage, to be drank on the premises with the knowledge or consent of the owner, and if this was done the instrument should be void. Title to the property passed to the defendant through several intermediate conveyances, and after title passed to him this provision was violated and action of ejectment was brought by the plaintiff. The statutory provisions involved in this case were in *Section 46, Chap. 45, General Statutes of Minnesota, 1878*, and were as follows:—

> "When any conditions annexed to a grant or conveyance of lands are merely nominal, and evince no intention of actual or substantial benefit to the party to whom or in whose favor they are to be performed, they may be wholly disregarded, and a failure to perform the same shall in no case operate as a forfeiture of the lands conveyed subject thereto."

By virtue of this statute judgment was directed for the defendant, and plaintiff appealed. The judgment was reversed on the ground that the court erred in disregarding the condition in the absence of proof that the plaintiff had a special interest in the observance of the condition. The finding of the court did not show whether or not the plaintiff had then, or ever had, any special interest in the enforcement of the condition by reason of its ownership of the lands, or for any other reason. Under this statute the forfeiture provision in the deed would not be operative when the conditions were merely nominal, or showed no actual or substantial benefit to the party in whose favor they were to be performed, so the matter of their effect simply resolved itself into a question of fact in each instance.

The Insurer Has His Rights

In dscussing the matter of the treatment of risks undertaken by the title underwriter, two factors should be taken into consideration. In the first place, the title insurer, as may other underwriters, may select its risks for insurance. The mere fact that an application for title insurance is submitted does not obligate the underwriter to insure the title. Selection may be exercised, and if the risk appears to be uninsurable or undesirable it may be declined. In the second place, if the risk is accepted for insurance the underwriter may deem it advisable to insert certain exceptions in the policy as to this particular risk, and the insurer is at liberty to do this. The limitation on this privilege that should be suggested is that the sum of all such exceptions should not leave the insured under the policy with little or no actual protection. Applying these principles to the treatment of restrictions in title underwriting, it may be said that the insurer may deem the restrictions of such a nature that it does not care to write a policy of title insurance on the property so restricted. This may occur very seldom, so the ordinary course would be to write the policy subject to the necessary exceptions relating to the effect of such restrictions upon the title.

Some time in the development of the law on real property the courts may recognize that proper restrictions on the use and occupation of real estate for a limited time are perfectly valid, but that restrictions unlimited as to their duration are void *ab initio* as a violation of public policy, or statutes to this effect may be enacted generally. In the case of *Sioux City & St. P. R. Co. v. Singer, supra*, a Minnesota statute which affected the case at the time of its decision was noted. The particular section quoted from the *General Statutes of Minnesota, 1878*, is still in force, with some amendments, and as illustrative of the statutory treatment of restrictions it may bel well to quote *Section 8075* and *Section 8065* of *Mason's Minnesota Statutes, 1927*, as amended by *Chapter 487, Laws of Minnesota, 1937*, as follows:—

> "8075. *Nominal conditions disregarded.* (a) Whenever any conditions annexed to a grant, devise or conveyance of land are, or shall become, merely nominal and of no actual and substantial benefit to the party or parties to whom or in whose favor they are to be performed, they may be wholly disregarded; and a failure to perform the same shall in no case operate as a basis of forfeiture of the lands subject thereto.
>
> "(b) All covenants, conditions, or restrictions hereafter created by any other means, by which the title or use of real estate property is affected, shall cease to be valid and operative thirty years after the date of the deed, or other instrument, or date of the probate of the will, creating them; and after such period of time they may be wholly disregarded.
>
> "(c) Hereafter any right to reenter or to repossess land on account of breach made in a condition subsequent shall be barred unless such right is asserted by entry or action within six years after the happening of the breach upon which such right is predicated."
>
> "8065. *Qualities of expectant estates.* Expectant estates are descendible, devisable and alienable in the same manner as estates in possession; and hereafter contingent rights of re-entry for breach of conditions subsequent after breach but before entry made, and possibilities of reverter, shall be descendible, devisable and alienable in the same manner as estates in possession."

This Minnesota statute is quoted because it seems to supply a practical solution to this problem of restrictions. Analyzed briefly it settles the following points:—

(a) Nominal conditions of no substantial benefit to parties in whose favor they are to be performed, may be disregarded, and failure to perform shall not operate as a basis of forfeiture.

(b) Covenants, conditions and restrictions shall cease to be valid and operative thirty years from date of the deed, etc.

(c) Right of re-entry must be asserted within six years after happening of breach of covenant.

(d) Rights of re-entry, etc., shall be descendible, devisable and alienable, the same as estates in possession.

Changed Conditions

The basis upon which the courts have modified or nullified restrictions in deeds has been that of changed conditions. Transition from a residence district to a business district makes property in that locality further unsaleable for residential purposes, and so in order to facilitate progress and make property saleable the courts have to find that the covenants in old deeds which restrict the use of the property to private residences are no longer appilcable. Types of residential localities change, usually from a superior to an inferior type, and so racial restrictions

on the occupancy of property must be modified. The title insurer accepts the situation as it is. The title company is not responsible for the actual status of the record title, or for any convenants that may appear in recorded deeds. The title examiner and underwriter may, however, determine the effect of such covenants on the status of the title, either as to marketability in cases where no reversion is involved, or as to the potentiality of loss of title by forfeiture on violation in cases where reversion is involved, and may come to the conclusion that such provisions are null and void, and ineffective to cause loss of title for that reason. If so no exception regarding the effect of such covenants may appear in the policy, and the title insurer then assumes the risk of any claim that may arise affecting the title by reason of alleged violation of such covenants. If, however, the law is established in the jurisdiction where the property is situated that such reversionary provisions are valid and that violation may involve loss of title if claim to this effect is made, or if the law is unsettled and doubtful, the title underwriter is perfectly justified in requiring the insertion of an exception in the policy relating to the effect of such covenants. The basic fact to be considered in connection with such an exception is, as already noted, that the title insurer is in no way responsible for the status of the record title as to such restrictions, and should not be expected or required to assume any responsibility as to their effect in cases where their effect is certain as to forfeiture, or may be a matter of doubt.

Complete Data Needed

The prospective insertion of such exceptions in the policy in relation to the necessities of non-resident investors, who are among the largest prospects for title insurance brings up the matter of the services which may be expected of and may be rendered by title insurers aside from but incidental to their functions in the actual insurance of titles. Tile insurance is essentially preventive in its nature. It is written on the assumption that no loss will occur, as all possible precautions have been taken to prevent loss as to the risk insured. Some portion of the title may remain uninsured because of exceptions in the policy, but as to such exceptions an insured needs information as to the potentialities involved. If an insurer cannot take the risk as to the effect of restrictions in deeds the insured must assume that risk, and it is essential that an insured, either as owner or as mortgagee, should be fully informed as to such hazards. This information can be furnished to an insured by the insurer as an element of title service, something which title insurers are being urged to offer and to emphasize as an essential part of their functions. They offer land title service, and they may represent that they have complete facilities for rendering efficient title service. They say that they are organized to serve their insured in connection with all title work, and that their organizations have achieved a reputation for responsibility and integrity in all types of service. The should, therefore, report to their prospects all potentialities, either of loss or of annoyance, against which they cannot protect under the policy. The prospective insured can then determine for himself whether he desires to purchase property or take a mortgage on it. Title insurers understand title requirements, and they are in a position to report upon the status of titles even though they do not give advice to influence their customers one way or the other. When the responsibility for decision is with the customer he should have the benefit of all of the information which the insurer can submit, both as to the records and as to extraneous facts.

Observations

I began this talk with a tribute of a personal nature to the title men of this country, and I am closing it with some observations of an equally personal nature, being the reactions formed and presented here as a result of many years of experience with the different methods of evidencing title to which I have referred, gained from the vantage point of association with one of the large financial institutions of the country investing a portion of the funds under its care in obligations secured by mortgages on real property. From the standpoint of practical operation and results I have found all methods satisfactory, but this is because of the reliability of the local title man, or the combination of title men in each locality. If it were not for this fact the title situation in this country would rest upon a very unstable basis and the result would be unsatisfactory in the extreme.

In my opinion the highest type of present title work is that of the conscientious and experienced local attorney who goes to the records, makes his own notes, whether he prepares an abstract or not, and then renders his opinion as a result of his own work. He has no alibi if a mistake in examining the records has been made. This method has its limitations as far as the legal protection of those who are interested in property is concerned, for even if the attorney is liable for a mistake the statute of limitations may have run before the mistake is discovered, or the attorney may have passed to his reward, or even if his liability is still outstanding he may not be financially able to respond in damages. His professional responsibility is, then, the protection for his clients. He may not as a professional duty go beyond the records, but his personal knowledge of the locality and the history of titles there may be of the greatest benefit to his clients, whether local or those in other localities.

Divided Responsibility

When the abstract is prepared by the professional abstracter and submitted to the attorney for his examination the responsibility is divided, as the attorney cannot be held for the mistakes of the abstracter and his responsibility is limited to the proper examination of the abstract. The protection of property towners and mortgagees then depends on two factors, the correctness of the work of the abstracter and of the attorney. This method also has its limitations, in that it does not afford protection as to collateral matters, which protection is important to owners and to mortgagees, and it lacks the element of personality which may be present when the work of abstracting and examining is done by the same person.

A fact which soon impresses itself upon the attorney who spends much time in making personal examinations of the records and then sees other attorneys making subsequent examinations of the title to the same properties, is that of the tremendous duplication of work involved in connection with this system, which may be said to amount to waste, and causes him to wonder if some authoritative and official method could not be devised whereby the status of a title as established as of a given date might be recognized and accepted by all who subsequently become interested in the title, thus reducing the work of future examinations to an extension of the status to another given date. This speculation inevitably leads to the consideration that the certificate method of accomplishment is a legitimate subject for discussion.

The insurance of the title offers both the service and the continued financial protection which the certificate method and the abstract and opinion method cannot offer, but from experience I want to say that I consider the service element the major factor in title insurance, and financial protection the minor factor. The title insurer stresses the element of service, and offers it as an inducement for title insurance. The issuance of the policy of title insurance to evidence the status of the title and to guarantee that status should be considered by the insurer as the consummation of its service, as an incident of which should be a reporting service on collateral matters and upon phases of the record status of the title against the effects of which it cannot guarantee. No prospective insured has the right to require the insurer to insure against the effect of record matters for which it is in no way responsible, and building restrictions and reservations in deeds which limit and restrict the use and improvement of property coming within this category. If the insurer feels that because of the status of the law in the jurisdiction in which the property is situate it cannot insure against the effect of such restrictions, it should report the record status of all such limtations to its prospective insured, and its duty in this respect has been performed.

Reversionary Restrictions

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The question often arises as to whether there may be successive reversionary rights as to restrictions in the same chain of title.

The question arises in this way. The subdivider places certain restrictions on all the sub lots in a subdivision and provides that upon violation of restrictions title shall revert to him. It often happens that A, a purchaser from the subdivider, copies the restrictions (including the reversionary clause) in his deed to B, B does the same in his deed to C, and so on down the line. As a consequence we find successive reversionary clauses in the chain of title. Are all of these clauses enforceable, and must we get a release of the forfeiture not only from the subdivider, but from the successive grantors in the chain of title?

Why

There is a reason for the imposition of the right of reversion by the subdivider. He imposes the reversion for the purpose of enforcing the restrictions for the benefit of other sub lots not yet sold. It is sort of *in terrorem* clause. But there is no reason for the imposition of the reversion by subsequent grantors, because such grantors are not interested in the enforcement of the restrictions.

It is rather remarkable that there seem to be only two cases dealing with the subject of successive rights of re-entry or "powers of termination" as they are called in the Restatement of Property, an English case and a California case.

Successive Rights of Ren-Entry

The English case, *Hillier v. Parkinson, 9, L. J. (O. S.) Ch. 156* (1831)[1] deals with successive rights of re-entry on the part of the original lessor, and on the part of subsequent sub-lessees.

The head note reads as follows:

"Building lease from A to B. B underlet to C. C was to build houses; but, by his inability to do so, his lease became forfeited to B, and B's lease also became forfeited to A. B assigned all his interest to D, who applied to A for an extension of time to complete the original contract, which was granted."

Court says:—"This is a question of a very peculiar nature, and it is certainly wonderful, that, among the vast variety of facts of daily occurrence likely to give rise to it, it should never before have come before the court for decision. The question is whether the waiver of forfeiture on the part of the landlord, the lord of the fee, to his lessee, is to be considered as a waiver, to be extended to the sub-lessee of the original lessee."

Court held that the waiver of forfeiture in favor of B did not prevent B's enforcement of his right against C. In the course of its opinion court says:

"Mr. Portman (A) made an agreement with Dunnage (D), by which he waived his right to the forfeiture, and extended the time for the completion

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of the houses. By this agreement he precluded himself from taking any advantage against (Dunnage (D) for the breach of his covenant; but, clearly that could not in any way prevent Dunnage (D) from turning round upon his own immediate lessee, who committed the breach of covenant by which he (D) might have lost the benefit of his lease had Portman (A) chosen to enforce his rights. It is clear that (Dunnage (D) might say, he was not bound to grant that indulgence to another which Mr. Portman (A) had granted to him; he was entitled to his rights just in the same manner as if Mr. Portman (A) had not waived his, and might take the benefit of the 6000 pounds laid out upon the houses by his sub-lessee."

California

The California case is *Parry v. Berkeley Hall School Foundation 74 Pacific Reporter (2d series) 738.*[2] The situation giving rise to this case was that Rodeo Land and Water Company sold land to defendant, but title was taken in the name of a trustee. In the deed from the land company to the trustee there was a restriction against the sale of intoxicating liquors with a right of reversion, and the trust agreement provided that the trustee should impose the same restriction and reversion in the deeds for the various sublots.

The plaintiff violated the restriction and he brings this action to quiet title against the reversionary restriction.

Court says: "The major point raised by appellant is the proposition that the Foundation had no right of re-entry to enforce, and by necessary inference, that the condition which it imposed in the deed to plaintiff was void. The reasoning advanced is that a right of re-entry is an estate in reversion; that the Rodeo Company had already reserved that very estate by its deed; that consequently the trustee bank had no such estate to reserve for itself or its beneficiary, the Foundation, for that would result in having the identical estate in two parties, an impossibility."

The court refused to follow this argument and held that there could be successive reversionary rights in the same chain of title.

The gist of the court's opinion is as follows: "The law further recognizes that each owner of an estate may grant it, in whole or in part, absolutely or on condition; and if he grants it on condition, the right of re-entry for breach is a separate right of that grantor, and never identical with a right of re-entry reserved by a prior grantor for breach of conditions imposed by him."

Time and Change

Another question in connection with reversionary restrictions is whether a court of equity, after the lapse of time and the change in the character of the neighborhood, will enjoin the enforcement of the restrictions *including the reversionary right.* Few courts have done so, although Professor William F. Walsh in an article entitled "Conditional Estate and Covenants running with the Land" (14 New York University Law Quarterly Review 162) argues that they should.

The general law on the subject is epitomized by Professor Walsh as follows:

"All conditions annexed to conveyances or devises of land which are not illegal or impossible of performance are theoretically valid today, so that within these limits the owner of land may incumber the title by any condition he pleases, interfering with its alienability in the hands of his grantee or devisee, making the title unmarketable except as the property is sold subject to the condition and enforceable by him or his heirs at any time in the future whether or not any substantial reason ever existed for the restriction so imposed, and though changed conditions have eliminated any reason

therefore which may have existed when the conditional estate was created."

And as follows:

"There is no doubt that restrictive covenants, unknown in Littleton's time, have as a practical matter largely displaced conditions in restricting the use of land. They serve to give effect exactly to the intent of the parties by their specific enforcement in equity. In the modern cases discussed above it was clearly evident that the parties did not intend a forfeiture which could be enforced only by the original grantor or his heirs. As a condition the provision would not protect the land which was intended to be benefited after its transfer to a third person either by deed or will. But where an express clause of forfeiture is used, either in the form of a right of entry or that the estate shall cease and determine on breach of the condition, there is no room for interpretation on the part of the courts. They must enforce the forfeiture under the common law rule no matter how unfair or unjust such action may be and no matter how far removed it is in its results from the purposes sought to be accomplished."

"It follows, therefore, that if a right to enter be expressly reserved, whether the prior provisions be language of condition or of covenant, a condition involving a forfeiture is created. If language of covenant is not used the provision can be enforced only by forfeiture, though the dominant purpose to protect property retained by the grantor is clearly established by the attendant circumstances. Since it can be enforced only by the grantor and his heirs, the original purpose is eliminated after the grantor conveys or devises the property intended to be benefited to any third person. Thereafter the owner of such property has no remedy by which he can enforce compliance with the restriction. It becomes a mere possible right to enforce a forfeiture in the original grantor or his heirs, entirely disconnected with its original purpose as a restriction to protect the property retained."

Conditional Estates

Professor Walsh's citation of cases is mostly from New York, but the law as to conditional estates is ancient and few courts have had the courage to deviate from the Common Law.

Professor Walsh says:

"Furthermore, restrictive covenants cannot be enforced in equity by injunction when the purpose for which they were created becomes impossible of accomplishment. Equity refuses to enforce covenants restricting the use of property to single family dwellings when the encroachment of business structures and apartment houses in the neighborhood has so changed its character that the property can no longer be used to advantage for such dwellings, and the result of the enforcement of the restriction must be to bar the owner from using his property in the only ways reasonably possible. That restrictions come to an end when their purpose becomes impossible and will be removed as clouds on title has been decided on unimpeachable reasoning. It seems clear that damage recoverable at law will be nominal in such cases, because if such damages would be substantial equity would enforce the covenant by enjoining its breach. It is difficult to see why such restrictions should be allowed to continue when their only effect is to incumber the title and interfere with alienation in order that the dominant owner might recover nominal damages."

Enforcability Continued

"However, the New York cases seem to have established the rule that the covenant continues enforceable at law though equity would not enforce it by injunction, the court holding that the existence of such a restriction is a defect in the title which justifies a purchaser in refusing to complete his contract of purchase."

"Is there any valid reason for giving effect to such restrictions after their purpose has become impossible of accomplishment when they are created as conditions by an express clause of forfeiture? What will the New York courts do when such a situation arises? If they persist in the way they have started, the owner will be compelled to use the property in these cases for single family dwellings only although it may have become entirely unsuited for such use, the alternative being the forfeiture of his property if he uses it for business buildings or apartments. He will be unable to sell the property for anything like its value because the purchaser would be in the same situation. A considerable section of a city might in this way be made stagnant and retrogressive, destroying taxable values, retarding community growth, and illustrating most vividly why restrictions imposing burdens, when created by covenant, are void in such cases when the covenantee has no rights *in rem* in the property affected. It seems incredible that the courts would enforce forfeiture in such cases, but under the decisions as outlined above, particularly in view of the position of the Court of Appeals that a "law of property" must stand unchanged except by statute, it is very doubtful whether the New York courts will take the position which sound public policy demands that restrictions, whether created by way of covenant or condition, come to an end when their original purpose becomes impossible of accomplishment."

"Human thought has a way of becoming segregated in definite grooves. Conclusions which seem simple and unassailable in the law of restrictive covenants do not even suggest themselves to the courts in cases of restrictions created in the form of conditions with forfeiture expressly reserved in case of breach, though the purpose in each case is identical and the evil involved in the situations discussed above are exactly the same. It is far better that this law be corrected by decisions of the courts, feeling their way gradually forward from point to point under the guidance of fundamental principles, than by legislation which attempts to rewrite the law of conditions all at once."

He further says:

"It is entirely clear, as we have seen, that conditions in the form of restrictions are just as contrary to public policy as restrictive covenants when reserved as a matter of personal whim without purpose or motive in the protection of neighboring property. Is there any good reason why the owner of land should be permitted to annex to the title of land conveyed or devised in fee burdensome incidents restricting the liberty of action of the owner or making his estate subject to forfeiture on the happening of a collateral event having no relation to any reasonable purpose? If it is contrary to public policy to discourage alienation by restrictions in gross having no relation to any interest in the property remaining in the grantor or the heirs of the devisor, it would seem to follow that whimsical conditions without reason or purpose should have no different or other effect."

And in Support

But apparently the courts of only two states have had the requisite courage, California in decisions and Missouri in a dictum. The cases follow.

Hess v. Country Club Park, 2 Pac. (2d) 789 (1931).[7] (Case decided by Supreme Court of California.)

Defendant was the owner of a subdivision, the sub lots in which were sold with certain building restrictions, with a proviso that the premises should revert to the grantor. Defendant was the owner of a sub lot and desired to build in violation of the restrictions. He brings an action for declaratory judgment, asking that the court declare the restrictions and the reversion null and void because of the changed condition of the neighborhood.

Court held that plaintiff had the right to proceed by Declaratory Judgment and held that the restrictions and the reversion had become null and void.

Letteau v. Ellis, 10 Pac. (2d) 496 (California Appellate Court, 1932).[8]

Sub lots had been conveyed with the following restriction:

"Said lot shall never at any time be sold, rented, to, or occupied by any person of Negro descent, and a violation of any of said conditions shall work a forfeiture of title thereof to said party of the first part, their successors or assigns."

Plaintiffs are the heirs of the original grantor. Defendant the owner of a lot with the quoted restriction. Character of neighborhood had wholly changed. Court denied relief to plaintiff.

Racial

Koehler v. Rowland, 275 Mo. 573, 205 S. W. 217, 9 A. L. R. 107.[9] This is another Negro case, and on page 587 court says:

"It is true that where circumstances

are changed, owing to the natural growth of a city or of the present use of a whole neighborhood, so that the purpose of a restriction in a conveyance no longer can be accomplished, and it would be oppressive and inequitable to give effect to such restriction, the courts will not enforce it, whether it be a restrictive covenant to restrain the violation of which injunction is sought, *or whether it is a condition providing for a re-entry in case of breach*"

"If the court upon sufficient inquiry had found, as claimed by defendants in this case, that the conditions had so changed since the conveyance was made, by Negroes occupying the surrounding lots, that an enforcement of the restriction no longer could serve the original purpose, then it would have been improper to allow the forfeiture."

It is true that the above quotation is a dictum only, but the California case leans heavily upon the Missouri case and quotes that part of the Missouri opinion that is quoted above.

It is to be hoped that courts in other states will become as enlightened as the California and Missouri courts. But this is a hope rather than a prophecy.

Essex Lunch, Inc. v. Boston Lunch Co., 229 Mass. 557, 118 N. E. 899 (1918).[3]

In this case there was a lease from owners of the fee to A, who assigned his interest to plaintiff. Sub lease from A (before assignment to plaintiff) to defendant. There was a covenant in the underlying lease "to keep the said leased premises in such repair, order and condition as the same are in at the commencement of said term" and "not to make or permit to be made any alteration or addition to the said leased premises nor permit any hole to be made or drilled in the stone or brickwork of the said building except such and in such place and manner as shall have been first approved in writing by lessor."

It also appeared that the owner of the building also owned the next building, which also had a store on the ground floor, and gave the defendant permission in writing to cut an opening in the partition wall for the purpose of connecting the two stores, and that the defendant (sub lessee) proceeded to cut such opening although forbidden by the plaintiff (underlying lessee) to do so. *Held*, that the owner of the building had no power to authorize the defendant to violate the obligations of his covenant in the sub lease from the plaintiff's assignor, and that the plaintiff was entitled to an injunction.

In other words, where there is a covenant from A to B, and the same covenant from B to C, a release from A to C, does not release C from his covenant to B.

McArdle v. Hurley, 103 Misc. (N.Y.) 540 (1918).[5]

Gouverneur Morris had in September, 1848, imposed restrictions, with a reversionary clause, against the sale of intoxicating liquor in deeds to some 200 sublots. In December, 1848, one Baldwin, grantee in one of these deeds, imposed the same restrictions (with reversion) in a deed to his grantee. In 1849 Morris released all the lands conveyed by him from the effect of the condition, but there was no release to Baldwin, nor did Baldwin join in the covenant with his co-owners. The present defendant in 1885 conveyed the premises with warranty that they were free and clear of all encumbrances. The present case arose out of a suit for breach of warranty, plaintiff alleging the existence of Baldwin's right of reverter as an encumbrance. Court held for defendant on the theory that no right of reverter existed in Baldwin or his heirs.

Court says: "When this right (to enforce the reversionary restriction) was lost to Morris by release, and all other owners consented to its abandonment, Baldwin no longer a common covenantor, was devoid of right or obligation,

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and therefore of remedy. The grantor Baldwin owned no adjoining property, nor was he a grantor to a number of grantees whom he was subjecting to similar conditions for the preservation of the character of the neighborhood. Under such circumstances the condition prescribed is not enforceable since it is without even the fiction of a consideration to support it. It is a *donum gratuitum* and neither law nor equity will give it force."

This is one of those common sense decisions that one wishes courts would oftener make, but it is clearly overruled by *Weinberg v. Sanders*, below.

Weinberg v. Sanders, 204 App. Div. (N. Y.) 409 (1923).[4]

Marketability

This action arose out of the same Morris allotment mentioned in *McArdle v. Hurley*, above. In this case one Davids, a grantee of Morris, had imposed the same reversionary restrictions in the deed to his grantee.

The present case arose out of a suit for return of purchase money under a contract to convey, on the theory that the title was unmarketable by reason of the condition in the deed of Davids.

Court held for plaintiff and in the course of its opinion says:—"The fact that the original grantor had imposed a condition with right of reversion could not prevent a subsequent owner from imposing a like condition for his own benefit, and more than the imposition of a first mortgage could prevent the imposition of a second mortgage; it is simply a question of priorities. The right of Davids to re-enter and take possession of the property in the event of a breach of condition was only subject to the prior right of Gouverneur Morris so to do, and the release by the latter of his right leaves intact the right of the former."

Although this case clearly overrules *McArdle v. Hurley*, above, the court nowhere in its opinion refers to the *McArdle* case.

Posttey v. Kafka, 213 App. Div. (N. Y.) 595 (1925).[6]

This case arose out of the same Morris subdivision considered in *McArdle v. Hurley* and *Weinberg v. Sanders*, above. In the present case the grantees of Morris had joined in the release of the condition, so that the situation was not the same as in *Weinberg v. Sanders*, wherein Morris' grantee had not joined in the release of the condition. In the present case the defendant contended that although the *condition had been released adjoining property owners could enforce the restrictions* which had not been released.

The court's opinion as carried into the head note is as follows:

"The effect of said agreement was to wipe out the condition so that thereafter neither Gouverneur Morris nor any succesor in title who held before the condition was abrogated would have the right to re-enter and the purchasers of other lots whose deeds contained smilar provisions *would not have the right to enforce the provision as a restriction.*"

"Furthermore, the lapse of time since the condition was imposed and the fact that it has not been observed for seventy-five years, and that that part of the city in which the property was located has been built up without regard to the condition, shows that all concerned have accepted as adequate the discharge thereof and acted accordingly during the period extending over a generation."

Dissent

In this case there is a dissenting opinion by Finch (who wrote the opinion in *Weinberg v. Sanders*, above) contending that although the condition as a condition is inoperative, because of the release, the restriction as a restriction is still a bar to the

marketability of the title. And the case is one involving the question of marketability.

It will be noted, that of all the cases cited either in the original article or in this sequel only one case, *McArdle v. Hurley*, holds that a release by the first imposer of a condition (or right of reverter) will release subsequent reversionary rights in the same chain of title, and that this case was overruled without mention in *Weinberg v. Sanders*.

Condition Subsequent

Firth v. Marovich, 160 Cal. 257, 116 Pac. 729 (1911).[12] The deed in this case had the following provisions: "This conveyance is made and said real property is sold subject to the following conditions." (Here follow restrictions as to use of the property). "That any breach of the foregoing conditions, or any of them, occurring after the delivery of this deed shall have the effect of forfeiting the title of the grantee and his assigns, and thereupon the title to said real property shall revert to the grantor."

Plaintiff conveyed to one Scherer with the above restrictions, and Scherer conveyed to the defendant. Plaintiff sues to recover lot, alleging a breach of the restrictions. Plaintiff was nonsuited in the lower court and makes this appeal.

The court was not called upon to decide whether the restrictions had been violated, but had only to decide whether the lower court had erred in nonsuiting the defendant. The case was remanded to the lower court for a new trial.

In the course of its opinion the court laid down these two principles. (a) "It is not open to question that building restrictions of the kind contained in the deed from plaintiff to Scherer was valid and enforceable at the suit of the grantor, so long as he continues to own any part of the tract for the benefit of which the restrictions were made." (b) "A condition subsequent forfeiting the title to the grantor in case of breach is not repugnant to the granting clause, nor does it come within the terms of the Code sections prohibiting or limiting restraints on alienation. The power of alienation is not restrained. The grantee, Scherer, was at perfect liberty, at all times, to convey what title he had." But court points out that subsequent grantees took title subject to the restrictions and subject to the power of the original grantor to enforce the forfeiture.

In this case the court was not called upon to decide whether the plaintiff could enforce the forfeiture after he had sold all the lots containing the same restrictions and conditions.

Firth v. Los Angeles Pacific Land Company, 152 Pac. 935, 28 Cal. App. 399 (1915).[30] This is not a restrictions case but a case arising out of a deed for railway purposes. The court does, however, lay down the following rules which apply to any sort of deeds containing conditions subsequent. (a) If there is any doubt court will construe deed as creating covenant, rather than a condition. (b) Where words have been used showing a clear and unmistakable intention on the part of the grantor to create an estate on condition, the condition will be upheld. (c) If it is clear that a condition subsequent was intended, the title does not automatically revert upon breach, but no formal re-entry is required. Demand for a re-conveyance, or any other method of notice that a forfeiture is claimed is sufficient.

Johnston v. City of Los Angeles, 176 Cal. 120, 168 Pac. 1047 (1917).[13] In this case it was held that the right of entry for condition broken is transferable by reason of a California statute. This was not true at common law. Where the common law is strictly followed, not only is a right of entry not transferable, but if it is attempted to be conveyed, the condition is destroyed. In other words, not only has the grantor lost all his rights, but the grantee has acquired nothing.

Contingent Right of Re-Entry

There are two other cases in California holding that the contingent right of re-entry may be conveyed: *Los Angeles v. Arizona Land Company, 200 Pac. 1051, 187 Cal. 120* (1921);[14] *Thornton v. Middletown Educational Corporation, 21 Cal. App. (2d) 707, 70 Pac. (2d) 234* (1937).[15] Since these decisions are based on a statute which clearly states that rights of entry are transferable, they are of no force elsewhere. But they do show that California has been wiser than those states that still adhere to the common law.

In *Strong v. Shatto, 45 Cal. App. 29, 187 Pac. 159* (1920)[12] it was held that the reservation of a right of entry for condition broken does not violate the rule against perpetuities. This is one of those cases where a wrong reason is given for a right decision. The court says that a right of re-entry is a vested interest. *Which of course it is not.* But conditions subsequent have always been construed by the common law courts as not violating the rule against perpetuities. It is simply a case of an illogical exception to the rule.

In *Quatman v. McCray, 128 Cal. 285, 60 Pac. 855* (1900) it was held that where two lots were conveyed with reversionary restrictions, the violation of the restrictions on one lot would not forfeit title to both lots, but only the title to the lot whereon the violation occurred. This is certainly a common sense decision.

Forman v. Hancock, 3 Cal. App. (2d) 291, 39 Pac. (2d) 249 (1934).[10] It was held in this case that a court in an action for declaratory judgment may relieve a grantee from restrictions (and from forfeiture for possible future breach of condition) where the character of the neighborhood has so changed as to make it inequitable to enforce the restrictions.

It was held in *Wedum-Aldahl Co. v. Miller, 18 Cal. App. (2d) 745, 64 Pac. (2d) 762* (1937)[27] that the grantor may lose right of reversion by acquiescence, waiver, release, or abandonment, and that the owner may quiet title against such right. In this case the neighborhood had so changed as to make the enforcement of the restrictions and conditions inequitable

Mutual Plan

It was held in *Young v. Cramer, 100 Cal. App. 961, 100 Pac. (2d) 523* (1940)[11] that a right of reverter, under a mutual plan for benefit of all lots in tract, is not enforceable by grantor or the assigns of the reversion, after all lots are sold and grantor no longer owns any of the lots in said tract. Please note that the court did not say that the restrictions could not be enforced by equitable action on the part of the owner of a lot in the tract. But it did say that the original grantor, after he had sold all the lots, had no interest in enforcing the restrictions, and that since the reverter had been put in the deeds to enforce the restrictions, he had no right to enforce the forfeiture after he had lost the right to enforce the restrictions. This is good sense, and it is to be hoped that the courts of other states will see the light, and will follow the sensible precedent set by the courts of California.

Clapp v. Wilder, 176 Mass. 332 (1900). Deed for Lot B from a grantor who owned both lots A and B. The deed for lot B contained this language: "And this conveyance is made upon the express condition that said (grantees), their heirs and assigns, shall never erect any building nearer the street line of said land than the store building now thereon."

The real question in this case was whether this condition could be enforced as a restriction by the owner of lot A whose title came from the original grantor of lot B. On this question there was a divided court, but it is assumed and specifically stated that the language in the deed for lot B created a condition and not a covenant.

One of the classic cases on conditions and covenants is *Post v. Weil, 115 N. Y. 361 (1889).*[19] In this case the owner of two estates, "Monte Alta" and "Claremont," sold "Monte Alta" to M. The deed contained the following language: "Provided always, and these presents are upon this express condition, that the aforesaid premises shall not, nor shall any part thereof, be at any time hereafter used or occupied as a tavern, or public house of any kind." Subsequently the "Claremont" estate was conveyed without restrictions, and in 1821 one P became the owner of both estates, and he and his heirs held the same until 1873, when the "Monte Alta" estate, which had been divided into lots was sold at auction.

The purchaser of certain of these lots refused to go through with his contract on the ground that the above recited condition in the original deed made the title unmarketable. But the court held that the provision was simply a covenant running with the land

for the benefit of the adjoining estate, and that the covenant was extinguished when the ownership of both estates was united in P.

The deed in *W. F. White Land Company v. Christenson, 14 S. W. (2d) 369.*[31] (Texas Court of Civil Appeals, 1929) contained the following language in connection with certain building restrictions: "In case the grantee, or his heirs, etc. shall ever violate any one of said conditions contained herein and made a part of the covenants of this deed, the said land and all improvements thereon shall immediately revert to and become the property of the grantor herein and its successors or assigns, and it shall be lawful for said grantor and its successors or assigns to re-enter said premises as in its first and former estate."

The deed also contained a provision that the grantor had the right to enjoin any violation of the restrictions.

The court while not denying that it is lawful to create a condition subsequent in connection with restrictions held as follows: "It is our conclusion that what purports to be conditions subsequent in the deed are merely building restrictions denoting covenants, for violation of which injunctive relief was provided in the instrument."

School Purposes

Daggett v. City of Fort Worth, 177 S. W. (Tex.) 222.[33] In this case, land was conveyed to the city for school purposes with a proviso for reverter in case it was not so used. The lower court had found that the real consideration for the conveyance was that the use of the land for school purposes would enhance the value of grantor's remaining land adjoining the school. As to this phase of the case court held: "Where property is conveyed on condition subsequent for the purpose of enhancing the value of grantor's adjoining property, without any provision as to the duration of the condition, it will not be held to continue after the particular use specified ceases to be of any benefit to the adjoining property."

Ross v. Sanderson, 162 Pac. (Okla.) 709 (1911).[35] The deed in this case imposed certain building restrictions with a proviso for forfeiture of title in case the restrictions were violated. This was a proceeding to quiet title brought by the grantor who had created the condition some four years after violation of the restrictions. Defendant was an owner who held by mesne conveyances from the original grantee. The plaintiff prevailed and the title was quieted in the original grantor against the defendant who had violated the restrictions.

The case of *Sanderson v. Dee 168 Pac. (Okla.) 1001*[36] arose out of the same situation as *Ross v. Sanderson*, above, and the court's decision is substantially the same.

Gray v. Blanchard, 8 Pick (25 Mass.) 283 (1829).[25] Deed reciting "provided, however, this conveyance is upon the condition that no windows shall be placed in the north wall of the house aforesaid, or of any house to be erected on the premises, within thirty years from the date hereof." This language was held to create a condition and not a mere covenant and a violation of the same worked a forfeiture of the estate. It will be noted that there were no specific words of forfeiture or reverter in this case.

In *Ayling v. Kramer, 133 Mass. 12* (1882)[30] the deed recited "this conveyance is also subject to the following conditions." (Here follow certain building restrictions). Court held that this language created a covenant and not a condition subsequent. It will be noted that it takes more than the use of the word "conditions" to create an estate upon condition subsequent. Calling restrictions "conditions" does not cause the estate to be subject to forfeiture.

Park Purposes

May v. City of Boston, 158 Mass. 21 (1892).[21] There was a deed to the city of certain land for park purposes with this proviso: "Provided, however, and

these presents are upon the condition that a part of the granted premises (a strip 65 feet wide adjoining the remaining land of grantors) shall forever be and remain a public way." It was held that this language created a condition a breach of which would work a forfeiture, and not a restriction enforceable in equity. Please note that there are no specific words of forfeiture or reverter.

Plumb v. Tubbs, 41 N. Y. 442 (1869).[34] Deed upon condition that the grantee would not sell or manufacture intoxicating liquor on the premises, unless the grantor should sell other land in the vicinity without restrictions as to sale of liquor. It was further provided that any violation of the restriction against manufacture or sale of liquor would work a forfeiture of the estate. It was held that this was a valid condition and that upon violation the grantor could recover in an action of ejectment, upon proof of breach, without previous entry, demand, or notice.

Underhill v. S. & W. Railroad Co., 20 Barb. (N. Y.) 454 (1865).[16] Deed to railroad company "*upon the condition however*, that the grantees in said deed should build and maintain a water tight embankment," etc. It was held that this language created a valid condition that could be enforced by grantor or his heirs, but not by a transferee of the grantor, and that the attempted assignment by grantor of his right to enforce the forfeiture destroyed the condition.

Collins Mfg. Co. v. Marcy, 25 Conn. 242 (1856).[20] This was an action of disseizin brought to recover possession of land for breach of condition. The language in the deed was, "Provided always, and this deed is upon condition, that in case ardent spirits, cordials, or wines, shall be kept or sold on any part of said premises, or in any building erected, or to be erected thereon unless it be with other drugs and medicines, and sold in similar quantities, and in cases of sickness only, then, and in that case, the deed shall become void and of no effect." The case was decided in favor of defendant, but that was only because there was not sufficient evidence to prove that the condition had been broken. The court distinctly held that the language quoted above created a valid condition.

Railway Purposes

Hamel v. Railway Co., 97 Minn. 334 (1906).[22] Deed conveyed to defendant a strip of land for railway purposes and two adjoining strips for yard and station purposes, the deed reciting "If said second and third strips shall not be used for station purposes for the period of one year at any one time, the same and said first strip shall revert to and revest in the party of the first part." Plaintiff brings an action of ejectment for breach of condition and the court permitted him to recover the land.

Wilson v. Wilson, 86 Ind. 472 (1882).[27] A father conveyed land to his son who neither paid nor agreed to pay a valuable consideration therefor. Contemporaneously with the execution of the deed and as a part thereof the son executed and delivered to his father an agreement whereby he acknowledged that he accepted the deed "on the following terms" (the word condition is nowhere used). The terms were that at his father's death he would pay to his two brothers a sufficient amount to equalize the portions of the three sons, that the father and mother were to have a certain amount of control of the property during their lives, etc. Court held, at the suit of the father (grantor) that the deed and agreement constituted a valid condition subsequent and that a breach of the condition forfeited the estate. Not many cases in the books go as far as this in construing liberally a condition subsequent in

favor of grantor. Generally deeds attempting to create an estate upon condition subsequent are construed strictly against the grantor.

Consideration of Support

Brittain v. Taylor, 168 N. C. 271 (1915).[28] This is not a restrictions case, but involved a deed from mother to son in consideration of support, the deed reading (in part) as follows: "The said deed is made on this special trust: That said (grantee) is to feed, clothe, and kindly care for the said (grantor) all of her natural life, and should the said (grantee) fail to feed, clothe, and kindly care for the said (grantor) then this deed is to be null and void." Court held that the grantor of lands upon a condition subsequent, during his life, and his heirs or privies in blood after his death, may take advantage of the breach of condition and may bring suit to declare the estate forfeited, and to recover the land.

Intoxicating Liquor

O'Brien v. Wetherell, 14 Kas. 616 (1875).[23] This is an action of ejectment brought by the original grantor of lands against a successor in title to the original grantee, alleging breach of condition subsequent. The deed expressly contained a recital that no intoxicating liquor should ever be sold on the premises, either by grantee or his heirs or assigns. The deed further provided that any violation of the liquor restrictions should work a forfeiture of title. The judgment was for plaintiff in the lower court and the supreme court affirmed the decision on the ground that the language in the deed created a valid condition subsequent.

Cowell v. Springs Co., 100 U. S. 55 (1879).[24] The head note to this case sufficiently states the conclusions of the court: (1) "A condition in a deed conveying land that intoxicating liquors shall never be manufactured, sold, or otherwise disposed of as a beverage in any place of public resort thereon, and that if this condition be broken by the grantee, his assigns or legal representatives, the deed shall become null and void, and the title to the premises revert to the grantor, is not repugnant to the estate granted, nor is it unlawful or against public policy." (2) "Upon breach of condition, the grantor has a right to treat the estate as having reverted, and, under a statute of Colorado, can maintain ejectment without a previous entry or demand." The law as to entry, demand, or notice is the same practically everywhere and bringing an action of ejectment (or whatever action for possession is applicable) is sufficient without previous re-entry, demand, or notice.

Hawley v. Kafity, 83 Pac. (Cal.) 248 (1905).[21] The deed in question contained the following provision: "This deed is given by the parties of the first part, and accepted by the second party, upon the express agreement of the second party to build, or cause to be built, upon the said premises within six months from the date hereof a dwelling house to cost not less than fifteen hundred dollars. Said agreement being considered by the parties hereto as part of the consideration for this conveyance." It was held that this language did not create an estate upon condition subsequent, but that it created a mere personal covenant.

Minard v. Railroad Co., 130 Fed (N. J.) 60 (1905).[38] This case contains a very good discussion of the subject of covenants and conditions and will repay reading in full. The deed was to a railroad company for railroad purposes and contained various stipulations as to the use of the land. Following these stipulations was the reverter clause which read (in part) as follows: "And if at any time the said party of the second part, successors or assigns, shall knowingly cause or permit the premises hereby conveyed, or any erection thereon to be used for any of the purposes hereinbefore provided against, and forbidden, or shall knowingly cause or permit any such intoxicating beverages or fluids to be sold or otherwise disposed of thereon, then and in such case the right and title hereby conveyed shall cease and determine, and the said tract of land and premises, and all right and title thereto shall revert and return to, and become vested in the said party of the first part, his heirs and assigns, in all respects the same as if this conveyance had not been made."

Court held that the matters that came *specifically* within the reverter clause would give the right to forfeiture for breach, but that as to the stipulations not specifically mentioned in the reverter clause the deed created a covenant and not a condition. Court held, that while a reverter clause is not absolutely necessary to the creation of an estate upon condition subsequent, such a clause of reverter is persuasive, and courts will hesitate to construe a seeming condition as a covenant, where there is a specific clause of reverter or forfeiture in the deed.

Enforcability in Equity

The leading English case on restrictions enforcable in equity is *Tulk v. Moxhay, 2 Phill. Ch. 774* (1848)[39] in which the court held that "A covenant between a vendor and purchaser, on the sale of land, that the purchaser and his assigns shall use or abstain from using the land in a particular way, will be enforced in equity against all subsequent purchasers with notice, independently of the question whether it be one which runs with the land so as to be binding upon subsequent purchasers at law."

Court says: "That the question does not depend upon whether the covenant runs with the land, is evident from this, that if there was a mere agreement and no covenant, this court would enforce it against a party purchasing with notice of it; for if an equity is attached to the property by the owner, no one purchasing with notice of that equity can stand in a different situation from the party from whom he purchased."

Church Purposes

Upington v. Corrigan, 151 N. Y. 143, 45 N.E. 359, 37 L.R.A. 794 (1896).[15] In this case there was a deed from a Mrs. Davey to the Archbishop of New York. The deed contained the following language: "To have and to hold x x x unto the said party of the second part, his heirs and assigns, x x x upon the following conditions to-wit: That said party of the second part shall consecrate, or cause to be consecrated, the said property, for the purpose of erecting a church building, and shall, within a reasonable time, erect, or cause to be erected, said building."

The church was never built and Mrs. Davey, the grantor in the deed to the Archbishop, died leaving two heirs at law and leaving a will disposing of the residue of her estate to some one other than her heirs at law. The present case was brought by the heirs at law to recover the property because of breach of the condition.

This brought up the question as to what the nature of a right of entry for condition broken, and a possibility of reverter is, whether such an interest is descendible and devisable under a New York statute which reads "every estate and interest in real property descendible to heirs is devisable".

Other provisions of the New York statutes (Real Property Law Sections 35 to 40) are as follows:

35. *Estates in possession and expectancy.* Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy. An estate which entitles the owner to immediate possession of the property, is an estate in possession. An estate, in which the right of possession is postponed to a future time, is an estate in expectancy.

36. *Enumeration of estates in expectancy.* All expectant estates, except such as are enumerated and defined in this article, have been abolished. Estates in expectancy are divided into

1. Future estates; and
2. Reversions.

37. *Definition of future estates.* A future estate is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time.

38. *Definition of remainder.* Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

39. *Definition of reversion.* A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of one or more particular estates granted or devised.

40. *When future estates are vested; when contingent.* A future estate is either vested or contingent. It is

vested, when there is a person in being, who would have an immediate right to the possession of the property, on the determination of all the intermediate or precedent estates. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain.

Now the provision of the New York statutes that any descendible estate is also devisable put the New York Court of Appeals in a quandary. Common sense would seem to indicate that this statute, together with the other statues quoted above, were intended to make all sorts of future interests alienable, descendible, and devisable.

But courts are very agile, sometimes even gymnastic. In order to decide that this estate was not devisable they had to rule that it was not descendible, and in order to decide that it was not descendible the court had to go back into the common law and dig up some musty precedents that never did make sense.

We quote the meat of the court's decision:

"The appellant, feeling bound to concede that the right of re-entry was not devisable at common law, claims that the Revised Statutes have altered the law by the provision that "every estate and interest in real property descendible to heirs may be devised." 2 Rev. St. p. 57, 2 (Decedent Estate Law Consol. Laws, c. 13) 11). Undoubtedly, this language of the statute of wills is as comprehensive as it can be to cover real estate interests; but we are remitted, nevertheless, to the inquiry whether, here, what the grantor had, with reference to the estate she had granted, amounted in law to an estate or interest in the real property, and therein lies the difficulty. At common law it was only a possibility of reverter, and not a reversion. 4 Kent, Comm. 370; Martin v. Strachan, 5 Term R. 107, note. Until the happening of the breach of the express condition in the deed and a revesting of the estate through re-entry, the whole title was in the grantee. Have the Revised Statutes changed the grantor's status? In volume 4 (8th Ed.) c. 1, pt. 2, of the Revised Statutes, upon the nature, qualities, and alienation of estates in real property, article 1 of title 2 creates various estates in lands, and divides them into those in possession and expectancy. The latter class is again divided—First, into future estates limited to commence in possession at a future day, either without the intervention of a precendent estate, or on the determination of a precedent estate; and second, into reversions, which latter are defined to exist where the residue of an estate is left in the grantor, or his heirs, commencing in possession on the termination of a particular estate granted. By section 35 of the same article, it is also provided that "expectant estates are descendible, devisable and alienable in the same manner as estates in possession." If, therefore, there was any estate left in Mrs. Davey, upon her grant to Hughes, it was not one known to our statute on real property; and all expectant estates, within which class it would have to fall, are abolished by the article, except such as are therein defined, and which must be either estates limited to commence in possession at a future day, or reversions.

The real interest contended for here would not satisfy the requirement of either class. The mere possibility of reverter, which was all there was in this case, could not be included within the "reversions" spoken of by the statute, within its letter or spirit. The statute of wills, through the use of such precise words as "every state and interest in real property descendible to heirs," obviously, must have reference to such as are recognized by the Revised Statutes to be estates of inheritance. We would be without warrant in asserting the existence of any estate in Mrs. Davey in the premises granted to Hughes, whether at common law or under the Revised Statutes. She had

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an election to enter for condition broken, and she could release her right to do so. To those rights her heirs, after her decease, succeeded, by force of representation, and not by descent. There was no estate upon which the statute of descents could operate; but, as heirs, there devolved upon them the bundle or aggregate of the rights which resided in and survived the death of the grantor, their ancestor. Her legal personality was continued in them."

In other words, in cases of this sort, the heir succeeds not *as heir, but because he is the heir.* He takes not by descent, but by representation. This whole business is just too metaphysical for me.

Descendibility

This is what "Simes on Future Interests" (Section 724) has to say about the descendibility and devisability of rights of entry for condition broken and possibilities of reverter:

"Logically it would seem that, if the old rule as to the descent of future interests has been abrogated in the United States with respect to other varieties of future interests, it is also abrogated as to possibilities of reverter and rights of entry for breach of condition. Such is the view taken by some courts. In South Carolina, however, a line of early decisions took the position that, though the statutes had changed the law as to the descent of other future interests, these statutes did not apply to possibilities of reverter, for the reason that possibilties of reverter are not "estates," and the statutes of descent are, by their terms, applicable to estates only. This view is still the law in that state. In Upington v. Corrigan, the New York Court of Appeals took the position that a right of entry for breach of condition does not descend at all until the condition is broken, but that in the meantime it passes to the heir of the original owner "by representation". A few other cases have expressed approval of this view. It of course follows from the New York doctrine that, if the interest is not descendible at all, neither is it devisable; and, in fact, it was so decided. However, the New York court subsequently held that the right of entry was releasable before breach by the heir of the original owner. It is to be noted that the New York court expressed the view that rights of entry for breach of condition were not within the statute in force in that state to the effect that "expectant estates are descendible, devisable and alienable in the same manner as estates in possession." It is difficult to see why such an interest is not inheritable if, as is nearly everywhere conceded, executory interests and contingent remainders pass by inheritance in the same manner as present estates. That a possibility of reverter is an "estate" within the meaning of a statute which provides the manner in which estates shall descend was determined by the Illinois court in North v. Graham."

And in Section 732 he says:

"It would seem that the interests in land known as possibilities of reverter and rights of entry for breach of condition should be devisable. That they are interests in land does not admit of doubt; and, except for the anomalous doctrine of Upington v. Corrigan announced by the New York Court, they are descendible. Moreover, it is difficult to see why they should not be devisable if, as is everywhere recognized, executory interests will pass by will. In a number of jurisdictions statutes expressly provide that rights of entry for breach of condition and possibilities of reverter are devisable. In others they have been held to be devisable without the aid of such a statute. In any jurisdictions where all future interests are made devisable, it would seem clear that possibilities of reverter

and rights of entry for breach of condition should be included. Indeed, it is arguable that the same should follow if "estates" are made devisable, but it has been determined otherwise by some courts. Unless the peculiar New York view is followed to the effect that a right of entry for breach of condition is not descendible at all, it would seem that a statute which made all descendible interests also devisable would include these interests. In two jurisdictions, North and South Dakota, statutes provide that a right of entry for breach of a condition subsequent is not transferable except to the owner of the land. Whether "transferable" refers to an *inter vivos* transfer only, or also includes transfer by will, has not been decided."

It seems to me that the New York decisions are based on an old-fashioned and too narrow definition of just what an estate is. The American Law Institute definition of an estate (Section 9) is as follows:

"The word 'estate', as it is used in this Restatement, means an interest in land which

(a) Is or may become possessory; and

(b) Is ownership measured in terms of duration."

Now this definition is certainly broad enough to include rights of entry and possibilities of reverter. In fact in Comment (b) the restaters specifically say that these two interests are estates.

It might be said that the American Law Institute has coined a new word "power of termination" to take the place of "right of entry for condition broken".

Rice v. Boston and Worcester Railroad Corporation, 12 Allen (94 Mass.) 141 (1866).[17] Plaintiff's father in 1834 made a deed for a strip of land to defendant "upon the express condition that the corporation should forever maintain and keep in good repair a passway over the same, and also certain fences". The plaintiff's father subsequently (in 1842) conveyed to plaintiff a parcel of land, the description in which included the parcel that he had already conveyed to the railroad company. The plaintiff offered evidence of the breach of condition after his father's death and sued to recover the land.

The court followed the strict old common law and held, *First*, that the possibility or right of entry is not alienable, and *Second*, that the attempted alienation destroys the condition. In other words, the grantee gets nothing, the condition is gone, and the original grantee holds the estate free from the condition.

The court says:

"The only doubt which has existed in our minds on this point arises from the fact that the son and heir of the original grantor of the premises is the demandant in this action. But on consideration we are satisfied, not only that the son took nothing by the deed, but also that the possibility of reverter was extinguished so that the original grantor had no right of entry for breach after his deed to his son, and the latter can make no valid claim to the demanded premises either as grantee or as heir for a breach of the condition attached to the original grant. A condition in a grant of land can be reserved only to the grantor and his heirs. But the latter can take only by virtue of the privity which exists between ancestor and heir. This privity is essential to the right of the heir to enter. But if the original grantor aliens the right or possibility in his lifetime before breach, the privity between him and his heirs as to the possibility of reverter is broken. No one can claim as heir until the decease of the grantor, because "nemo est haeres viventis"; and upon his death his heir has no right of entry, because he cannot inherit that which his ancestor had aliened in his lifetime. The right of entry is gone forever."

There can be successive reverters in the same chain of title and a release by the first grantor of his rights does not affect the right of a subsequent grantor in same chain of title to enforce his right of reverter.

[1] *Hillier v. Parkinson, 9 L. J. (O. S.) Ch. 156* (English case).

[2] *Parry v. Berkeley Hall School Foundation, 74 Pac. (2d) 758* (Calif.)

[3] *Essex Lunch, Inc. v. Boston Lunch Co., 220 Mass. 557, 118 N. E. 899* (1918).

[4] *Weinberg v. Sanders, 204 App. Div. (N. Y.) 409* (1923).

[5] There is one case holding that a release by the first grantor is a bar to the right of a subsequent grantor in the same chain of title to enforce the condition. This case is *McArdle v. Hurley, 103 Misc. (N. Y.) 540* (1918), which is clearly overruled (without mention) in *Weinberg v. Sanders, 204 App. Div. (N. Y.) 409* (1923), cited above.

Where the condition *as a condition* has been released adjoining property, owner can not enforce the reversionary restriction *as a restriction.*

[6] *Posttey v. Kafka, 213 App. Div. (N. Y.) 595* (1925).

Reversionary restrictions will not be enforced, if the neighborhood has so changed as to make enforcement inequitable.

[7] *Hess v. Country Club Park, 2 Pac. (2d) 789* (Calif. 1931).

[8] *Letteau v. Ellis, 10 Pac. (2d) 496* (Calif. 1932).

[9] *Koehler v. Rowland, 275 Mo. 573, 205 S. W. 217, 9 A. L. R. 107 (Dictum only).*

[10] *Forman v. Hancock, 3 Cal. App. (2d) 291, 39 Pac. (2d) 249* (1934).

It is held in a California case that the grantor will not be permitted to enforce a reversionary restriction after he has sold all the lots upon which the reversionary restriction was imposed.

[11] *Young v. Cramer, 100 Cal. App. 961, 100 Pac. (2d) 523* (1940).

The rule against perpetuities does not apply to a right of entry for condition broken.

[12] *Strong v. Shatto, 45 Cal. App. 29, 187 Pac. 159* (1920).

A right of entry for condition broken is alienable by California statutes.

[13] *Johnston v. City of Los Angeles, 176 Cal. 120, 168 Pac. 1047* (1917).

[14] *Los Angeles v. Arizona Land Co., 200 Pac. 1051, 187 Cal. 120* (1921).

[15] *Thornton v. Middletown Educational Corporation, 21 Cal. App. (2d) 707, 70 Pac. (2d) 234* (1937).

Aside from statutes the right of entry for condition broken is not alienable, or devisable.

[16] *Underhill v. S. & W. Railroad Co., 20 Barb. (N. Y.) 454* (1865).

[17] *Rice v. Boston & Worcester Railroad Corporation, 12 Allen (94 Mass.) 141* (1866).

It was held, in the two cases last cited, that the attempted alienation of a right of entry for condition broken destroys the condition and the original grantee thereafter holds free of the condition.

The Court of Appeals of New York has held that, notwithstanding certain New York statutes, a right of entry for condition broken and a possibility of reverter is *neither alienable, descendible, nor devisable.*

[18] *Upington v. Corrigan, 151 N. Y. 143, 37 L. R. A. 7940* (1896). This case is very thoroughly *cussed and discussed* in the following pages.

The following cases have held seeming words of condition to be covenants and not conditions.

[19] *Post v. Weil, 115 N. Y. 361* (1889).

[20] *Ayling v. Kramer, 133 Mass. 12* (1882).

[21] *Hawley v. Kafity, 83 Pac. (Cal.) 248* (1905).

In the following cases the deeds were construed to create condition and not covenant.

[22] *Hamel v. Railway Co., 97 Minn. 334* (1906).

[23] *O'Brien v. Wetherell, 14 Kans. 616* (1875).

[24] *Cowell v. Springs Co.*, 100 U. S. 55 (1879).

There may be a valid estate upon condition subsequent without specific words of reverter or forfeiture.

[25] *Gray v. Blanchard, 8 Pick. (25 Mass.) 283* (1829).

[26] *May v. City of Boston, 158 Mass. 21* (1892).

[27] *Wilson v. Wilson, 86 Ind. 472* (1882).

[28] *Brittain v. Taylor, 168 N. C. 271* (1915).

[29] *Collins Mfg. Co. v. Marcy, 25 Conn. 242* (1856).

Courts will, if possible, construe seeming words of condition as creating a covenant, rather than a condition.

[30] *Firth v. Los Angeles Pacific Land Co., 152 Pac. 935, 28 Cal. App. 599* (1915).

In case of violation of condition subsequent title does not revert automatically, but some action must be brought.

[30] *Firth v. Los Angeles Pacific Land Co., 152 Pac. 935, 28 Cal. App. 599* (1915).

If there are restrictions enforceable by forfeiture and by some other methods, such as injunction, court will relegate grantor to the alternative method of enforcement and will not decree forfeiture.

[31] *W. F. White Land Co. v. Christenson, 14 S. W. (2d) 369* (Texas, 1929).

A condition subsequent to enforce restrictions is in no sense a restraint on alienation.

[32] *Firth v. Marovich, 160 Cal. 257, 116 Pac. 729* (1911).

Where property is conveyed on condition subsequent for the purpose of enhancing the value of grantor's adjoining property, the condition will not continue enforceable after the specified use ceases to be of benefit to the adjoining property.

[33] *Daggett v. City of Ft. Worth, 177 S. W. (Texas) 222.*

No entry, or re-entry, is necessary but the question as to the enforceability of the right of reverter may be tried out either by ejectment, or an action to quiet title. And the action to quiet title may be brought either by the one claiming the right of forfeiture, or by an owner who claims that there is no right of reverter or forfeiture.

[30] *Firth v. Los Angeles Pacific Land Co., 152 Pac. 935, 28. Cal. App. 399* (1915).

[34] *Plumb v Tubbs, 41 N. Y. 442* (1869).

[35] *Ross v. Sanderson, 162 Pac. (Okla.) 709* (1911).

[36] *Sanderson v. Dee, 168 Pac. (Okla.) 1001.*

[37] *Wedum-Aldahl Co. v. Miller, 18 Cal. App. (2d) 745, 64 Pac. (2d) 762* (1937).

While a reverter clause is not absolutely necessary to the creation of an estate upon condition subsequent, such a clause is persuasive, and courts will hesitate to construe a seeming condition as a covenant, where there is a specific clause of reverter or forfeiture in the deed.

[38] *Minard v. Railroad Co., 130 Fed. (N. J.) 60* (1905).

[39] The law as to restrictions enforceable in equity, restrictive provisions containing no right of entry, reverter, or forfeiture goes back to the English case of *Tulk v. Moxhay, 2 Phill. Ch. 774* (1848).

The cases herein involving reversionary liquor restrictions are the following:

[34] *Plumb v. Tubbs, 41 N. Y. 442* (1869).

[29] *Collins Mfg. Co. v. Marcy, 25 Conn. 242* (1856).

[23] *O'Brien v. Wetherell, 14 Kans. 616* (1875).

[24] *Cowell v. Springs Co., 100 U. S. 55* (1879).

SESSION LAWS OF MINNESOTA FOR 1937, PAGE 851

CHAPTER 487—S. F. No. 279

An act to amend Mason's Minnesota Statutes of 1927, Sections 8075 and 8065; and to define the status of conditions, rights to re-enter for condition broken, and possibilities of reverter, attached to or created by a grant or conveyance of land; and limiting the life of covenants, conditions, and restrictions, so attached or created, and the time within which rights to re-enter or to repossess land for breaches of conditions subsequent may be asserted.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Law amended. That Mason's Minnesota Statutes of 1927, Section 8075, be amended to read as follows:

"8075. Nominal conditions disregarded. (a) Whenever any conditions annexed to a grant, devise or conveyance of land are, or shall become, merely nominal, and of no actual and substantial benefit to the party or parties to whom or in whose favor they are to be performed, they may be wholly disregarded; and a failure to perform the same shall in no case operate as a basis of foreiture of the lands subject thereto.

"(b) All covenants, conditions, or restrictions hereafter created by any other means, by which the title or use of real property is affected, shall cease to be valid and operative thirty years after the date of the deed, or other instrument, or the date of the probate of the will, creating them; and after such period of time they may be wholly disregarded.

"(c) Hereafter any right to re-enter or to repossess land on account of breach made in a condition subsequent shall be barred unless such right is asserted by entry or action within six years after the happening of the breach upon which such right is predicated."

Section 2. Law amended. That Mason's Minnesota Statutes of 1927, Section 8065, be amended to read as follows:

"8065. Qualities of expectant estates. Expectant estates are descendible, devisable and alienable in the same manner as estates in possession; and hereafter contingent rights of re-entry for breach of conditions subsequent, and rights to possession for breach of conditions subsequent after breach but before entry made, and possibilities of reverter, shall be descendible, devisable and alienable in the same manner as estates in possession."

Section 3. Application of act. The provisions of this act shall not apply to so called ground leases providing for the construction by the lessee of buildings or other structures upon the lands of the lessor.

Approved April 26, 1937.

GENERAL LAWS OF MASSACHUSETTS, 1921, CHAPTER 185

Section 23. Conditions or restrictions, unlimited as to time, by which the title or use of real property is affected, shall be limited to the term of thirty years after the date of the deed or other instrument or the date of the probate of the will creating them, except in cases of gifts or devises for public, charitable or religious purposes. This section shall not apply to conditions or restrictions existing on July sixteenth, eighteen hundred and eighty-seven, or to those contained in a deed, gift or grant of the commonwealth.

Some Local Problems

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If it is true, and I believe it is, that real estate is the basic industry of the nation, it is equally true that notwithstanding the vicissitudes of the past several years, the title industry is on a firm foundation.

No Boom

Far be it from me to suggest that our problems have been solved and that we have entered, or are about to enter, the boom days of a decade and a half ago. We still must expect periodical but, we hope, ineffective drives from the Torrens advocates. We still have the visitation of the tax gatherer but the increasing tax burden on real estate is an old problem and I am inclined to think that we will have to grin and bear this so-called injustice because government cannot well be administered without taxation. Then, of course, at this moment, we have the frightful condition of the war abroad. This, and other unsettling factors, causes real estate operators to pause in their activities and money lenders to withhold their funds.

There seems to be a great deal of confusion among real estate experts about the present condition of the real estate market, particularly the effect of the war on that market. It is interesting to note the opinion of that school of thought which believes that the war is generally beneficial to real estate in the United States because people of today have long memories and have not forgotten the decline in the value of the dollar during the past World War, and turn to the purchase of real estate as a hedge.

Complex City Problems

In the New York metropolitan area, where we have one section of closely built office buildings and apartments and in another section, suburban homes, we naturally have complex problems. In the suburban area, the market has been active for some months, with considerable improvement in our business, particularly on account of home building.

This home building program has been greatly stimulated by the Federal Housing Administration. I refer to the F. H. A. with considerable pride for the reason that I had a part in organizing it and helped carry on the work for some four years. I resigned as the Senior Deputy Administrator about two years ago to return to New York as President of the Lawyers Title Corporation.

Let me digress a moment and say a word about Washington.

If you want to have a grand time, take a year or two off from your present work and go to Washington and get a job in one of the active Federal agencies or departments. You will do a tremendous amount of work; have a tremendous amount of fun and be paid very little. Probably you will return to your own job with the realization that, "It is often times easier to criticize than it is to do better."

Washington is full of a lot of interesting things besides public buildings. The "crack-pots" from all over the United States come there to present their ideas to the Senators and Congressmen and to the various departmental and agency managers. I had my share of listening to these indi-

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viduals. I remember one plan called for the tearing down of all buildings now standing in the United States and the construction of a new highway from New York to San Francisco. All the buildings and residences which the people of the United States would occupy were to be built on both sides of this super-highway. This was proposed as a sure cure for unemployment.

Also, of course, there were the swarm of advocates of the old age pension, old-age relief, $30.00 every Thursday and the Townsend Plan. One began to think that the outstanding attribute of the American public is an enormous appetite which they expect to satisfy at the Federal trough.

Manhattan is a real problem. A large proportion of the workers in Manhattan reside in suburbs and if the tendency of migration continues, one wonders what the ultimate fate of Manhattan will be as a residential community.

In Manhattan, we have the problem of the old-law tenement. Many of these old buildings are greatly encumbered with Municipal Department violations and are wholly out of the market, either for sale or rent. Savings banks of this city, cooperating with the Mayor, have agreed to make what is known as "compliance loans" covering the repairs and alterations necessary to remove the violations. The title companies also have agreed to cooperate and at the Mayor's request, have reduced the title rates covering insurance on loans of this character.

Blighted Areas

We know that the removal of dilapidated dwellings from blighted areas and the construction of modern housing accommodations benefit not only the affected area, but, like the pebble dropped into a pool of water, spreads in ripples so that real estate on the extreme boundaries of the locality is benefited.

I recall that soon after the Red Hook Housing Project was started, we received an application for fee insurance of a whole block immediately adjoining the development. In this block, there was a motley collection of frame buildings and vacant and unused lots. Today, modern stores have been constructed on the site, which means that builders have benefited, brokers have profited, and, incidentally, title insurance developed.

Rate Regulation by the State

I should like to turn now to what I feel is one of our most perplexing problems. I refer to the regulation and fixation of our rates by state authority. It may not be universally known by our out-of-state members that on and after January 1, 1944, the Superintendent of Insurance will regulate title insurance rates in this State. Under the New York Insurance Law, the Superintendent of Insurance will have the same powers as to basic rates, classification of risks, rules and discriminations which he now has with reference to other insurers. Naturally, to arrive at just and equitable rates, requires a tremendous amount of study and investigation on the part of the Insurance Department. For that reason, the operation of the law is deferred for a period of years to enable the Department to complete its study. For the purpose of this study, the title companies of this State are now required to file with the Insurance Department their basic schedules of rates and classifications of risks, their rating plans and other necessary data. Even now they may not deviate from such rates without previously having filed them as provided by the new Insurance Law.

During this period of study by the

Insurance Department, the Superintendent has appointed our State Title Association as the designated statistical agency for furnishing information to the Department under the new Insurance Law. In this way, our State Title Association hopes to be helpful to the Department in this enormous task of regulating title rates.

New York Board of Title Underwriters

Here in New York City, we have a title organization known as the New York Board of Title Underwriters. This organization is composed of five of the title companies in the metropolitan area. It has a standard form of title policy and this form of policy is generally used in the metropolitan area by members as well as non-members. The New York Board of Title Underwriters has been granted a license as a rating organization under the new Insurance Law referred to, and this smaller organization also hopes to be helpful to the Insurance Department in the interim study of rates that is being made.

The Executive Secretary Went to the Fair

It would seem that placing the regulation of title insurance rates with the Insurance Department should be beneficial to the title insurers in the State of New York. On the other hand, the abstract companies are not included in the rate regulation plan for the simple reason that the Insurance Department in this State has no jurisdiction over the abstract companies, but possibly, a regulation of rates among the abstract companies should be considered, particularly now that rate regulation is under way for the title insurance companies.

Licensing and Bonding Abstracters

Any attempt to solve the problem of rate fixing without a consideration of the regulating, licensing or bonding of abstracters would, in my opinion, be only a partial solution of the problem. It would be comparable to the fixing of charges for public liability insurance while "tax payers' associations" or other mutual companies would be permitted to solicit business from the general public without any restraint imposed by the supervisory officer in connection with the rates quoted.

There are many other aspects of the problem which come to mind. We know that throughout our own State, there are practices peculiar to a given locality. In some places, the "hand me down" abstract is the fashion. Our purchaser receives the abstract from his predecessor in title and a charge is made by the abstracter or insurer for bringing the title to date. To this continuation charge is added the charge for insurance. If one were to compare charges for insurance in other parts of the State without considering the cost of the continuation and abstract, he might get the impression that a great disparity exists.

A full consideration of this problem will require a study of the practices and charges throughout the State. Costs of production in the various localities must differ. Salary levels and the price of butter will undoubtedly affect the charges made by abstract companies and title companies throughout our State.

Exceptional Risks

In regulating rates, an important distinction must be made between title insurance transactions and what we, here in New York, have been calling "special service" applications which generally involve the searching, examination and certification of necessary parties for the release of a restrictive covenant, and the like. I do not think that any attempt should be made to fix charges for tasks we undertake other than the examination of titles and the issuance of policies. The standardization of charges should relate only to the cost per thousand for insurance.

I realize that New York has not been the guinea pig with regard to the experiment of fixing charges for title insurance and searches and therefore, we, in New York, will be grateful for suggestions from our friends in Texas, Washington and California who, we understand, have had either a partial or a complete major operation in this respect.

Practicing Law

I take it that some of our title colleagues of other states have been faced with the problem of whether or not they are practicing law under the statutes in their States. We have had that problem in this State from time to time. Our Penal Law on this subject provides: "No voluntary association or corporation shall ask or receive, directly or indirectly, compensation for preparing deeds, mortgages, assignments, discharges, leases," etc., etc., but further provides: "This section shall **not** apply to a corporation or voluntary association lawfully engaged in the examination and insuring of titles to real property, etc., insofar as such instruments are necessary to the examination and insuring of titles, and necessary or incidental to loans made by any such corporation or association." It becomes necessary at times for our title companies here to prepare such instruments. It is done mostly as an accommodation because the income derived therefrom is small. The question that arises in each case is as to which instruments "are necessary to the examination and insuring of titles." In the City of New York, ninety-five per cent of our company's customers are members of the Bar. The percentage in suburban counties is not so high.

CLAUDE B. WHITE

Golden, Colo.

Member, Executive Committee, Abstracters' Section

As we view the problem, the title company is an adjunct to the practicing attorney and counsel for lending institution. We are performing a task which traditionally was performed by their predecessors. If we cooperate and render service to attorneys, there will never be any problem. When we, by our conduct, exclude an attorney from the performance of his proper functions, we are not only bad business men but we run the risk of violating the law.

It seems to me that there should be a closer relationship between the various Bar Associations and the title companies with reference to this matter. We should consider the advisability of having the title companies appoint committees to confer with committees from the Bar Associations and have a complete and definite understanding of the whole subject.

No Easy Road

And last, and most important, let me say that the ability to issue title insurance does not mean that we will secure any large volume of business. Like anything else, if you want it, you have got to go after it.

Building Prestige for the Title Insurance Industry

HENRY J. DAVENPORT

President, Home Title Guaranty Company, Brooklyn
Chairman, New York Board of Title Underwriters

The title insurance business will prosper and grow only when the full confidence and faith of the public in our industry and in the individual companies comprising our industry have been fully restored. Although some progress in this direction has been made since the shock to the industry during the early depression years, it is foolish on our part to believe we shall ever completely fill the valuable and essential public need which it is our duty to fulfill and which we are capable of fulfilling, unless we overcome the laissez faire attitude and the general inertia which now exists within our industry respecting our public relations. Although the problems which confront us may vary in different states throughout the country, many are mutual problems, and it is my purpose to outline the efforts which we are making to increase the prestige of the title insurance business in New York State through our State Title Association, discuss some of our weaknesses about which we are doing little and suggest a program for reconstructing our industry in order to make it worthy of the support it must have from the public to justify its existence. It is hoped that in this way we may together develop some suggestions helpful to us all upon this vital subject of public relations.

Ancient History

How the title insurance industry suffered a loss in prestige through the collapse of the guaranteed mortgage business and other co-related businesses, along with which it operated in the pre-depression era, is an old story I shall not take the time to review. I believe that what our Superintendent of Insurance in New York has frequently stated publicly, is probably also true of the title business in other states, namely, that none of the failures of title companies in this State were due to the methods of operation or management of the title end of the business. Nevertheless, because of various factors which entered into the picture upon the failure of many of the companies six or seven years ago, it has been a difficult task to bring back to the industry the prestige it deserves and must have to survive and prosper.

We in New York State have been fortunate during most of this period in having the Honorable Louis H. Pink as Superintendent of Insurance. He has been sympathetic, understanding, and cooperative, in the problems that confront us and in our efforts to overcome them. In addressing our State Convention last May he hit the nail squarely on the head with respect to my topic of this morning when he said: "We must make the public believe that there is a necessity for the title business, that we are progressing, and that we are dealing fairly with the public not only in the matter of rates but in all public relations."

Public Relations a Science

At last year's State Convention we had as one of our principal speakers Mr. Edward L. Bernays, an eminent

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Brooklyn, N. Y.
President—Home Title Guaranty Co., Brooklyn, N. Y.
Chairman—New York Board of Title Underwriters

public relations expert of this City. Mr. Bernays gave a very instructive and inspiring talk on the value of a public relations program to our industry, basing his remarks on the theory that American business today, if it is to succeed, must first recognize what its public resonsibilities are, and then it must live up to them. Although the scientific and complete method of ascertaining these responsibilities is to have a comprehensive economic study made of the industry as well as an exhaustive survey of public opinion respecting the industry, it is premature to enter upon such a phase of a public relations program when we are already cognizant of important factors adversely affecting our prestige which we continue to tolerate.

We Cannot Relax

It is not sufficient that we from time to time successfully defend ourselves from annihilation by Torrens registration and then sit back and expect our business to carry on successfully in the same clothes it wore a decade or more ago. After the railroad industry had lost business from competition by airways and bus transportation, it finally woke up to the fact that it could only survive by thoroughly streamlining and overhauling its services and rate structure. The industries which today are prospering and growing most rapidly are those which are constantly on the lookout for changing public needs and supplying products and services to meet those needs at less cost to the consumer and at the same time with better working conditions for employees and reasonable earnings to stockholders.

It is this attitude respecting our services to the public which our industry must take if it too is to prosper and grow. Although there is much work to be done by our Association in New York State, it is most encouragaing that we have made a start in the right direction. One of the most important steps which we took was the election of an active president and a full time executive secretary in 1937. During the past three years under the leadership of President William L. Marcy, Jr. of Buffalo, real progress has been made. Without reviewing in detail the work of our Association during this period, I wish to mention the following high-spots of President Marcy's administration:

As to membership—whereas in 1937 the membership of our State Association comprised only twelve title insurance companies, seven abstract companies, and one hundred and thirty individuals, our present membership now includes all seventeen title insurance companies operating under the Superintendent of Insurance in New York State, as well as fourteen abstract companies and one hundred sixty-nine individual abstracters and attorneys, showing a substantial increase in total membership, membership income and sustaining contributions.

Legislative Program

As to the Association's legislative program — through the cooperative effort of some of our member companies active on the Law Committee of our State Association, close watch has been kept over some thousand bills presented to the Legislature each year,

E. B. SOUTHWORTH
Minneapolis, Minnesota
Treasurer, American Title Association

encouraging those which are favorable to the efficient functioning of the real estate and mortgage business and discouraging those which would adversely affect our recording system. In 1938 the biggest achievement along legislative lines was the cooperation given by our Association to the Superintendent of Insurance in promulgating the new laws affecting companies issuing title insurance in New York State, which law; although not as yet perfect, have done much to put the underwriting of title insurance on a sounder footing. In 1939 the work of the Association through cooperation with various bar associations, real estate boards and other organizations, in informing our legislators and members of the State Constitutional Convention as to the merits of the recording system over Torrens Registration, was most outstanding and successfully effective in bringing an end, at least temporarily, to the efforts of Torrens advocates to put into discard our whole American system of recording titles. During the 1940 session of the Legislature our Law Committee performed the constructive task of sponsoring necessary amendments to the new law on acknowledgments adopted in 1939, which amendments were essential to the efficient operation of that law.

We Tell the Public

As to publicity and public relations —in spite of limited funds and man power, considerable strides have been made toward improving our relations with the public. These efforts have included over thirty scheduled addresses by our executive secretary on the subject of the value of title insurance, which have been given by him before as many business clubs, real estate groups and other organizations. All these talks are followed by brief question and answer periods which give the public a chance to air their grievances, if any, and to get a better understanding of the purposes and services of our industry. Accounts of these addresses appear in local newspapers, and special articles written by our executive secretary on various title subjects have been published in real estate board magazines and the real estate sections of local papers. Too much emphasis cannot be made on the value of a full time executive secretary for a local title association and it is impossible to appraise the value of the opportunities that arise for him to represent the association and exchange ideas through contacts he is able to develop with the executive heads of the many organizations interested in real estate, and with real estate editors and other outlets for publicity.

We Tell Facts

A year ago at a time when compulsory Torrens legislation was under serious consideration in New York State, our secretary entirely by chance made the acquaintance of one of the executive heads of the savings and loan associations, which were planning a Convention at Lake Placid. In the course of conversation, our secretary learned that the proposal of a resolution in favor of Torrens Registration was being considered for adoption at the Convention. At his suggestion, the Convention Committee agreed to include on their program a speaker to plead the cause of title insurance and the recording system, as opposed to Torrens Registration. Mr. George L. Allin, one of the outstanding real estate attorneys of this City, and President of the New York Real Estate Board, agreed to deliver such an address at the Convention on the same platform with one of the most ardent Torrens advocates. The result was that the resolution supporting Torrens Registration was **not** adopted by the Convention. This is just one incident illustrating what can be accomplished by a local association organized under a full time executive secretary. Any title association must be ever awake to what is being done by other organized groups interested in real estate conveyancing.

We Approve Self-Regulation

As to self-regulation of the industry, the insurance industry and particularly the title insurance industry in New York State has been constantly encouraged by our Superintendent of Insurance to impose self-regulation. Of the thirteen companies operating in the New York metropolitan area, for some twenty years, five of them, as members

of the New York Board of Title Underwriters, have imposed upon themselves regulations respecting rates, services and forms. Under our new Insurance Law involving a general regulation and control of the entire industry, it is obvious that such regulations should be made effective by the State Association of which all the companies, now operating under the Insurance Department, are members. This is going to be a large task about which I shall have more to say, but here I wish to mention that at least a start has been made in this direction by the recent designation by the Insurance Department, of the State Association as the agency for collecting statistical data on the industry in New York State. A Committee of executives and comptrollers of all the companies is already working on forms for the development of statistical data to be required from the individual companies. These statistics will be used by our Association in cooperation with the Insurance Department as a basis for setting up standards and regulations for our member companies as to rates and services.

This program, as I have briefly outlined it, is our start in New York toward rebuilding prestige for the title insurance industry. Our program and similar programs of local associations throughout the nation must be developed and expanded along with the work of the American Title Association if we are to prosper as an industry. There are many problems, affecting our business in New York, yet to be considered and acted upon. I find that most of these problems are common to the industry in other states and I should like to discuss a few of them.

Self-Improvement

Although every important survey which has been made of the Torrens system as compared with the recording system, has so far conclusively shown that the recording system is preferable and must remain, and that it would not be to the public interest for it to be replaced by the Torrens system, these same surveys have pointed out that changes must be made in our recording system and the business of title insurance, if the best interests of the public are to be served.

Powell Recommends

In Professor Richard R. Powell's report on the Registration of Title to Land in the State of New York, made last year for the New York Law Society under a Grant from the Carnegie Corporation, and with which I believe most of you are familiar, Professor Powell, after concluding that it would be to the public interest to enact legislation putting an end to further registrations of title in the State of New York, recommended that:

1. Substantial study and extensive remodelling of the statutes of the State of New York on recordation are seriously needed and the importance of this task might well justify the early undertaking of this work by the Law Revision Commission of the State.

2. The proposed new revision of the Insurance Law of the State of New York should be expanded so as to bring within the supervision of the State Insurance Department:

(a) Rates charged for original and re-issued title insurance policies; and

(b) The form and extent of exceptions which may be written into such policies.

These recommendations are a reiteration of Superintendent Pink's message

H. LAURIE SMITH
Richmond, Va.
Member, Board of Governors, American Title Association

to our State Convention in 1938 when he counselled us to "permit and encourage the enactment of laws which will simplify the real estate laws of this State. Study and apply as soon as possible a sound rate schedule. Be progressive—and—keep the confidence of the buying public."

The Responsibility Is Ours

There is no doubt about the fact that these responsibilities which are due the purchasers of title insurance, are definitely the responsibilities of our own industry. Our Superintendent of Insurance acknowledges that these responsibilities are ours, and that we, with many of our members experienced in the business for over half a century, are the best equipped to work out these problems in a way that will most adequately fulfill our responsibilities to the public. If we do not act now, it is only reasonable and logical that our Government through the State Insurance Departments, will be forced to take over these responsibilities. If we show our own inability to perform this task, how can we then expect any Government agency, less familiar with these problems than ourselves, to work out a satisfactory solution? We must act now!

Some Present Problems

It is apparent that the principal problems confronting us are all tied in with the need for a revision of our rate schedule and services, for improvement in methods of production, and for the sponsoring of legislation to simplify the present complex system of recording titles to real property. A constructive effort along these three frontiers is essential to reach the objectives of furnishing adequate title evidence to the public with greater security and at lower cost, of bettering the employment conditions of those engaged in the industry, and of establishing a permanent and strong financial set-up for all the companies, which will compare in prestige to that of the life insurance companies, savings banks and other public serving institutions.

Variances

The public cannot have complete confidence in the title work it is receiving from our companies if, as in New York City, members of the same state title association quote rates for similar services and insurance varying as much as 100%. Purchasers of our services know that they must either be receiving inadequate title evidence from some of the companies, or paying excessive premiums and fees to others. Let us consider why such variances exist.

In 1933, 96.5% of our total title business in New York was handled by the seven then member companies of the New York Board of Title Underwriters, at approximately the same schedule of rates now quoted by that Board. The balance of 3.5% was being done by eight other companies as incidental to their mortgage business. These latter companies, although chartered to do a title business, had not actively engaged in it. In 1934, however, when the Home Onwers Loan Corporation became most active in this area, the majority of these last mentioned companies as well as several new abstract companies, which sprang into being, entered the title examination field and helped fill the suddenly increased demand for title facilities created by the Home Owners Loan Corporation. Unfortunately, after the volume of H. O. L. C. business subsided, it left the City with more title facilities than were warranted in a period of real estate inactivity, and created two important problems which we still have to solve. One involves the reducing of previously existing rates by some of the companies in an effort to procure a larger share of existing business, and the other problem, which is a corollary to the first, has to do with the changing of standards and methods of production, making possible such rate reductions.

Short Period Chains

Counsel for the H. O. L. C. was satisfied for examining companies to certify title on the basis of examinations for a forty to fifty year period. The old Title Board companies, however, in long years of experience, had actually paid many losses due to defects in early titles, and strongly felt that they could not assume liability for the complete title on the basis of a short period examination. The H. O. L. C. therefore permitted the Board companies to certify their titles only from the date of the mortgages previously insured, procuring statements of the condition of the title as of the date of the original mortgages from the company originally insuring them. The company issuing such statements assumed no liability thereunder and the company bringing the examinations down to date assumed no liability for the title prior to the date covered by the statement. A precedent was thus established in the industry, at least theoretically approved by a Federal agency, for certifying titles on the basis of a forty to fifty year search, as well as on the assumption that a title previously insured by another company might be assumed good as of the date of such insurance, subject to such exceptions as may have been taken in the policy issued at that time.

In any event, a policy of title insurance based on such an examination is either adequate or it is not. If it is adequate, then the public should not be charged by the higher rate companies for the cost of a complete examination of the title running for one hundred years or more. If it is not adequate, then the policy issued on the basis of a forty to fifty year search, at a cheaper rate, definitely carries additional risk, although under the New York Insurance Law, legal reserves being based on a percentage of the fee charged, less reserve is actually set aside in spite of the additional risk. This question of what is or is not an adequate basis for the certification and insurance of titles should be thoroughly studied and determined by the industry. It may even be possible to devise legislative remedies reducing some of the hazards of relying upon forty to fifty year searches. This situation is one indication that standards of examinations should be established if the public is to receive full protection and fair rates from the industry as a whole.

Re-issues

A similar problem presents itself when a company on a new application examines an entire title previously insured by another company. This entails a higher fee being charged to the public on so-called reissue titles than may possibly be justified, and is entirely caused by the failure of our companies to work out among themselves some satisfactory method of avoiding this duplication of work. It will be difficult for all companies to agree on what methods are adequate, but no solution to this situation will be found until the methods of examination of titles by all the companies in our industry have been standardized, and provision made for the sale and purchase between companies of work which is now either being duplicated, omitted entirely, or obtained by some surreptitious means. Production costs must be reduced by sound and efficient methods.

Mutual Confidence

Partly because of the lack of standardization of the examination and certification of titles and partly because of a certain feeling of pride and superiority on the part of individual companies,

P. R. ROBIN
Tampa, Fla.
Member Executive Committee, National Title Underwriters Section

the majority of the companies are not willing to rely upon the examinations or certifications of other companies. Even when differences of opinion occur or natural human errors are discovered on the re-examination of a title by another company, there is a definite reluctance on the part of most of our members to give or accept indemnifications covering even minor risks which in the course of time will eventually be eliminated through statutes of limitations or otherwise. From the standpoint of the lack of standardization and uniform quality of work performed, this feeling on the part of the companies is definitely justified. However, from the standpoint of pride and the belief that the examining staff of any one company can be infallible and free from human error, it is in many cases a false pride. Experience shows these errors occur with mutual frequency on the part of the companies with the greatest pride in this respect, often resulting in inconvenience and loss to purchasers of title insurance. If the industry itself is not set up on the basis of mutual confidence between all the companies, how can we expect the public to have complete confidence in any one of us.

I could cite many specific instances where a company in a re-examination of a title previously insured by another company discloses an error of the type that may cause a temporary technical objection to the title which by the longest stretch of the imagination will never result in a money loss to the company previously issuing the insurance or which through not too much effort might be permanently cured by the procurance of quit-claim deeds or affidavits from interested parties. Often the company having originally made such an error, will immediately take the attitude that the title is good and agree to re-insure despite the objections raised by the re-examining company. In the course of ensuing conferences with both companies, the applicant's attorney is forced into the position of determining his own opinion of the title. If he agrees with the re-examining company that the objections are valid, he then makes a final effort to persuade the company originally insuring the title to acknowledge the defect. When that company has then spent another few weeks perfecting the title, the transaction is eventually closed after much inconvenience to the applicant—or else by that time the parties to the transaction have given up in disgust and the deal falls through. In building up public relations and the confidence of the public in our industry, differences of this kind should be ironed out promptly between the companies involved through closer cooperation and greater mutual confidence between Association members.

Standardization

The question of improving this mutual confidence through standardization of examinations, presents a more difficult problem. Mr. Paul D. Moonan, President of the Monroe Abstract Corporation, addressed the 1939 Convention of the New York State Title Association on the subject of an abstracter's licensing law. Mr. Moonan in recommending the form that such a law should take, strongly stressed the necessity of standardizing the work of abstracters in order to develop the confidence of the public in the accuracy and financial responsibility of those engaged in the business. Although it is possible for an institution or an attorney in handling a large and continuous volume of title work to learn from experience and through investigation the methods and responsibility of those companies he employs to examine and insure titles, it is natural and right for the general public and occasional purchaser of title insurance to assume that they will receive adequate security from any and all of the companies representing themselves as operating under the Insurance Department of the State. They make the same assumption in the purchase of their life insurance or in the placing of their funds in a savings in-

stitution. I agree with Mr. Moonan that standardizing methods must be accomplished if the public is to be assured of adequate protection from all abstract and title insurance companies. I do not necessarily agree that this must be accomplished through State licensing of abstracters and examiners. Without making any definite recommendation, I do wish to suggest the possibility of the certification of abstracters and examiners and the standardizing of their work through the title association. If the New York State Title Association, for instance, or a title insurance division of it, is going to assume responsibility as the rate making and regulatory body for the industry, standards for the making of examinations in connection with title insurace could readily be controlled through the power given such a body under the Insurance Law. As to how the abstract companies could be brought into the picture is another question, but this might also be done along similar lines through an abstract division of the Association, which could be established as a licensing body by the Legislature instead of a special commission as suggested by Mr. Moonan.

An adequate and responsible examination and certification of title, as pointed out by Mr. Moonan, is just as necessary for the abstract companies as the title companies, and there appears to be no good reason why there should be separate standards for each. In the abstracting and certification of the title, both the abstract company and the title insurance company assume full responsibility for the work performed. As to the title insurance feature, through which the title insurance companies assume further liability in protecting the applicant from errors on the record, opinions of title and hidden defects in the title, these risks are in addition to those assumed by the abstract company. Premiums for such risks might well be worked out on a scientific basis and the total charge for a title insurance policy broken down into a fee for the examination, plus a premium for the additional insurance, which system I understand is employed at the present time by the Philadelphia companies.

Can Costs Be Lowered?

In addition to standardizing the examination of titles in view of making it possible to work out methods of intercompany cooperation in eliminating wasteful duplication of work, there are other efforts that can be made to reduce the cost of producing titles. Little time and attention has been given in New York to cooperating with the offices of registers, county clerks and other public officers in view of making suggestions for the more efficient recording of public records in a way to minimize the work of examining titles. As an example, in this City a great number of examinations of titles have been complicated by reorganizations under the so-called Schackno Act. In New York County, the county clerk's office has filed the many papers in these proceedings in such a way that the particular plan to be examined can be applied for, and all the papers affecting that plan turned over to the examiner in one package. However, in the county clerk's office in Brooklyn, it is necessary for the examiner to thumb through literally thousands of pages in several large volumes in order to pick out each individual document of any one plan to be examined. Some of these documents are indexed by the street address of the property affected, some by plan number and some by the mortgage guarantee number. This method obviously requires hours more work than the system employed by the county clerk in New York County. There are probably many other

PAUL P. PULLEN
Chicago, Ill.
Vice-Chairman, Committee on Advertising and Publicity

similar instances where if the title companies were alert and in proper cooperation with the recording officials, a great deal of time, labor and money could be saved by both our companies and the recording offices.

Simplify Our Laws

Another and most important method of making possible the more efficient operation of the recording system, and at the same time cutting down the cost of title examinations, is by sponsoring the enactment of legislation toward this end. It is the enactment of such legislation that has been strongly urged by our Superintendent of Insurance, Professor Powell and others. Two years ago Mr. John L. Finck, Vice-President and Solicitor of the Company I represent, delivered a paper on this subject at the annual Convention of the New York State Title Association. Mr. Finck made several specific recommendations for simplifying and modernizing our real property laws. There is no one in our industry who denies the value of this type of legislation. The only thing that has kept the association from developing a constructive legislative program is the lack of time on the part of the law solicitors of the various companies and the lack of funds to employ additional man power for this work. Work done by the Law Committees of our State Association and New York Board of Title Underwriters is necessarily confined to analyzing the many ills affecting real property which are annually introduced. This leaves no time for the constructive work necessary to suggest remedial legislation and to prepare bills to that end. As it is, it is only a very few of the thirteen companies operating in the New York metropolitan area that are contributing the time of their best law men toward the amount of Law Committee work being done at the present time. This work from which all the companies eventually benefit is therefore being done wholly at the expense of a few of the companies, adding to the operating costs of those companies, which in turn must be reflected in the rates charged for their title insurance, while enabling lower rates for those companies not participating in this effort.

In Professor Powell's report, he suggests that a constructive legislative program should be undertaken by the Law Revision Commission of this State. Our Superintendent of Insurance suggests that the initiative should be on the part of the title companies. Provided such a program can be financed, I submit that the work can be done more efficiently by a committee of our State Association in cooperation with the Law Revision Commission and other sponsors of legislation affecting real property.

Our experience with the recent law on acknowledgments which was enacted by the 1939 Legislature substantiates this position. The title companies had no knowledge of the contents of the law until it was presented to the Legislature. After it had become a law, several sections of it proved to be unworkable from the standpoint of real estate conveyancing. As I have reported to you the Law Committee of our Association undertook the drawing and recommending of amendments to this law which were passed at the last session of the Legislature. If this legislation had been drawn in the first instance in cooperation with the Law Committee of our Association, the additional work of revision might have been avoided.

At the 1939 session of the Legislature some independently sponsored laws were passed endeavoring to simplify the foreclosure of Village and County tax liens. Subsequently when some of the companies were asked to insure titles coming through these new tax lien foreclosure proceedings, it was necessary for each company to make a

decision as to whether or not such titles were insurable. It seemed logical to the company which I represent that such a decision should be made by the Law Committee representing all of the companies. This Committee, however, could find no time for the consideration of the problem. The result was that the independent decisions of at least three of the companies asked to insure these titles, differed in so many respects that applicants had no confidence, regardless of how they conducted their foreclosures to satisfy one company, that they could hope for the same title to be insured by any one of the other companies on a re-conveyance.

Similar situations arise on many other new legislative enactments. If our local Title Association has a Legislative Committee established with sufficient prestige, and working on a constructive and well publicized legislative program, in cooperation with other sponsors of legislation affecting real property, we shall be on our way toward enacting the type of legislation necessary to simplify and make more workable our recording system on a basis that will inspire the utmost confidence and good-will on the part of the public. Of course it would be impossible for just a few member companies of any one Association to finance such a program. However, if a program could be set up properly, consideration might then be given to raising funds for financing it through a more equitable appropriation from all the abstract and title companies of the Association coupled with an appeal for support and cooperation from the State Legislature, the Law Revision Commission, bar associations, real estate boards, and other organizations, whose memberships would benefit from such a legislative program.

The Law Committee should also be helpful in eliminating the general competition that exists on title questions. The only advantage which I can see to such competition is that it keeps all the companies on guard not to adopt a too-independent attitude which would be against the public interest. It is always easier to refuse to insure a title than it is to make an effort to assist the applicant in finding ways and means of making the title insurable.

When one company insures a title that has been declined by one or two of the other companies, there is always the possibility of delay and law suits at the time of a resale of the property. These situations are even more annoying to the insured, if he endeavors to secure a mortgage on the property, at which time he cannot even tender title as in the case of a contract of sale, and is often refused mortgage money because of the mortgagee's fear of holding an unsaleable mortgage.

Technical Unmarketability

Then there is also the question of what might be called "technically unmarketable titles," titles which are good from the standpoint that there is no practical possibility of their ever being attacked but which because of certain defects might be held to be unmarketable. A strong Law Committee could not only do much by the sponsoring of legislation toward making such titles marketable, but also by means of closer cooperation between the companies, a great many of them could be agreed upon as insurable, thus making more saleable properties with titles falling into this category.

The existing conditions I have cited are obviously not in the public interest and are the cause of duplication of work and unnecessary expense as well as loss of business to all the companies. Ways and means must be found to carry on our legislative work progressively and effectively. It is only through a strong Law Committee, adequately and equitably supported by all the members of the Association that the conditions which I have referred to can be remedied.

Personnel

As to the personnel policy of the companies in this area, it is unfortunately true that those engaged in our work are not receiving remuneration commensurate with the training and responsibilities required of them. Many of our Law Department salaries in the New York companies are inadequate. If we wish our employes to work with the fullest efficiency, and it is certainly necessary that they do so, we must see to it that they are compensated for their efforts on the basis of a reasonable living wage and with security for the future in order to minimize the otherwise natural financial worries which not only tend to decrease their productive efficiency but in many cases have been found to encourage the performance of piece-work as a side-line and other undesirable practices. The employment policies of many of our leading industries, public utilities and life insurance institutions are continually providing for greater security in employment, retirement pensions and other benefits similar to those received by civil service employees. There is no question that business in general can more economically and efficiently make these provisions than can the government through State and Federal enactment of social legislation paid for by taxation. If business does not provide the proper working conditions for employees, we can expect further government intervention and more votes for Ham and Eggs and other crackpot pension schemes. If we are convinced that we can do the job more efficiently and with greater benefit to the industry and our employees, than can government, let us take the proper steps in this direction.

Such a program, however, requires additional income for the companies. This cannot be expected under the present rate structure and the present methods now employed for producing title examinations and so, as I have stated, all these problems are tied up with one another and can only be solved by a constructive and comprehensive program of action involving all phases of our industry.

General Motors would not sell many Cadillacs if they had to charge a sufficiently high price for these cars to enable them to sell all their Chevrolets at a substantial loss. It is necessary for them to produce the Chevrolets as well as the Cadillacs at prices at which they can be sold with a reasonable profit. However, over 85% of the title insurance underwritten in the New York metropolitan area is on the basis of a rate schedule under which the bulk of the business, comprising small transactions, is being underwritten at a loss which is made up by unscientific and excessive charges on the smaller percentage of larger transactions. Many purchasers of small policies as well as large ones, are resorting to substitutes for title insurance and we can therefore not expect to increase the volume of this business by raising the rates on smaller transactions. Methods must be devised to decrease the cost of producing these smaller titles and a scientific revision of our whole rate structure made in order to eliminate inequitable fees for insuring larger transactions and to iron out many other inconsistencies that exist. Every now and then a new rate is established or a new type of service inaugurated by our New York companies as a piece-meal effort to eliminate some of these existing inconsistencies. It is my belief that we are only further complicating our whole set-up by this method. On the other hand, I do not believe that our whole industry can be overhauled over night. I am convinced that the task can only be accomplished step by step if each such step is a part of a comprehensive program.

It is therefore my conviction, as far as the situation in New York State and particularly the New York metropolitan area is concerned, that our State Association must analyze these problems, devise a constructive program for overcoming them, and set up a plan of action for yearly accomplishment within a budget equitably supported by all the members of the Association. Such a program will cost some money but if the ultimate benefits to the industry and to the public can thereby be realized, the cost will prove to be an investment which we can well afford to make.

Summary

In summing up the points I have made, I would say that an adequate program for building prestige for the industry, should include:

1. Developing in each area a strong local association of all the companies engaged in the title business, all under aegis of the American Title Association.

2. Inaugurating a comprehensive

and constructive legislative program for the purpose of sponsoring remedial legislation to modernize and simplify existing statutes affecting real estate.

3. Working closely with the local real estate boards, bar associations, property owners' associations, associations of lending institutions, law revision commissions, and all other organizations vitally interested in real property.

4. Developing and imposing upon the members of each local association, such regulations respecting the conduct of the industry as are necessary to assure adequate protection to purchasers of title insurance.

5. Standardizing rates and doing away with cut-rate competition.

6. Devising rate schedules and title services on a scientific basis and in keeping with public interests.

7. Standardizing and constantly improving methods of production.

8. Keeping abreast of methods employed by local recording offices and cooperating to simplify and improve them.

9. Eliminating duplication of work through greater inter-company cooperation.

10. Developing means of clearing between companies on title questions which through lack of cooperation on the part of disagreeing companies, cause loss and inconvenience to the public.

11. Keeping the personnel policies of the companies in line with other progressive industries.

12. Publicizing the industry's service to the community, and through a well planned public relations program, recognizing public needs and opinions affected by our industry.

It is only by such efforts that we can fulfill our responsibilities to the public, increase our volume of business on a sound basis for the industry as a whole, and as a result, prosper and grow as an industry, worthy of the prestige that will then certainly come to it.

We Are Challenged

In closing, I wish to leave with you the challenge of our Superintendent of Insurance expressed by him in an address last April before the Farm Bureau Insurance Companies at Columbus, Ohio, when he said:

"If the (insurance) industry fails to properly police itself, if it fails to put in force rates and charges which are equitable to the public, if it permits the taking of business by one company from another through the payment of excess commissions or other unfair inducements, if it fails properly to regulate the cost of insurance and permits company expenses and commissions to eat up more than their fair and just portion, the state will be compelled to secure larger powers. The future of insurance rests with the industry."

The Title Business in Time of War

HOLMAN D. PETTIBONE

President, Chicago Title and Trust Co., Chicago, Ill.

The title business is very directly related to what is going on in the real estate market. Activity in real estate in turn is closely related to the income which real estate produces. Larger pay rolls mean better occupancy and larger gross and net rentals. These developments tend to attract investors and in time in any normal situation bring about new construction. Activity in construction is always closely related to maximum activity in sales and financing. Then our title business is at a peak.

When we are confronted with a war such as is now taking place in Europe, and with a defense program at home, it is well to cast about to see what factors disturb or alter normal trends.

1914-1918

First I shall recall to you some of our experiences in the title business and in the trust business during the war period 1914-1918. Then I propose to discuss a few intimate problems of our business today.

In Chicago our title orders for the year 1914, when the war broke out in Europe, were approximately 7 per cent less than the year previous. As the war went into 1915 there was practically no change. In 1916 when we really became occupied with war orders for the entire year there was an increase of a little over 2 per cent from the year previous. During our first war year of 1917 the number of orders fell off 20 per cent and in the year following suffered an additional decline of 19 per cent.

Escrows

For the year 1914 the number of our escrows, which is a pretty good indication of the state of the real estate market in our area, declined over 14 per cent and the next year there was an additional decline of 11 per cent. When war orders began to come in volume in 1916 there was some increase in real estate activity and our escrows increased approximately 8 per cent. In 1917, however, there was a further drop of nearly 12 per cent and in 1918 a further decline of nearly one-third, a total decline of nearly 45 per cent.

These statistics also reflect the building situation as it existed in Chicago. From 1913 to 1916 building continued at about normal, with an average of 4½ buildings erected for every thousand inhabitants. In 1917, however, this number reacted to less than two, and in 1918 it was less than one, a decline of 80 per cent.

A somewhat similar decline took place in the volume of mortgages and trust deeds recorded when in 1917 the volume dropped to $156 per capita from $381 the year previous. After our entry into the war there was a further decline the following year to $64 per capita.

In New York

In New York, according to "Real Estate Record," the volume of Manhattan mortgage lending dropped from 118 million dollars in 1914 to 99 million dollars in 1915. It rose again during 1916 and 1917 to 120 million dollars, but in 1918, as we went deeper into war conditions, the volume declined 55 per cent from the 1917 figure. New construction in Manhattan which rose during the period of our neutrality, slumped markedly during our participation in the war. In 1916 the figure had risen to 112 million dollars from 45 million dollars in 1914, but in 1917 it had slumped to 29 million dollars and in 1918 to only 9 million dollars, a 92 per cent drop from 1916. The first real estate to feel the effects of war was that in downtown Manhattan. As the volume of exports to the Allies increased, there was a corresponding demand for downtown office space. Office, loft, and warehouse space rented freely at increasing rates. The influx of office and loft tenants had its natural effect on residential property and the scarcity of apartments became pronounced almost immediately after the entry of this country into the war. The complete absorption of residential space was caused by the influx of war workers, a lack of mortgage money, and a rising cost of building material and labor. The government's prohibition of construction costing more than $25,000 except for buildings necessary to the conduct of war was a large element in

the 92 per cent decline in building construction.

Philadelpia

In Philadelphia, a city in which shipbuilding has always been an important activity, between 1914 and 1917, when the United States entered the war, there was an increase in real estate activity particularly in the neighborhood of the plants and factories furnishing war materials. After the United States entered the war, this activity increased tremendously. Since much of the industrial movement was in outlying districts of the city, real estate activity spread rapidly into the suburbs.

Seattle

In Seattle, another important shipbuilding point, if we take the average number of title orders for the three years 1911-1913 to be 100 as a base, business in 1914 dropped to 84, the year following to 74, the year following that to 69, and in the year 1917, when we declared war, to 68. From the detailed figures it is to be noted that the decrease in title business was gradual from the beginning of 1914, reaching the extreme low during August, 1916. From that date until we entered the war in April, 1917, the title business was at its lowest level. Then came a rise in rents until there was strictly a landlords' market. Residential and apartment rents increased during the war by as much as 40 per cent.

St. Louis

Now let us take two cities, which during the previous war were less important from the standpoint of war materials than those which we have discussed. We find that in St. Louis there was a decrease in real estate activity from 1914 until 1916 of about 25 per cent, following which there was an additional 25 per cent decrease during the war, so that at the end of the war real estate activity in St. Louis was only about half of its normal. Construction of all kinds decreased until it almost ceased entirely during the actual war period. This was not due so much to governmental regulations as it was to the fact that so many men left for the army that additional accommodations were not needed, and since workmen were paid such high wages on government construction they were not available for private building.

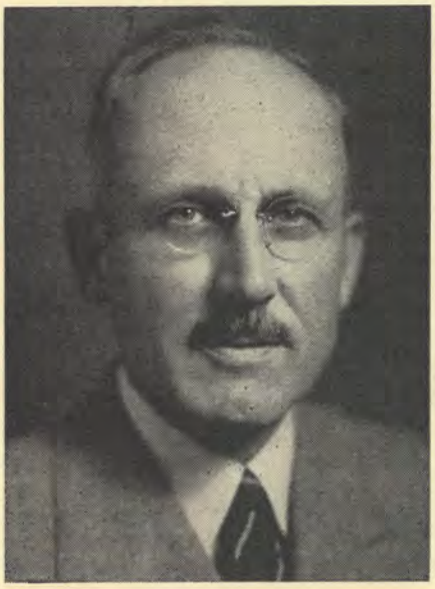
Los Angeles

In Los Angeles, the number of orders, taken decreased from 1913 to 1914 by 13 per cent. The following year there was an additional 5 per cent drop and in 1916 the number of orders was 4 per cent less than the year previous. A further drop of 10 per cent occurred from 1916 to 1917 and an additional 10 per cent decline from 1917 to 1918, a total decline of 42 per cent. In Los Angeles the effect of the war applied about equally to all classes of real estate: city, suburban, and ranch property.

It is probable that if we remain a non-belligerent the business of our title companies will improve somewhat in those cities which are called upon to furnish war materials. In other cities it seems likely that there will be some decline in real estate transfers resulting in a reduction in gross income for the title business. If our country engages in war there is every reason to believe our business will suffer a reduction in volume.

Efficiency Must Increase

With any reduction in gross income which may come to some of us because of war conditions and with a certainty



HOLMAN D. PETTIBONE

Chicago, Illinois

President—Chicago Title & Trust Co.

of an increase in taxes, it is necessary that our businesses be operated with increased efficiency. We must continuously study the prices we charge our customers and at the same time maintain the most careful control over our expenses.

Those customers of ours—and I believe there are only a few—who shop around demanding (and because of competitive conditions occasionally receiving) prices which will not enable us to pay fair wages, build up adequate reserves, and pay fair dividends, are most shortsighted. If any title companies are forced by their customers to succumb to demands for prices which are not adequate, the days of those title companies involved are numbered. And the title evidence issued by those companies will not carry full value to its holder.

Price and price alone is not and never was the proper yardstick. Shoddy merchandise, no matter how low the price, is never a good or wise purchase. A buyer of title evidence who looks only at the price is making a grave error.

Fair Prices—and Good Products

If we do insist on a fair price for our product our customer is equally right in insisting that we do our work efficiently. That means continuing study on our part, even though we may believe our methods are almost perfect.

I suspect that most title people have had occasion during the past ten years to make a pretty thorough study of operating routine and operating costs. So many of our customers have called upon us to do work related to failing investments that we have all been made to realize the necessity of watching our costs and our prices. When our customers enjoy good business and every one in a transaction is making a profit, the principal emphasis is on speed and accuracy in our work and not so much attention is paid to our price. When, however, we have an experience such as we have all had during the past several years, we are reminded frequently by our customers that they are losing money and that whatever fee is paid to us is an additional loss. This attitude is not limited to any one type of investor. It applies to large institutional mortgage lenders, agencies of the Federal government, charitable agencies, trustees, and the general run of private investors.

At the same time, we have been confronted with some increasing costs beyond our control, largely growing out of the increasing tax burden which affects wages, the cost of all the materials we use, the office space we occupy, as well as the amount of our direct taxes.

We Self Examine

We have considered it to be a wise policy to do everything in our power to reduce costs to our customers. To that end we decided to make a series of intensive studies of various operations in our title work. First—we invited in an outside organization to make a survey of our personnel and our general methods, with only casual attention paid to the details of technical procedure.

And Have Ourselves Examined

This survey proved its worth in giving us the benefit of the reaction of an outside group of specialists who were strangers to our people and to our business. We were given valuable suggestions in straightening out lines of authority and responsibility and more careful supervision of our employes. One of the results of this survey was the installation of a Personnel Division under a properly trained staff to assist in employing and training and checking up on the work of our employes. With this installation also went a number of items having to do with the general welfare, such as a staff physician, a staff nurse, a room for employes who bring their lunches, hospital insurance..

Tests

Next — we assigned a thoroughly trained title officer and a cost accountant to make an intensive study of the details of operations with test checks of costs for different parts of the work.

These two men were excused from all other work for a period of four months. During that time they went over all of the principal operating details with a view to discovering opportunities for improvement or eliminating unnecessary steps, with sufficient test checks on costs to indicate how and why we spend our money. This work was done under the immediate supervision of a senior officer of the company. Opportunity was afforded unit heads to make reviews of their own operations and suggestions for improvements.

The principles of motion study—that is, checking on the number of motions required for a given operation by one employe—have been studied with an organization doing only that work. One of our officers spent some weeks in a course of instruction on those principles. He is now attempting to apply them to our business.

Preparing the Budget

Our next step was a series of meetings with different unit heads to assist in the preparation of a budget made up for each ensuing six months. Unit heads are thus afforded an opportunity to watch and compare their costs over twenty-five units or departments. In different periods of time.

Our Title Division is divided into each of the more important departments a special manual of the work to be done by each individual under our particular plan has been prepared. From this manual charts have been drawn covering the flow of work through each unit.

Operations

A constant study is being made of the progress of an order through our office from the taking of the application to the delivery of the policy. Each step, each operation is studied as to its necessity and as to whether or not such step or operation can be eliminated without increasing the danger of error. To each operation the question is addressed: Why is it being done?

In a study of your own procedure you will have difficulty, I predict, as we have had, in answering that question as to some specific operation. With us, experiments are being made constantly as to how an operation or a series of operations can be done more speedily or at less expense. Many of these changes and experiments are based upon ideas suggested to members of our staff by questions asked us by attorneys and real estate men who visit our plant. This free exchange of ideas has been most helpful to us and I think you will find it a help in your own company.

Constant Review

All forms of work papers are constantly being reviewed with the idea of reducing unnecessary expense. Last week in our office we discovered that while we were using a printed card for a certain operation, we also carried in stock unprinted cards of the same size. It was found that the unprinted card would answer the purpose just as well and as a result we effected a saving of $75 a year. That may seem small compared with our gross earnings, but that is only one example out of many.

Keep Everlastingly at It

I submit that this whole study demonstrates that there is no magic formula which will enable the management to secure desired results. Rather it calls for a daily, persistent, unending study of procedure and personnel to the end that the staff may be trained to be more efficient in its duties and that every unnecessary step of the procedure incident to the issuing of an abstract or title policy be eliminated.

This is not an easy task because it must be carried on while we produce the current work of the office. It is work superimposed upon the regular daily chores. To be successful it can-

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Portland, Oregon
Chairman, Committee on Constitution and By-Laws

not be haphazard, occasional, or only done when time is found in which to do it. Such a job is not dramatic. It is not spectacular and much of the labor will not be productive.

Talent Needed

This work cannot be delegated to clerks, because to be performed successfully it requires a viewpoint of one who knows the business from all angles; one who understands the full purpose of each operation; and one who can determine whether the cost of the operation is greater than the expense of an occasional loss if some particular clerk is discontinued. It must be done by those who are cost-minded, profit-minded, and customer-minded.

We should not expect our customers to pay extra for our shortcomings, but we do expect them to be willing to pay a fair amount for our services; an amount sufficient to reimburse us for the most efficient system our brains and ingenuity can devise; an amount which will enable us to pay our employes a fair compensation, to build up adequate reserves, and to provide a fair return on our invested capital.

Study of Personnel

In addition to the study of procedure, an equally close study of personnel is a requisite. In the course of each year, with the assistance of our personnel department, a review is made of the entire staff of our Company. Those who do not show aptitude for their work, or whose performance is unsatisfactory, are released. Recognition is given for good work.

Training

In addition to the study of personnel, a planned training program is in effect throughout the entire year. Schools of instruction are held for employes ranging from newly employed office boys to our senior title officers. These schools are conducted on definite planned programs of instruction designed to prepare the staff for a better performance of their respective duties, thereby decreasing the expense of our operations.

These studies of procedure and personnel in the past three years have decreased our operating expenses substantially, largely through improved technique, and a smaller and more efficient staff. The largest single item of direct expense in our business is our payroll. Notwithstanding the lower payroll total, however, we find that our average pay per employe was 3.5 per cent greater in May, 1940, than it was in May, 1937.

For the first five months of 1940 our gross income from title sources was 18 per cent more than for the corresponding period in 1939, yet our direct expense for that period was actually less by about 2 per cent than for the corresponding period in 1939.

These reductions have not been made at the expense of our present staff, nor at the expense of the service we give our customers. In fact, we have revised our standard policy forms during the past two years in order to state more clearly the nature and extent of our protection. Our plant is properly maintained and we continue to exercise great care to avoid the kind of errors which would mean that an owner loses his title. Our loss record shows no increase.

A Patriotic Duty

In conclusion, may I emphasize that in these chaotic times, as in the War of 1914-1918, we title men must continue to carry on our work as a fundamental necessity in the maintenance of property rights. Our work must be accurate, our undertakings clear, our financial integrity beyond question. Our job is distinctly local in its history and in its requirements. It is founded on local customs and local traditions. We are held to the highest standards in our respective communities. Let us continue to measure up to these standards.

The Valuation Charge for Abstracts

J. I. MILLER

Owner and Manager, Montgomery County Abstract Co., Independence, Kansas

Last October I was invited to talk on the subject of "Valuation Charge for Abstracts" at the annual meeting of the Kansas Title Association. I supposed that everyone had forgotten about that effort until Jim Sheridan asked me to appear on this program and talk on the same subject. I am honored by these invitations.

For a long time I have had some hazy ideas that our charges for abstracts should be based upon the value of the property. The invitations to read these two papers have forced me to give this subject some thought and gather those hazy ideas into something more definite.

The Problem

The first section of the Code of Ethics of the American Title Association is as follows: "We believe that the foundation of success in business is embodied in the idea of service and that Title Men should consider first, the needs of their customers, and second, the remuneration to be considered." Under our present fixed schedule of prices, we are not serving innumerable people, in any way, who should be our customers. We have nothing to offer the owner of cheap property. Our schedule of prices is prohibitive as far as he is concerned. No one is going to pay $100.00 for an abstract on a $40.00 property. We do not get the original order; therefore, there is never any abstract to extend in the future, and the person who should be our customer and be entitled to the protection of our product has to trust to luck. His $40.00 investment may mean a lot to him, but there is nothing that he can do to protect it as far as our services are concerned. It seems to me that we should make his abstract at a loss, if necessary, and try to recoup some of our loss in future extensions of his abstract and in the good will he should manifest toward the abstract business. Even the man who could afford it will not spend $80.00 for an abstract on a property that he is selling for $200.00. He either does or should resent the fact that we cannot serve him under our present schedule of prices; and that property never brings us in one cent, now or in the future. Would it not be better if we could contrive to serve this class of people, who are potential customers, thereby making boosters for our business instead of knockers and still be able to drop something in the cash drawer?

Paradoxical

On the other hand, our fixed schedule of prices is absurdly ridiculous when we make or extend an abstract on a property worth thousands of dollars. Where our liability on the very cheap lot is practically nothing, our liability on the valuable property is something to stay awake nights thinking about. Where we are entitled to just about stenographic wages, plus something for overhead, in preparing the abstract on the $100.00 lot, we are entitled to, and should receive, ample pay for the liability which we assume on the valuable lot. By charging our present fixed schedule, we do not get any business from the poor man, or

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Owner—Montgomery County Abstract Co.

the poor lot, and we are giving away our services, reputation and responsibility when we sign our names to the abstract on the highly valuable tract.

The Profession

Other professions adopt this valuation basis of charge. A lawyer will not charge as much to probate a $300.00 Estate, or to foreclose a $300.00 mortgage, as he will to probate a $100,000.00 Estate or foreclose a $100,000.00 mortgage regardless of the amount of actual work involved or the ability of his client to pay, and the lawyer's liability is not as real as ours. Doctors base their charges largely on the ability of the patient to pay, and the doctor does not have to sign his name to his mistakes and have them resurrected two or three years later to haunt him.

The various people with whom I have discussed this subject since receiving this assignment, agree, and I think that you will all agree that the Valuation Charge for Abstracts is correct in principle. While we may all agree with the principle, it is a safe guess that we will all disagree as to the proper procedure that should be adopted to remedy the present injustices in our fixed schedules.

Educating Our Staff

When a new employee comes into our office, it is our policy to give him as little advice as possible on HOW to do any certain thing. We just let him struggle for a while and watch him. Every once in a while he will figure out a method he thinks is better than the one we have been using. Generally, we don't think so, and have to show him our old method and why it is better, but he may convince us. Like the new employee, I have approached this subject as a rank novice with the sincere hope that some suggestion I might make may prove valuable to the members of this Association. At the Kansas meeting last October, I presented a plan, which, even then, I did not consider workable; but being on the program, I had to say something. After receiving Jim Sheridan's invitation, I sent out a number of letters asking for suggestions on this subject. In reply I received about a dozen letters from a half dozen states, all of which were most helpful and constructive. A valuation charge is now being made in a number of places including St. Louis and certain counties in Oregon, with success and a minimum of criticism. A number of these letters disclosed that while most abstracters adhere to their regular schedule of prices generally, they make concessions in price on low priced properties without adding anything to their price on the valuable properties.

The Plan

In order to have something definite to present to this meeting, I have worked out a suggested plan which is not presented to you as the perfect plan. As we criticize it, all of us may change our first impressions, and the combined result of our criticism should be a more nearly proper answer to this problem. This suggested plan seems to me to be simple, workable and equitable to both ourselves and the public. I believe that such a plan would not have to be "put over" in our county; I think it would be welcomed.

This suggested plan would call for your regular schedule of prices, whatever it may be in your community, as your base rate, with the following qualifications:

For the sale or mortgage of any property assessed at $50.00, or under, your maximum charge for all necessary abstract work for each completed

transaction would not be more than $15.00.

On property assessed from $50.00 to and including $100.00, your maximum charge would not be more than $25.00.

On property assessed from $100.00 to and including $500.00, your maximum charge would not be more than $50.00.

On properties assessed at more than $1000.00, you would add $1.00 per $1000.00, or fraction of $1000.00, for each $1000.00 of assessed value above the first $1000.00, to your regular charge for each general certificate, either on a complete abstract or on an extension.

The above schedule would seem to be about right for our county. Different counties, and especially different states, would, no doubt, require a different schedule, but the idea would remain the same. In some states, where the assessed value is much lower than the usual selling price, $2.00 per $1000.00 should be added. In some communities the valuation charge per $1000.00 should perhaps run at $1.00 per $1000.00 for the first $50,000.00, then 50c for the next $50,000.00, and 25c after that.

Assessed Valuation Basis

You will note that all of these charges are based upon the assessed valuation of the land. The assessed value would not be the correct value in many cases, but it furnishes a value for which we cannot be blamed, and where there are two or more competing abstract companies, it would make their charges uniform. Another problem presents itself in the case of the producing oil property, or the oil and gas lease or royalty with unlimited potential value. These cases would have to be exceptions, and any abstract made for oil and gas purposes should be charged for according to or above your regular base schedule of charges.

Calculated Results

In order to have some figures to use as a basis, I took 200 consecutive orders including extensions and complete abstracts where general certificates were signed. I then got the assessed value of the properties covered by each of these orders. In only three out of these 200 orders would our bill have been less under the suggested schedule than it was under our regular price. Our total charge for these 200 orders was $2395.50. Under the suggested schedule, our charge would have been $2731.15. In other words, we would have received $335.65 more under the suggested plan than under our regular schedule of prices. Had we been operating under the suggested schedule during the time in which these 200 orders were received, we would no doubt have received a number of orders on cheap properties, some of which would have been made at a positive loss, which would have increased our income in some degree during this period, would have kept the stenographers busy and happy, and we would have a chance to extend these abstracts in the future at regular price.

About the only argument against a valuation charge is that most of us have never done such a thing before, and that it would be too much trouble to initiate such a new plan. For these same reasons some abstracters are doing the same things in the same way, but for less money, than they did forty years ago.

Pro and Con

There are a lot of arguments in favor of such a plan. In a way we are in much the same position as a public utility. If we do not serve our public properly, our public may do something about us. The high priced abstracts or low priced properties have been one of the main arguments for the passage of the Torrens Laws. It seems to me that we should make a real effort to make our services available to the owner of the cheap lot, and make a more reasonable charge for our abstracts covering the valuable properties. We are all in favor of making more money. Would it not pay us in actual cash if we could make that abstract on the cheap lot, even at a loss originally, so that the abstract would be in existence, and we would have a chance to bring it to date ever so often in future years. Once the public learns that an abstract can be procured on the low valued lot, we would get a lot of orders that we fail to get under the present fixed price plan. While we would have to work harder for this extra money, it would amount to many dollars each year with practically no liability on our part, and we would have the blessings of "a public better served."

Reserve

Everyone seems to agree that we should charge for abstracts in some proportion to the value of the land covered. Whatever plan is adopted, it should increase your revenue, not decrease it. Every abstracter should build up a reserve for losses, as our liability is constantly increasing. It seems to me that the funds which are taken in from a valuation charge, or a large proportion of it, should be set aside in reserves to meet losses. We should do this whether we make a valuation charge or not. The users of title service appreciate it when an abstracter has built up a fund for that purpose.

Title Insurance

Another thought is that a valuation charge for abstracts would help pave the way toward title insurance, which will be with us one of these days, and for which we might as well prepare.

With the Chairman's permission, I think we should all like to hear your impressions of such a plan.

Annual Report of Committee On Advertising and Publicity

WILLIAM W. HARVEY, JR.
Chairman
Advertising Manager, Title Insurance and Trust Co., Los Angeles, Calif.

It is generally conceded that no major industry can long survive that fails to take into consideration public opinion. Big Business is now fully aware of the necessity of telling its institutional story and thus placing the public in full possession of the facts in order that the product delivered, or service rendered, may be fully appreciated by the man who pays the bill.

We of the land title business have been among the last to recognize this as a problem which must be met and solved by properly directed advertising and publicity together with a well balanced public relations program.

Ours is a particularly difficult problem—not only because our stock in trade is *service*, an intangible which is difficult to describe and tell about in fast convincing copy—but also because even within our own ranks practices differ.

Having served as Chairman of your Committee on Advertising and Publicity for the past two years, it is my pleasure to report the progress we have achieved in creating and present-

ing practical plans which may be used by our membership to acquaint our customers with the benefits they receive from a service such as that which we render to the public.

Advertising Display

Last year I arranged the advertising display in San Francisco. This year I did the same thing for the New York exhibit and was amazed at the vast improvement in the materials created and distributed through various mediums by our members. I call your attention to the advertising display at this convention and invite you —I beg you—to give it your serious consideration. For on those panels, I assure you, you and your company will find many ideas which you can utilize to promote your own organization in your own community.

The Use of Cartoons

For instance, we never had a booklet like the one created by Howard Burnham. To my knowledge cartoons have never before played an important part in the exploitation of the title industry. But Howard saw a way to tell the fellow on the street just what his problem is—tell it in a way he can understand—and as a result he has given us a new idea. Howard, I'm going to "steal" that idea. True, I'll have to change some of the copy and explain in small print about a few of our exceptions—but I'm going to use it, and as a result people in and about Los Angeles will have a better understanding of what we do, and what they pay for when they have call for service such as ours.

I want you to study the advertising of Union Title Insurance and Trust Company of San Diego. They have launched upon a well rounded campaign that is certain to produce results. Their newspaper copy tells something about the product (or service) they sell. This paid advertising is supplemented by a well prepared series of editorial releases, sometimes called "publicity" which gives news readers the true story of title insurance.

Interior Counties

Another enlightening feature is the educational work being done by the Washington Title Insurance Company of Seattle. As many of you know, this company operates in several counties and some of its offices still issue abstracts. The problem there has been to educate those accustomed to receiving abstracts to the added advantages of the policy of title insurance. This has been carried on through a well planned campaign of newspaper advertisements, and Charlton Hall, of the Washington Title Insurance Company, reports that the new product is being favorably received.

Manual

A book recently published by Title Guarantee and Trust Company, of Los Angeles, called "California Land Titles," deserves more than a passing comment. It is a manual of California land law for use of brokers, escrow agents, banks, title and trust companies, as well as all other persons interested in real estate. It contains a comprehensive list of real estate definitions as well as a fund of information both general and technical, and is probably the most outstanding publication of this nature ever published by any of our members. George Reimers of that company is with us today—I suggest you make a definite date to go over this fine book with him.

Public Relations

Another method of exploitation is a tie-in with some civic body. This

WILLIAM W. HARVEY, JR.
Los Angeles, Calif.
Chairman, Advertising Committee

has been successfully used by Title Insurance and Trust Company, of Los Angeles, working with the Historical Landmarks Committee of the Los Angeles Junior Chamber of Commerce. Los Angeles, like every community, has much of color and dramatic history in its background. This title company saw the opportunity to place some of this interesting drama before the public in printed form—not overlooking the (to them) important point that search of every piece of property required a review of all documents affecting title for more than 100 years. You will find samples of this publicity in the advertising display.

Also, I call your attention to the booklet "A B C's of Checking Title to Real Estate," an excellent piece of title insurance promotion created and distributed by Southern Title and Trust Company of San Diego.

In our display are other notable examples of good advertising—look them over carefully—copy down some of the thoughts contained in them—and try them out in your own business in your own community.

A. T. A. Emblem

At this time, I should like to say a word about the new A. T. A. emblem created and produced by the Membership Committee under the able direction of Briant H. Wells, Jr., of Title Guarantee and Trust Company, Los Angeles. It is attractive—it tells a story—and it can be put to use by our members in various ways. One is to have it imprinted on either letterheads or envelopes—or both. Another is to use it as a colored sticker on envelopes, abstracts or on title policies. It is colorful, dignified, authentic, and its appearance is certain to catch the attention of every abstract and policy holder. You have all received a decalcomania. I urge that you use these to advantage. Put them on your door or windows so that people in your community can know through them that you are a recognized member of the national association and that through this organization you are able to improve your service to them.

Co-ordinating

For some time I have had two ideas which I wish to submit for your consideration as to practicability. The first is this: Would it be possible, or practical, for us to establish a well organized clearing house in the office of our executive secretary for advertising our public relation ideas? For example: I am a small abstracter but I recognize the fact that I should tell people about my product. I can't afford to spend much money, but I can afford, at the cost of a few cents, to order a mat for an ad which has already been prepared and paid for by some larger organization. I write to Jim Sheridan and tell him I want such an ad—or several ads—that are attractive and tell my story. Jim sends them to me—bills me for the cost of the mats—I change copy to meet my particular requirements and presto!—instead of my usual calling card I have an ad that *sells!*

Of course it's not quite so simple as that. But I'm sure it could be worked out for practical use by title companies. In fact, it has already been done. A short time ago, Title Insurance and Trust Company of Los Angeles ran an ad pointing out why it was a good time to buy or build a home. Facts and figures showed the many advantages offered the prospective purchaser today as compared with opportunities a few years ago. The ad ended, of course, by advising prospective purchasers to consult with a real estate broker before taking any definite action. Copies of this ad, together with a letter from a directing officer of the company, were mailed to every active real estate broker in the County. Was it well received? It certainly was—coming at a time when the market wasn't what the broker would like to have it.

This ad was of a general nature. The changing of the signature, or company name, was a simple matter. With only slight change it was suitable and available for use by other companies. Record Title Insurance and Abstract Company of Denver took advantage of this opportunity — using the ad with excellent results.

The point I'm trying to get over is this. You men are engaged in a technical business, and for the most part could use outside advertising and public relations counsel to advantage. I think this could be made available to you through a set-up within our organization. What do you think?

Operations

My second thought is this: If some of the ideas of the Advertising Committee, the Public Relations Committee, and the Cooperation Committee are *RIGHT*, why not enlarge upon them and furnish each member of our association not only with the ideas, but also with instruction and illustration on how to operate them. Personally, I feel that such a manual would go a long way towards getting more of our members started along the *right* path on advertising and public relations.

In closing, I wish to express my appreciation of the opportunity afforded me to serve as your Chairman of Advertising and Publicity for two years past, and the entire membership has my sincere thanks for the contributions which have made it possible to assemble such an improved display of advertising materials created and distributed during this past year.

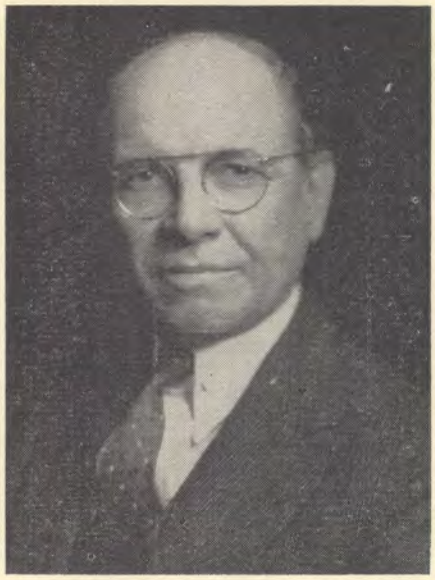
Particularly, I wish to acknowledge the fine spirit and whole-hearted cooperation of those who served on my committee, for without the aid and advice of such men as Vice-Chairman, Paul P. Pullen, A. B. Wetherington, Palmer Everts, and Culver A. Barr, my job as chairman would have been much more difficult.

"Flowers for the Living"

Pennsylvania Title Association Honors John R. Umsted

The following resolution was adopted at the 1940 Convention of the Association. It covers the subject so thoroughly that further comment by us would be superfluous:

WHEREAS, In November of 1921 was born the Pennsylvania Title Association. Of those who helped to organize our Association and who have remained through the years with us, none has given more unstintingly and freely of his time and energy to carry forward the objects and the ideals for which the Association was formed, than John R. Umsted. After serving as Vice-President for many years, in 1933, upon the retirement of our beloved John E. Potter, he assumed the Presidency of our Association, which he so fondly referred to as "An Academy." A most progressive, far-sighted man and one of firm convictions, and desirous of giving to the users of our products the best service and the greatest protection possible, he set his compass toward these objectives and never once has he deviated from his charted course. He appreciated that we should not remain aloof from or ignore the changes that are going on about us in the belief that we are self-contained. He is a strong advocate of closer public relations and has so expressed himself in addressing both the National Title Association and various State Associations. We will do well to carry on this program, a program that will help to establish in the minds of the public generally, a better understanding of what title insurance is and how desirous it is for an owner of real estate or a mortgage to have his investment protected by a title insurance policy.



JOHN R. UMSTED
Philadelphia, Pa.
Honorary President, The Pennsylvania Title Association

He was an ideal leader and we alone did not share the fine legal qualities of his mind, for they were also at the call of the Pennsylvania Bar Association. For the past several years, in that Association Mr. Umsted served as Chairman of that most important Committee, the Committee on Decedent's Estates. Many of the perplexing problems this Committee is called upon to consider are also live problems to the title man. Our problems were always close to his heart. Quite a number of the Committee's recommendations were enacted into laws. These Acts have proven most beneficial to the title insurance fraternity and we wish to note here our appreciation to him who in a very large sense was responsible for such constructive legislation.

AND WHEREAS, Mr. Umsted voluntarily and no doubt due to his recent illness feels that he should lay down his official duties as President, and it is only in a spirit of justice to his request and with heartfelt regrets that we acquiesce.

NOW, THEREFORE, BE IT RESOLVED, That the Pennsylvania Title Association, in Convention Assembled, does hereby accept with profound regrets the resignation of John R. Umsted as President of the Pennsylvania Title Association, and expresses to him our sincerest appreciation and gratitude for the great service he has rendered in the field of Title Insurance and to many of us personally. We are happy to know that Mr. Umsted is rapidly regaining his health, and we trust that within a very short time his recovery will be complete.

We take consolation in the thought that although in laying down his duties as President, Mr. Umsted will, nevertheless, remain in the ranks with us and so we shall continue to receive the benefit of his experience and wise counsel as we have in the past.

AND FURTHER, That it is fitting we create the office of Honorary President and elect to this office, John R. Umsted, and should an amendment to the By-Laws be necessary to permit the creation of this office, then let it be considered that the By-Laws are so amended.

AND FURTHER, That an engrossed copy of this Resolution be sent to Mr. Umsted.

Report of Title Insurance Section

FRANK I. KENNEDY
Chairman

President, Abstract & Title Guaranty Co., Detroit, Mich.

Review of the Executive Committee's files for the past year reveals the usual accumulation of one hundred or more letters, most of them having to do with matters of interest to individual companies, which would be of no great interest to the Title Insurance Section at large.

Contacts

During the year, your Chairman, as well as the Secretary of the Association, had occasion to visit the offices of a number of the federal agencies and a number of life insurance companies, all of which are interested in using title insurance. As a result of these visits and of a study of correspondence received from many of our members, it is the opinion of the officers and Executive Committee of the Section that there is a great need for the adoption of standard forms for use in referring to building restrictions and to the existence or non-existence of a possibility of reverter.

Standardization Needed

Counsel for many of the large users of title insurance have clauses designed to give substantially the same protection, but differing slightly from the language of others. As a result, it often happens that a title company which has recently issued a policy in connection with a mortgage loan is asked to rewrite the policy changing the reference in Schedule B to restrictions or possibility of reverter, because some proposed assignee of the mortgagee wishes a different clause than that which has been used in the policy. We believe that this situation exists, not because of any pride of authorship or desire to be arbitrary on the part of individual counsel, but because standard forms have never been adopted and and approved.

This is a matter which might have been worked out in connection with the study of the Committee on Standards for Title Insurance of the American Bar Association. However, I understand from our good friend, James Rhodes II, that that committee has been abolished or consolidated into another committee. We have received no official notice from the Bar Association of this change, nor have we received any invitation to work with the new committee.

We therefore recommend that the Chairman of the Title Insurance Section, to be elected at this convention, be authorized to appoint a committee to confer with counsel for federal agencies, life insurance companies and other large users of title insurance, for the purpose of effecting some standard form of reference to restrictions and possibility of reverter.

Special Committee

In view of the change in its committees, made by the American Bar Association, there would seem to be no reason to continue the Title Association committee which was appointed to work with the corresponding committee of the Bar. To the members of that committee who so generously undertook to give their time and services in the joint study, the officers and Executive Committee of the Title Insurance Section extend their thanks.

FRANK I. KENNEDY
Vice-President, American Title Association
President, Abstract & Title Guaranty Co.
Detroit, Michigan

Report of Chairman of the Abstracters Section

JOHN W. DOZIER
Chairman

Secretary, Columbian Title & Trust Co., Topeka, Kansas

The Abstracters Section, as you know, is merely a division of the National Association and naturally many of its activities is its cooperation with the National officers in the program of the Association as a whole.

These activities during the past year, under the leadership of our President, Jack Rattikin, have been many, most of which have already been or will be reported by National officers in their reports to this Convention and need not be reiterated here.

National Contest

During the past year the Abstracters Section has undertaken one idea that I believe will be of invaluable benefit if we receive continued support, and that is the national contest sponsored by this Section, offering a prize for the best address given before some civic club, real estate board, or other similar organization. The purpose of this contest was two-fold; one, to accumulate a number of suitable addresses concerning our business for distribution among our membership, and second, to start a program of advertising and acquainting the public with our service and our people.

Improved Public Relations

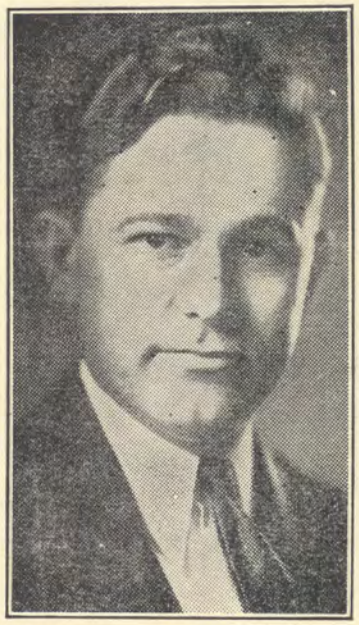
Our business is in desperate need of a better public understanding. The best protection to our business, or any business, is to inform the public fully and without misrepresentation regarding all phases of the business not understood, how it affects them and how it can best be used to their advantage.

Serve the Public

Too often owners of real property are required to furnish evidence of title to purchasers or mortgagees without knowledge of its actual purpose and value. It is definitely our duty and responsibility to see that those investing in real property are properly informed along these lines. A great amount of our business comes direct to us through lending institutions, real estate brokers, etc., and in few cases do we have the opportunity to actually contact the party who pays the bill, thus leaving the problem of justifying our fees to persons who seldom understand the actual purposes themselves. I know no other way that we can better inform the public than through talks before Civic Clubs, Real Estate brokers, Building and Loan Associations, Schools, and other similar organizations.

The greatest benefit to be gained by this Contest will go to those who participate. This contest was begun about the first of this year and closes November 1st. We sincerely hope that you will cooperate with us in making it a success by bettering yourself in your community through such public appearances and in turn submitting your talk to us as an entry in the contest, thus giving us the benefit of your ideas so that they may be used by others in similar circumstances.

We have already received a number of entries and have promises of many more. I would like to call your attention to the fact that any address delivered subsequent to October 1st, 1939, is eligible for entry.



JOHN W. DOZIER
Topeka, Kansas
Chairman, Abstracters' Section

Insurance Against Errors

In accordance with the suggestion made at the San Francisco Convention a Committee has been appointed to make a further study of the problem of the Abstracter to avail himself with some type of protection against unavoidable error.

For a number of years we have discussed this question as to whether or not some type of Insurance might be available or whether or not this type of Insurance would be desirable. This Committee is headed by William Lincoln of Springfield, Missouri, who will make a report of his findings at this meeting.

Our New Emblems

During the year the National Association has adopted a new emblem, a copy of which has been sent to each member. I would suggest that additional copies of this emblem be purchased as they can be used advantageously on office windows, entrance doors, etc.

In the past year, like all others, we have had much correspondence, most of it pertaining to individual matters of various members and in all cases we have made every effort to be of assistance.

I am sure that you will, at all times, find the officers of this Section as well as all other officers of the National Association, ready and willing to give you assistance or advice and I hope that you will feel free to call on them.

It has been a pleasure as well as an honor to have the opportunity of serving as Chairman of this Section and I wish to thank each and every one for your cooperation. I hope that you will continue to give your support and cooperation to the incoming officers of this Section and of our National Association.

TO THE ABSTRACTERS SECTION OF THE AMERICAN TITLE ASS'N:

Your committee, appointed by the chairman of the Abstracters Section for the further investigation of the matter of obtaining some type of insurance which would protect the abstracters against loss occasioned by unavoidable error, respectfully submits this report.

Your committee has met and fully investigated the subject, and after duly considering the subject is of the opinion that it is not to the best interests of our member abstracters to obtain such coverage and, therefore, recommends to the Abstracters Section that it not endorse this form of coverage.

Respectfully submitted,

W. A. LINCOLN, Chairman
ARTHUR C. MARRIOTT
A. W. EVELYN.

Report of Committee on Cooperation

T. M. SCOTT
Chairman

President, Scott Title & Trust Co., Paris, Texas

Soon after I was notified of my appointment as Chairman of the Committee on Cooperation of the American Title Association, I wrote a letter to each of the other members of this Committee.

In this letter, I asked for any suggestions or ideas they might have as to the nature and scope of the work of this Committee.

I received some good letters in reply, especially from Mr. Harvey Humphrey and Mr. Fred Wilkins. I gave the matter a good deal of study in trying to organize and plan the work. Soon after this was done, a number of unforeseen events have occurred which have prevented me from being active as Chairman of this Committee, and from carrying out some of the ideas that have developed in its organization.

I want this report to cover the ideas that have developed, hoping that they may act as a help and a guide for this most important Committee for whoever may handle its future work.

Over my many years of experience in Title Association work, there has been nothing needed, in my opinion, as badly as an active Committee on Cooperation. The work of this Committee should be two-fold, that is, the same Committee should handle both National and State work along the lines hereinafter outlined. On account of the details and extensive work to be done, we should have the active cooperation and work of the Secretary of the National Organization and the Secretaries of the State Associations.

We should, through the Chairman of this Committee and the Secretary of the National Association, find out through the Secretary of the State Associations, and where there are no State Associations, through the Secretary of the National Association, where meetings will be held from July 1, 1940, to July 1, 1941, in the various States of the different Associations that we desire to especially cooperate with.

I feel that we should undertake to cooperate, this first year, with the Life Insurance Companies, Real Estate Associations, Building and Loan Associations, Bankers Associations, and probably others, as the meeting places may develop from time to time.

Where ever there is a meeting of the National organization of one of the above referred to Associations, we should seek, through the State Secretary of one of our Associations where the meeting is to be held, the privilege of having a speaker on their program. We can, in turn, use from time to time, speakers from their Associations on our programs.

In the same way, where there are State Association meetings of any of the above organizations, the State Secretary should arrange for a speaker from his State or a neighboring State Association to appear on their program. If we could secure, during the ensuing year, an average of a dozen speakers before National and State gatherings on Title subjects that would be interesting to them, I think we would accomplish one of the finest pieces of work that could be done by us and our organization. The representative from our Association to these meetings would not only deliver a talk, but could obtain information as to prices, uniformity, the desires of the members of the various Associations, and how they look at our work. He could also extend the hand of fellowship and cooperation. This, I feel, would be very helpful.

This could then develop the following year and probably on a larger and more definite scale.

I am sorry that I have not been able to carry out a plan of this kind, but sincerely hope that this report, with these recommendations, will be given most serious consideration by our Board of Governors, and our Association.

Report of Legislative Committee

J. L. BOREN
Chairman

Mgr. Bluff City Abstract Co., Memphis, Tenn.

Your Legislative Committee has very little to report this year as we have reports of only five state legislatures meeting in regular session and two in special session. The legislatures meeting this year seem to be unusually kind to title men as no legislation of any kind has been reported which might affect our industry adversely.

Torrens

New York state was the only place where any Torrens legislation was introduced. Two bills on the Torrens question were introduced in that state, both of which were buried in committee. The laws with reference to acknowledgments and proofs of conveyances of real property were changed in New York so as to eliminate the requirement of a seal on a certificate of acknowledgment or proof taken before a Notary Public or other persons authorized by laws of the place where the acknowledgment or proof is made to take acknowledgments or proofs. The New York Board of Title Underwriters has recently been designated by the Insurance Department as a Rate-Making body, and the New York State Title Association has recently been appointed as agent of the Insurance Department to work out the statistical reports required by Section 183, Subdivision 2, of the Insurance law which provides in part as follows:

"Every authorized insurer shall annually file with the rating organization of which it is a member or subscriber, *or with such other agency as the superintendent may approve*, a statistical report showing a classification schedule of its premiums and losses on all kinds or types of insurance business to which this section is applicable, and such other information as the superintendent may deem necessary or expedient for the administration of the provisions of this article. *** Such statistical reports shall be consolidated in accordance with regulations prescribed by the superintendent."

California

The California State Legislature met in special session this year and this is what it did:

The Governor included in his call of the special session some sixty-four items for legislative action. The Legislature acted upon about twenty per cent of them.

The Governor asked the Legislature for approximately $64,000,000 in new revenues. The Legislature gave him none of it.

The Governor asked for $77,000,000 for relief. The Legislature gave him $13,800,000.

The Assembly formerly had an ultra New Deal Speaker. It now has an ultra conservative Speaker.

There was formerly a private telephone wire from the Speaker's desk to the Governor's office. It isn't there any more.

Furthermore, the Legislature im-

posed a requirement that to be eligible for relief one must be a resident of the State for three years. That means that Bill Gi l and Jack Rattikin can no longer unload their deserving poor upon the bounty of the State of California.

Nebraska

The Nebraska Legislature also met in special session. One of the reasons for the session was to provide for releasing Old Age Assistance liens. The 1939 regular session of the Nebraska Legislature had made elaborate provisions for Old Age Assistance and had provided for the filing of liens by the Assistance Board against land belonging to the donee, but had provided no method of releasing such liens when repaid.

These are the only matters of interest to our group reported to your committee. However, a few of the state legislatures met too late for the committee to secure reports as to their activities and I would suggest that the legislative committee for 1941 follow through and secure reports from those states.

Report of Councilor to the U. S. Chamber of Commerce

A. C. MARRIOTT

Vice-Chairman, Chicago Title & Trust Co., Chicago, Illinois

Appointed by the president of our Association as your representative, it was my pleasant duty to attend the 28th Annual Meeting of the Chamber of Commerce of the United States, held at Washington April 29 to May 2, 1940.

The Chamber of Commerce is an organization of business men representing local chambers of commerce and trade associations. Those in attendance represented every part of our nation and practically every phase of our productive life, and during the four days of the meeting conferred together and gave thought as to our national problems.

The concensus of opinion was that with an open road private enterprise can resume its progress toward a sound and wholesome national economy. That conclusion was based upon the premise that there is no limitation upon the opportunities for further development, that the door to further accomplishments is not closed, and that there is more work to be done which will employ the energy and ingenuity of all our people.

National Defense

The Chamber took the position that the most important question before us today is national defense, that no unprepared nation, however peaceful its people, has any assurance of security, and that our defense today is inadequate. It further declared that under present world conditions we must be prepared to defend our country, prepared with a defense of such strength that any potential aggressor, however powerful or ambitious, will be fearful to attack us.

ARTHUR C. MARRIOTT
Chicago, Illinois
Member, Board of Governors
Chairman, Finance Committee, American Title Association

Events abroad since that declaration by the Chamber last May have demonstrated the imperative, unquestioned necessity for such preparedness.

Included among the policy declarations submitted to the Chamber by its Resolutions Committee, and duly adopted, were the following:

That the broad objective of the United States Chamber of Commerce is to serve the nation and all of its citizens. That it seeks to and does represent all forms of American business endeavor, large or small, wherever situated.

That it stands firm for our American form of government and for the dignity and rights of the individual, the family and the minority.

That excessive debt—excessive taxation—excessive central planning and control are basic dangers to us all.

That no inducements must ever be allowed to lead our people from the paths of sanity, of productivity, of opportunity and of liberty.

As an organization, and as individuals, we support these declarations.

Report of Committee on Regional Conference

WILLIAM GILL
Chairman

Vice-President, American First Trust Co.

At the 1939 National Convention of the American Title Association held in Los Angeles, California, the Board of Governors approved the holding of the Southwestern Regional Conference, the territory included being the states of Texas, Oklahoma, New Mexico, Colorado, Kansas, Missouri, Arkansas and Louisiana.

By reason of almost identical title and economic conditions in these eight states it was thought that if such a plan was to be inaugurated these states would be "virgin territory."

The Board approved a Regional Conference Committee composed of President Jack Rattikin, John W. Dozier, Chairman of the Abstracters Section, Executive Secretary J. E. Sheridan and Past President Wm. Gill. This committee was authorized to canvass the membership and if such a Conference was desired, to arrange for and hold same.

Attendance

Your Committee wrote all members of the American Title Association residing in the eight states asking for an expression and a declaration as to whether or not such member would attend. The response was most favorable, and by reason of its central location Oklahoma City was chosen for the meeting place.

The conference was held March 4 and 5, 1940, and while the attendance was not in keeping with the response previously indicated, yet in view of unfavorable weather conditions, the attendance was all that could be expected. Each state was represented and the total Conference registration was approximately 200.

The program did not contemplate the usual entertainment enjoyed at conventions since it was to be a conference of work, exchange of ideas and plenty of open forum or round table discussion of practical problems of the title industry, with a minimum of prepared addresses.

Program

The Conference opened with a preconference session March 3, 7:30 p. m. The guest speaker being the Secretary of the Southwestern Region of the Building and Loan Group. This group having the same territorial boundaries, with the exception of the State of Mississippi, as our own title region.

Another interesting feature was the "Comparison of Abstracting methods in the Southwestern Region." Numerous sample abstracts were obtained in advance from each of the eight states and method of compilation, etc., compared.

A large Eastern Life Insurance Company readily agreed to the appearance upon the program of its Resident Title Attorney, handling title examinations and foreclosures in the eight states.

A representative of the American Bar Association discussed "Relations with Bar Associations"—he didn't pull his punches, neither did those in attendance hesitate to likewise have their "say so."

Another interesting feature was the "frame work" of a public address to be given by a title man before a Civic Club, Chamber of Commerce, etc. Ten minutes were allotted each speaker and each speaker was a practical title man of long experience.

Round Table

The remainder of the Conference program was devoted and confined to business, technical and legal problems of the title industry peculiar only to the eight states included in the Region.

It would be erroneous to say that the first Regional Conference ever attempted by the American Title Association was a huge success. To assert that those attending did not receive more real practical benefit than expected, would likewise be untrue. Without a single exception the program was well planned, enjoyed and instructive. From the opening of the first session until the close of the conference, those attending seriously considered the many problems common to those engaged in the title business in the eight states represented. It was interesting to note that each one present "talked the same title language" and by reason of similar title and economic conditions existing in the eight states there was in evidence a feeling of "on an equal footing." Believe it or not there was never a dull moment and absolutely no hesitancy (usually noticeable at most conventions), upon the part of anyone to frankly, bluntly and enthusiastically take part in all discussions. At different times officers of State associations presided—at no time was it necessary to "confidentially spot" certain ones to open a discussion. In no sense, could the open forum and round table discussions be referred to as a "knock down and drag out" affair. Neither could it be said that anyone hesitated to speak out in understandable English language his or her thoughts.

Discussion on Title Insurance

Representatives of different title insurance companies were assigned questions, submitted by those attending, for discussion. These questions, together with approximately 50 other questions and problems of the abstracter—appeared in the printed Conference program and provided approximately six hours of real, serious discussion and thought.

Whether or not other Regional Conferences should be attempted is debatable. While the attendance at Oklahoma City fell short of the Committee's hopes, yet it must be remembered that this "first conference" was an experiment. It is safe to say, however, that a large majority attending were emphatic in their belief that such conference proved most beneficial and should be continued.

Regional meetings confined to the boundaries of states, have proven most successful. It will be noted that in every State where regional meetings are held, there is always a strong state association with a "better than usual membership." Some states are entirely too large to reach all those engaged in the title business or at least many of our members think so. The grand total of those attending regional meetings in any particular state always exceeds the attendance at any State Convention. If the title industry will not attend State Conventions as it should then it cannot be expected that it will attend National Conventions as it should. The attendance at both State and National Conventions is deplorable as compared with the number engaged in the title business.

Shall They Continue?

A series of Regional Conferences throughout the United States might awaken the title people and result in a bettering of our financial condition as well as increasing attendance at National and State Conventions.

In order to have a more complete understanding of our business problems —in order to secure more uniformity both as to practice and charges and in order to educate our own people, they must be reached in some manner. Our National and State Association Bulletins are splendid but to what extent they are read and put into practice is problematical.

It is the belief of at least one member of the Regional Conference Committee, that the question of Regional Conferences should not be dropped. Extreme caution should be used and more thought and study should be given with a view of ascertaining whether or not there is a need for such meetings and a successful plan devised for financing same. The Oklahoma City meeting was an experiment but a successful one as far as a beneficial program is concerned.

It may be expecting too much to ask a title man or woman to attend their own State Convention, then a National Convention, then regional meetings in

their own states, plus Mid-Winter conferences and added thereto Regional Conferences embracing a number of States.

The Building and Loan Group, the Lumber dealers and the Realtors have proven that Regional Conferences will reach and serve their membership more successfully than in any other matter. This may not be true of the title industry. Undoubtedly, it's worthy of the consideration of future Administrations of the American Title Association.

Report of Judiciary Committee

McCUNE GILL
Chairman

Your President appointed the following Judiciary Committee for the current year:

Mr. Edward C. Wyckoff, Attorney, Newark, New Jersey.

Mr. George T. Burgess, Attorney, Stewart Title Guaranty Company, Dallas, Texas.

Mr. Charles C. White, Chief Title Officer, The Land Title Guarantee & Trust Co., Cleveland, Ohio.

Mr. John L. Finck, Vice-President, Home Title Guaranty Company, Brooklyn, New York.

Mr. R. F. Johnson, Attorney, Bankers Life Company, Des Moines, Iowa.

Mr. Henry J. Fehrman, Attorney, Metropolitan Life Insurance Company, New York, New York.

Mr. McCune Gill, Vice-President (Chairman), Title Insurance Corporation of St. Louis, St. Louis, Missouri.

The Chairman thought it would be interesting to the members of the Association for each Committeeman to write a summary of the opinion of an appellate court of his own State in some reported case involving an unusual situation having to do with the operations of title companies and abstracters. These summaries follow.

1. MR. WYCKOFF. A very unusual title policy was the basis of Banes v. Title Co. 142 Fed 957 (New Jersey 1906). A title company in 1900 insured the title to a fractional interest in a railroad mortgage dated in 1867 which mortgage had descended through several successive degrees of heirs of the original mortgagee. The chain included a pending administration and a receivership. The assured, upon learning of these facts, which had not been disclosed in the title policy, sued the Title Company. The court decided in favor of the Company in this particular suit, because as yet there was no proof that the mortgage would not be paid, and as a title policy is a contract of indemnity, some showing of loss must be made before recovery can be had. One's reaction to this case is that such a policy should not have been issued unless full recitals as to the matters covered had been set forth in the policy.

2. MR. BURGESS. Several of the States (including Texas) have two laws which worry title companies exceedingly. One is the law requiring a wife to be examined by the notary separate

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St. Louis, Missouri
Chairman, Judiciary Committee
Vice-President, Title Insurance Corp. of St. Louis

from her husband, and the other is the law forbidding a mortgage on a homestead for an ordinary loan. In one case there was no separate examination of the wife although the deed said there was, and there was an attempt to avoid the homestead law by conveying to another person and having him execute a purchase money mortgage to the husband and wife which mortgage was used by them. The court held the transaction void in law for both reasons but took pity on the assignee of the mortgage and held that the wife and husband were estopped to urge the invalidity because they knew that the proceeds were being used to assist a bank of which the husband was cashier. However, the whole affair shows how careful title insurance companies in these States must be in checking facts not of record in connection with their title policies. Callaway v. Sanger, 61 SW 2nd 988 (Texas).

3. MR. WHITE. Abstracters must necessarily take orders to compile abstracts largely from real estate agents. However, if possible and where the ability or willingness of the agent to pay the abstracters' charges is in doubt, the principal, that is the seller or buyer as the case may be, should be asked to confirm the order. This is brought out in the case of Spengler v. Sonnenberg, 88 Ohio State Reports (192) (1913) where the court held that a real estate agent has no implied authority to bind his principal to pay for an abstract.

4. MR. FINCK. A policy of title insurance, insuring a newly completed office building in New York City, correctly described the property by metes and bounds followed by the following words: "and also the building now being erected on said premises known as the Bowling Green Offices. The lands the title to which is hereby intended to be insured, being that on which said building now stands as shown by the survey * * * * duplicate of which is hereto annexed." The survey did not show any encroachments upon the street, but it was found that the building, at the time that the policy was issued, actually did encroach upon the street. The policy holder was compelled to remove the encroachments at a cost of $16,000 and brought suit against the title company to recover the amount so paid. The Appellate Division, reversing the lower court, held that the policy covered only so much of the building as stood upon the land described, but the Court of Appeals unanimously reversed this decision and gave judgment against the title company. On the theory that any ambiguities should be resolved against the insurer, the Court of Appeals held that the description must be construed to include "the land upon which a known and designated building stands and it places such building wholly inside the street line. The policy says, even though in somewhat equivocal language, that an accurate survey of the plaintiff's building is attached to and made part of the policy and shows no part of the building in the street." In other words, the plaintiff was misled because neither the survey or the policy showed encroachments upon the street. As the title company had insured a marketable title when in fact street encroachments existing at the date of the issuance of the policy made the title unmarketable, the company was held liable for the cost of removing the encroachments. Broadway Realty Co. v. Title Company, 226 N. Y. 335.

5. MR. JOHNSON. The case of Young v. Lohr, 118 Iowa 624 was an action brought to recover damages sustained because of a defective abstract of title furnished by the defendant abstracter. Judgment was rendered for the plaintiff, which was affirmed on appeal. The plaintiff resided in Council Bluffs, Pottawattamie County, Iowa, where a certain judgment was rendered against him. This judgment was later transcripted to Sioux County, Iowa, and became a lien upon land which the plaintiff owned there, and to satisfy the judgment said land was sold at sheriff's sale, and afterwards went to deed. The plaintiff did not know of the transcript, lien or sale until after the sheriff's deed was delivered. After the sale of the land he applied to a lending firm in

Council Bluffs for a loan, making said firm his agents to procure the loan and to pay off a mortgage and all other liens and encumbrances affecting the property, and agreed to furnish a complete abstract of title. He delivered an abstract to the lending firm, and they sent it to the defendant abstracter for extension and certification. It was extended and certified by the defendant, without showing the filing of the transcript of judgment or the sheriff's sale of the land. The defendant contended that there was no contract or privity of contract between him and the plaintiff upon which liability could be predicated in this case, because the abstract was extended and certified for the use of the lending firm, and not for the plaintiff. The Court said, however, "Here there was evidence showing that Walters & Wadsworth (the lending firm) were acting as the agents of the plaintiff in procuring an extension of the abstract. It is true that their agency may not have been disclosed by their action or by the nature of the transaction, but such disclosure was not necessary to create liability on the part of the defendant. If the agency in fact existed, the abstract was furnished for the plaintiff, and he was liable to the defendant for the service rendered, whether the defendant knew him as a principal or not. Being liable for this service, he is entitled to reciprocal rights against the defendant, and may maintain this action, subject to any defense which the defendants might have interposed against the agents.

6. MR. FEHRMAN. An abstract company furnished an abstract to certain City Commissioners, the information to be used in condemning a street. The abstract gave the name of the owner correctly but erroneously showed the land to be encumbered by a mortgage when it was in fact clear. The Commissioners paid the proceeds of the condemnation to the mortgagee. The court held that up to this point the abstract company was not liable to the owner because the abstract had not been made for him. The abstract company, however, in its desire to cooperate with the owner, agreed that if such owner would not sue the abstract company it would try to get back the money. This, the court held, was a valid contract to pay and the forbearance to bring even a losing suit against the Company was sufficient consideration to hold the abstract company after its attempt to recover the money had proved unsuccessful. Lockwood v. Title Co. 130 New York Supplement 824 (1911).

7. MR. GILL. A wealthy man died in St. Louis and his estate was administered in the Probate Court; all allowed claims having been paid, the estate was finally settled and the executrix discharged. However, a suit had been pending in the Circuit Court against the executrix to establish a large claim against the estate which was actually established later and long after the final settlement. Pending this matter a large amount of real estate was conveyed to a title company as security and it issued policies to purchasers and lenders free of the claim. Upon final judgment being rendered on the claim for some $226,000 the title company was compelled to raise this large amount at once and in cash, but the real estate could not be sold until long afterward and at considerable loss. Two lessons can be learned from this transaction, first that a final settlement of an estate is frequently not "final" at all, and second that "slow" security (such as real estate) should not be accepted as the basis of a large title policy against what may become a "quick" liability. Knisely v. Leathe, 256 Mo 341, 166 SW 257, 178 SW 453.

Report of the Committee on Federal Legislation

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

The second session of the Seventy-sixth Congress of the United States still continues and, because the European War keeps on, is likely to remain in session for a long time.

There were definite indications in the early days of the session of a desire on the part of legislators to give an appearance of reductions in Federal appropriations. Election expediency seems to have been the guide, and the aim was to do nothing controversial. The attitude for reduction of appropriations has been necessarily nullified, in recent weeks, by the trend of events in Europe and the consequent almost universal belief, it has become necessary that the United States arm for defense.

The Association should realize that a report on Federal Legislation, made to a special group, must, of necessity, be very sketchy, and only can "hit the high spots".

Again we find that the enactments and proposed legislation of the Seventy-sixth Congress have little application to the title industry.

Not in the line of legislation, but rather in an attempt by Federally controlled agencies, to make existing legislation operative, the Reconstruction Finance Company, early in this year, agreed to purchase, at par, Class 3, Title 1 Federal Housing Administration loans under Twenty-five Hundred Dollars ($2,500.00) from insured lending institutions. Considerable activity has been evidenced by the Federal Housing Administration in an endeavor to induce builders and lending institutions to cooperate in the making of such loans, so that the building of homes would be stimulated.

House Bill No. 7342 amended the Emergency Farm Mortgage Act of 1933. This Bill extended until June 1st, 1942, the authority of the Federal Land Commissioner to make loans on behalf of the Federal Farm Mortgage Corporation. That authority had expired by limitation on February 1st, 1940.

House Bill No. 8450 would make permanent the present reduced interest rate of 3½% on Federal Land Bank Loans and 4% on Land Commissioner Farm Loans.

Senate Bill No. 1935 to amend the Bankruptcy Act relates to the Frazier-Lemke Act. It provides for compositions with creditors by farm debtors, and was limited to expire March 4th, 1940. The benefits of that Act are extended until March 4th, 1944. The definition of whom are farm debtors is broadened.

Senate Bill No. 1836 promotes farm ownership—by amending the Bankhead Jones Farm Tenant Act to provide for government insured loans to farmers. A revolving insurance fund is to be created in the Treasury, to be known as the "Farm Tenant Mortgage Insurance Fund", to be used by the Secretary for the purposes of the Bill. Insurance would be written by the Secretary. Mortgages securing insured loans are to run for not longer than forty years, would bear interest at 3% and have annual servicing charges of 1%, to be paid by the borrower. Borrowers eligibility and eligibility of the mortgage would be established under the terms of the Farm Tenant Act, with an additional provision limiting any individual loan to an amount, including fees and charges, not exceeding 90% of the reasonable value of the mortgaged property, including improvements.

Senate Bill No. 3480, called "Farm Credit Act of 1940" creates what is to be known as the "Farm Credit Administration," under the direction and control of a Farm Credit Board. This new Board would take the place of the present Farm Credit Administration and Federal Farm Mortgage Corporation. The offices of Governor of the Farm Credit Administration, Land Bank Commissioner, Production Credit Cooperative Bank, and Intermediate Credit Commissioners would be abolished, and the powers and functions of these offices vested in, and exercised by, the Federal Farm Credit Board. The Board would be composed of five members, and the Secretary of Agriculture ex-officio.

House Bill No. 8822 extends the original jurisdiction, in civil actions, between citizens of the District of

Columbia, Territories of Alaska or Hawaii and any other State or Territory, so that the citizens of these Territories are to have the same right, to bring suit in a District Court in any State, on grounds of diversity of citizenship, as is now enjoyed by citizens of a State .

The existing law which requires that the Attorney General certify the title of any land to be purchased by the United States for the site of any public building, before any money is paid for the land, is to be amended by Senate Bill No. 3900, *by adding language* which would permit the acquisition by the United States of low-value lands (not exceeding $10.00 per acre), such as denuded forest lands or submarginal agricultural areas, *without requiring* an opinion by the Attorney General, *where there are infirmities in the title*, which would *probably not be asserted*, and would not affect the rights of the United States in the lands acquired. The amendment would be limited to apply to lands not exceeding in value $3,500.00 in a single option or contract of sale. That Act seems to me a very strange animal. Perhaps, the Attorney General's office is busy. But it would seem the advice of the Attorney General is needed more in acquisitions involving questionable titles, than in those affecting titles apparently good.

House Bill No. 7020 would amend Section 2 of the Act of March 4, 1931, in regard to service of process on the United States in foreclosure actions. Under that Act the United States permits itself to be made a defendant in suits, brought in the Federal Courts for the foreclosure of liens on real estate, for the purpose of securing an adjudication as to any interest the United States may have in the property. The new Act would permit service to be made, either on the United States Attorney or on a clerk designated, for that purpose in writing, by the United States Attorney.

House Bill No. 9966, introduced on May 30, 1940, is intended to provide for the expenses of national preparedness, by raising revenue and issuing bonds, and to provide a method for paying for such bonds. The Act will be known as the "Revenue Act of 1940". Its chief effect is to provide for supertaxes, for a period of five years. These supertaxes are mainly 10%, but in few cases are as high as 33⅓%, *greater* than the amount of tax payable, if the tax were computed without regard to the Act. According to newspaper reports, the Act is calculated to produce increased revenues in excess of One Billion Dollars. The Act is effective July 1, 1940.

General Notice—Stamp Taxes

Bonds and debentures or certificates of indebtedness issued by any corporation and all corporate securities, on each $100 of face value or fraction thereof, 11c.

Transfers of any of the foregoing, on each $100 of face value or fraction thereof, 5c.

Deeds where consideration exceeds $100 but not $500, 55c; each additional $500 or fraction thereof, 55c.

The appointment of three additional Circuit Judges, and eight additional District Judges, is authorized by House Bill No. 7079. One of the Circuit Judges will be for the Sixth Circuit and two for the Eighth Circuit. The eight District Judges will be for New Jersey, the Southern District of California, the Western District of Oklahoma, the Eastern District of Pennsylvania, the Southern District of New York, the Northern District of Illinois, the Northern District of Georgia and the Northern and Southern Districts of Florida.

Amendments of the Federal Home Loan Bank Act is provided by House Bill No. 6971. Among the provisions

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of the Bill is one to permit (within the present limitation of $20,000.00 for loan upon a single property) loans on up to four-family dwellings, and also, *without regard to loan limitations*, loans on *any* improved and marketable real estate, *capable* of producing income *reasonably* in relation to carrying charges on a loan. This last amendment seems to be at variance, with what is ordinarily construed to be the *home* mortgage loan sphere of Building and Loan Associations. Undoubtedly, it will encourage Building Associations to explore loan fields, which they have never heretofore prospected.

The members of your Committee took some part in the negotiation for amendments to House Bill No. 9722, which is known as the "Fire and Casualty Act" and is applicable only to the District of Columbia. The Bill, when originally introduced, in addition to providing for the regulation of fire, marine and casualty insurance, included the regulation of *title insurance* in the District of Columbia. Section 13 of the Bill limited the amount of any one risk, to not more than 10% of the sum of the capital stock and surplus of the issuing company, except with the written prior consent of the Superintendent of Insurance. The Bill, *as amended*, will have no application to the business of title insurance. It is mentioned only because it indicates a trend legislation may follow in the states.

Your Chairman has had called to his attention, Senate Joint Resolution No. 92. It seems that an organization which calls itself the United Land Owners of Los Angeles, California, is very much concerned about the Resolution. It is charged by the United Land Owners that the Resolution purports to transfer, *to the United States*, title to submerged and overflowed lands in the United States. A Joint Resolution of the Senate and Assembly of the State of California, protesting to the President and Vice-President, the President of the Senate and Speaker of the House of Representatives, Secretary of the State, Secretary of the Navy, and to members of Congress, against the provisions of this Senate Resolution, has come into our hands.

Your Chairman has always believed, that title to the lands under navigable waters in the United States is vested in the Sovereign states, and he cannot conceive how a congressional enactment can affect such title without the payment of just compensation. However, the matter is one which may be of importance, and if the serious attitude of the legislature of the State of California is justified, it is worthy of the notice of all title men.

In reports on Federal Legislation during the past five years, this Committee has called to your attenion that appropriations of the Congress are greatly in excess of the income of the Treasury. We believe that the *piling up* of the public debt creates great danger to our free institutions. Your Chairman now asks your indulgence, to quote on this subject, from a paper which has come into his hands. The quotation is short, the argument unanswerable. I quote:

"There is no *bottomless cash drawer* into which Congress may dip, when it chooses, simply by passing an appropriation bill. The United States Treasury is not self sustaining. It creates *nothing*. It is merely the *bill collector* of the Federal Government, and the bills are paid by the people.

"No *President, no Congress, no fiscal expert* has yet been able to devise a way of getting *something for nothing*. We, *as a people*, may spend our money as we choose *but*, if we spend it for *one thing*, we cannot have it for *another*.

"If the Federal Government makes grants to state and local governments, the people of the states and local political divisions must foot the

bill. There is nothing benevolent about such grants. They are merely giving back to the people *a part* of something that has been taken away from them.

"In the past fiscal year, federal "handouts" in the form of assistance to state and local governments amounted to more than two and one-half billion dollars. Taken as a whole, the states now get one-fifth of their revenue from the Federal Treasury. Some get nearly one-third.

"That looks like generosity—but is it?

"To get the money the Federal Government must collect it from *the same sources* upon which the *state* and *local* government rely for revenue to pay their running expenses. The *more* the *Federal* Government takes, the *less* there is for the *state* and *local* governments. In recent years the Federal Government has been tapping the sources of revenue more and more and, accordingly, there is less and less left for the states and local governments to tax. You can't get *twice as much butter* by milking the cow *twice as often.*

"That course of public financing leads to disaster. State and local governments may think they are getting something for nothing. The Federal Government may be commended for its apparent generosity, but in the end the people reap a harvest of taxes and debt.

"Take a look at the national balance sheet.

"For the tenth consecutive year the Federal Government has been piling up deficits.

"In the decade 1921-1930 — the prosperous 'twenties'—it collected in taxes about 41 billion dollars. In the decade 1931-1940—when we were bumping the depression bottom—it collected about the same amount.

"But in the first decade it spent *34 billion dollars.* In the present decade it will have spent *68 billion dollars—twice* as much.

"The net result is, that in the *earlier period,* the Federal Government paid out *8 billion dollars less* than it took in. In the decade ending with this fiscal year 1940, it will have spent *27 billion dollars more* than it took in.

"The end of *that road* is catastrophe. Congress and the people now face *the choice* of continuing to follow it, by *raising the federal debt limit* and going deeper into the Red, or taking the hard but surer road of cutting down current expenditures.

"The fiscal predicament into which we got ourselves is not merely a social problem. It is not merely an economical problem. It is first of all, a problem *of simple arithmetic.*

"We cannot go on very long under the delusion that two and two *can,* by the magic of political bookkeeping, be made to equal *five* without running on the rocks."

That was written in December 1939. Consider its implications. Add, to the Federal *debt figure,* the appalling aggregate of the State and local debts, and ask yourselves—how it all will be paid. Take into the account the increases in appropriations, which everyone will conceive to be necessary, to provide for our national defense. The Federal debt limit of 45 billion dollars has been reached and *must* be extended. It is not fanciful to estimate that the debt will reach *80 billion dollars* within the next five years.

Of course the spending of huge sums of money in a short time for armaments, will create a specie of prosperity, but what are to be the consequences after the rush of spending has ceased. Will we have money inflation? Will we have repudiation of some sort? I don't know, but certainly our standards of living will be lowered, and after the flush of spending for defense is ended, we will need to "pull in our belts".

We have been complacent and have grown soft. We have permitted our Government — Municipal, State and Federal—to be run by *politicians.* We need Statesmen—men of courage and ability—who will unselfishly devote themselves to the management of the Country.

You, who are important people in your respective communities, should think about, and discuss this problem. Its proper solution is vital to our future happiness, and perhaps, to the continuance of our present form of Government. Exercise your influence and your right of suffrage, *without regard to your party affiliation.* Send to the Congress and the White House representatives of the highest calibre obtainable, so that *opportunism,* and "catch as catch can" administration will cease, and thereby assure—in the words of our revered Civil War President—that "government of the people, by the people and for the people shall not perish from the earth."