TITLE NEWS

OFFICIAL PUBLICATION

The American Title Association

VOLUME 21 NUMBER 1

APRIL, 1941

TITLE NEWS

Official Publication of

THE AMERICAN TITLE ASSOCIATION

Soldiers and Sailors Civil Relief Act

COMMENTS

The above Act supersedes and re-enacts:

1. The Act approved August 27th, 1940, with respect to National Guard, Reserve and Retired Personnel ordered into active service, (Public Resolution No. 96, 76th Congress, Chapter 689, Third Session) and

2. The Act approved September 16th, 1940, with respect to draftees ordered into active service, being the so-called Selective Training and Service Act of 1940.

The Act approved October 17th, 1940, now supersedes such re-enacted provisions of the 1918 act and adds many other provisions. Numerous of the provisions of the act of 1940 are the same as sections of the 1918 Act as re-enacted by the National Guard Act and the Selective Training and Service Act.

It affects real estate titles. Thus, (1) it affects the liability of title insurance companies under their policies of title insurance; (2) it presents problems to the abstracters on the matter of sufficiency of showing in abstracts of title as may be disclosed by searches of the public records; it presents problems to the attorney engaging in the examination of titles to land, and his desire to protect his client, to cause real estate transactions to be made rather than impeded, and, at the same time to protect his own standing as one skilled in the law of real property.

These labilities arise by reason of the possibility of: Claims of certain persons asserting directly rights in real property. Claims that titles are unmarketable because of the (practical) impossibility to show beyond reasonable doubt that no interest of a person in the military service of the United States is outstanding.

SUMMARY

To be in force until May 15th, 1945, unless the country is then at war, in which case it shall be in force until six months after such war is terminated by presidential proclamation of a treaty of peace.

Being an exercise of a paramount federal power, the act abrogates all state laws inconsistent therewith.

Enacted for the benefit of persons in the military service of the United States:

1. Members of the United States Army.
2. Members of the United States Navy.
3. Members of the United States Marine Corps.
4. Members of the Coast Guard.
5. Officers of Public Health Service detailed by proper authority for duty with either the army or navy.
6. Those being trained or educated under the supervision of the United States preliminary to induction into the military service.
7. Women on active duty, for example, registered nurses, members of the Voluntary Reserve and as such members of the Naval Reserve, a component part of the United States Navy.

Period of Service

The term "period of military service" for persons in active service at the date of approval of this Act begins with such date, and for persons entering service after the approval of this Act, such period begins with the date of their entering active service. Such period terminates with the date of discharge from active service or death while in active service, but in no case later than the date when this Act ceases to be in force.

Applicability

The Act is applicable to all actions and proceedings commenced in any court.

The Act does not operate if the defendant enters his appearance.

Default

If there is default of any appearance (Section 200) the plaintiff must file an affidavit that the defendant is not in military service. This affidavit need not necessarily be affidavit of the plaintiff.

If unable to file an affidavit that the defendant is not in military service, plaintiff must file an affidavit either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service.

If plaintiff cannot determine whether or not defendant is in the service, or if the defendant is in the service, no judgment shall be entered without an order of court directing such entry; and if the defendant is in the service, no such order shall be made until after the court shall appoint an attorney for the defendant to protect his interest. The court may also require, as a condition before judgment is entered, that the plaintiff file a bond, approved by the court, to indemnify the defendant, if in military service, against

any loss should the judgment be thereafter set aside. No attorney appointed under this Act shall waive any rights of the person for whom he is appointed or bind him by his acts.

Defendant Prejudiced

The act provides that if the defendant was prejudiced, the judgment may be opened by the Court and the defendant let in to defend, provided he has a meritorious or legal defense.

Bona Fide Purchaser for Value

Vacating, setting aside or reversing any judgment of any of the provisions of the Act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment. (Paragraph 4, Section 200.)

If judgment was entered without the affidavit of non-military service being filed, it is believed the judgment may be considered as valid if the affidavit (and certificates of non-military service if obtainable) will be filed, on first obtaining an order permitting this to be done. See *Schroeder v. Levy*, 222. Ill. App. 252; *Eureka Homestead Soc. v Clark*, 145 La. 917, 83 So. 190, that the judgment rendered without such affidavit is not null and that the affidavit is not jurisdictional because, under Paragraph 4 of said Section 200, the judgment may nevertheless be permitted to stand.

Eviction

The wife, children or other dependents of a person in military service cannot be evicted from a dwelling for which the rent does not exceed $80 per month, except by leave of Court.

The Secretary of War, of the Navy, or of the Treasury (as to the Coast Guard) may order an allotment of pay, in reasonable proportion, to discharge the rent of such premises.

Land Contracts

No land contract can be rescinded or terminated, where a deposit or installment thereon was made prior to the approval of the Act, except by action in a court of competent jurisdiction or by mutual agreement executed in writing.

Voluntary Conveyances

The provisions of the Act do not apply to a mortgagor who had conveyed away his title and entered the service, except only as to his personal liability on the obligation.

A proceeding to enforce an obligation secured by a mortgage originating prior to the date of approval of the Act, may be stayed by the court or such other disposition may be made of the case as may be equitable to conserve the interests of all parties.

Originating Date

The provisions of Section 302 apply to obligations originating prior to October 17th, 1940. In attempting to determine whether an obligation originated after that date, one cannot rely completely on the date of the mortgage or deed of trust where it is given as a renewal of a previous mortgage or deed of trust.

Power of Sale

No sale under a power of sale or under a judgment entered upon warrant of attorney to confess judgment shall be valid if made during military service or within three months thereafter, unless upon an order of sale previously granted by the court and a return thereto made and approved by the court.

Taxes—Assessments

No sale of property shall be made to enforce the collection of a tax or assessment, and no proceeding or action for such purpose commenced, except upon leave of court granted upon an application made therefor by the collector or other officer. The court may stay such proceedings or sale.

When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, a person in military service shall have the right to redeem or commence an action to redeem such property at any time not later than six months after the termination of such service, but in no case later than six months after the date when the Act ceases to be in force; the period for redemption provided by any state law shall not be deemed to be shortened.

Certificates of Military Authorities

The Act provides for the issuance, on application, of certificates signed by the Adjutant General of the Army, by the Chief of the Bureau of Navigation of the Navy Department, and by the Major General Commandant, United States Marine Corps, which shall, when produced, be prima facie evidence as to any of the following facts stated in such certificate: That a person named has not been, or is, or has been in the military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the time of issuing the certificate, the time when and the place where such person died in or was discharged from such service; with some qualifications as to missing or presumed dead members of the service.

It has been ascertained that the certificates referred to above can readily be obtained from the Major General Commandant of the United States Marine Corps, the Treasury Department for the Coast Guard, and the Surgeon General of the United States Army for Army nurses.

As to the Offices of the Adjutant General, War Department, and Navy Department, Bureau of Navigation, we quote, in full, the responses given:

War Department

THE ADJUTANT GENERAL'S OFFICE

Washington

November 23rd, 1940

"1. Favorable consideration cannot be given to your request for the issuance of a certificate of the Adjutant General as to whether or not a certain person has not been, or is, or has been in the military service under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public No. 861, 76th Cong., approved October 17, 1940), section 601 thereof or under its antecedent enactments, section 4 of the Act of August 27, 1940 (Public Res. No. 96, 76th Cong.), or section 13 of the Act of September 16, 1940 (Public No. 783, 76th Cong.), under which latter enactments certain benefits of the Soldiers' and Sailors' Civil Relief Act approved March 8, 1940 (40 Stat. 440) were extended.

2. Such certificates will be issued only in the following instances:

(a) Where a request is made by an individual who has been or is now in military service, that is, in one of the components of the Army of the United States concerning his own service.

(b) In other cases, where the request is accompanied by a certified copy of a court order entered in the proceeding under the act cited for which such certificate is required and directing that such certificate be procured.

3. In all cases involving such requests it is necessary that the fullest possible information concerning the identity of the person regarding whom the certificate is desired be submitted. This is made necessary because various files of the War Department contain some twelve million separate sets of records showing the military service of former Soldiers and men who are now members of the Army. Due to this fact it is virtually impossible to make an intelligent search for, or identify with any degree of certainty, the record of any individual unless the information submitted contains his full name, the name under which he enlisted or was inducted (if known), the date and place of his birth, his last known address and data concerning time and locality of enlistment or induction (if known).

4. As Army nurses are the only female personnel in the United States Army, any requests for certificates regarding military service of women for use in connection with the Soldiers' and Sailors' Civil Relief Act of 1940 should be submitted directly to the Surgeon General, who has custody of the records of such personnel."

E. S. ADAMS, Major General,
The Adjutant General.

Navy Department
BUREAU OF NAVIGATION
Washington, D. C.

November 23rd, 1940

"Referring to your letters of October 30, 1940, and November 12, 1940, requesting a certificate in accordance with the Soldiers' Relief Act of October 17, 1940, showing whether or not the subject named man is now or has been in the Naval service, you are informed that pursuant to an opinion of the Secretary of the Navy, such certificate will be furnished only upon the order of the court wherein the proceedings arising under the provisions of this act have been commenced."

Very truly yours,
C. W. NIMITZ,
Chief of Bureau.
C. B. HATCH,
By direction.

(These have been quoted in full, so that you, as members of the Association, and through you, members of your local bar will have them for such use as may be considered advisable in discussing procedure, etc., with other attorneys and with the judges having jurisdiction.)

It is rather obvious that certificates from service departments other than the army and navy represent but a small fraction of the men and women in service or who will be in service; for the great bulk will be in the two services whose letters are quoted above.

It is also obvious that the regulations of both the Army and the Navy seem to be entirely justified and sound; and it is probably equally obvious these regulations spell the "death knell" of obtaining such certificates. As Mr. John Umsted, of the Philadelphia Bar and Honorary President of the Pennsylvania Title Association describes it, "as impossible of performance as King Canutes' command to the sea, notwithstanding the language of section 601 of the Act.

APPROVAL OF TITLE

(Note—While this discussion is in the singular, It is of course intended to refer to and cover all defendants necessary to be included in any action.)

Defendant Not in Military Service

Where the defendant can be located and positive information obtained as to his identity and employment other than in the military service, supported by affidavit to that effect, or where a written acknowledgment can be obtained from the defendant that he or she is not in the service, attached and referred to in the affidavit, or where the defendant is interviewed by someone else and an affidavit by such person attached to the affidavit by the plaintiff, it seems that in those cases, if the court accepts such affidavit and grants judgment, title can be passed.

If reliance is to be had on affidavits not accompanied by certificates, then the affidavit should be so full and complete that its averments would have to be definitely denied in an application to open the judgment or to stay execution. An affidavit that "John Johns is not in the military service; we believe he is a man eighty years of age" is not believed to be sufficient in scope. Rather the facts upon which the statement is made should be set forth—not only that the party is not in the military service, but such facts as a statement of his movements in recent years, his family connections, the amount of inquiry that has been pursued.

Where title to real property comes through a suit terminating after August 27th, 1940, and an affidavit is on file setting forth facts showing that the defendant is not in military service, and if the court accepts such affidavit and grants judgment, most of the title insurance companies will pass the title for purposes of issuance of a policy of title insurance.

As to the situation where the defendants or any of them are designated as persons unknown, or whether or not the defendants are served by publication, one of our title insurance companies states it will pass title in all cases where a decree has been entered, irrespective of the contents of such affidavits, being of the belief any judgment or decree would bind all parties who are not actualy in the military service.

This company indicates its belief the judges might be willing to accept an affidavit in which the affiant states the action is not brought and the decree is not desired for the purpose of eliminating any rights of any of the unknown heirs, but is intended to obviate errors, insofar as this can be done, in the record; and to obtain a marketable title to the property described in the complaint; that no one has an interest in the property except as set forth in the said complaint; that, therefore, none of the unknown defendants are in the military service of the United States.

FORM OF AFFIDAVIT

(Suggested)

State of.....
} ss.
County of.....

....., being first duly sworn, deposes and says that he is the beneficiary (one of the beneficiaries) under that certain deed of trust (or mortgagee under that certain mortgage) executed by .....to ....., as trustee, recorded in Book.....Page....., of official records in the office of the (name of public office) of.....County, (State) , covering:

(Here describe real property)

That (Here insert data referred to on reverse side of affidavit form. This data, printed on the reverse side of the affidavit form, appears in this copy at the foot of the affidavit form).

That affiant knows of his own knowledge that said .....is not now, nor was (s)he within the period of three months prior to the making of this affidavit (a) in the Federal Service on active duty as a member of the Army of the United States, or the United States Navy, or the Marine Corps, or the Coast Guard, or as an officer of the Public Health Service detailed by proper authority for duty either with the Army or the Navy, or (b) in training or being educated within the supervision of the United States preliminary to induction into the military service within the purview of the Soldiers' and Sailors' Civil Relief Act of 1940.

That this affidavit is made for the purpose of inducing....., as trustee, without leave of court first obtained to cause said property, without leave of court first obtained, to cause said property to be sold under the terms of said deed of trust pursuant to the power of sale contained therein.

.....

Subscribed, etc.

Note: On reverse side of affidavit, the following should appear:

"In the blank space contained in the body of the affidavit, following insertion of the description of the property, the affiant should set forth such facts as he is able to furnish, to show:

1. Whether or not he personally knows the then owner.
2. The approximate length of time he has known him.
3. The present address of such owner.
4. The occupation of such owner and name of his employer.
5. The approximate age of such owner.

Where Military or Non-Military Service Cannot Be Established

Mr. John Umsted, distinguished member of the Philadelphia Bar, and Honorary President, The Pennsylvania Title Association, comments on this point, as follows:

"In the class of cases where it cannot be ascertained whether the defendant is or is not in the service, the pertinent facts that should be set forth in the petition . . . . should be the date when the instruments was executed by the defendant, if such there be; the date of his acquirement of interest; his age at those times, if known, and if not known, then an age deducible from other facts or circumstances, such as the age of 21 when an instrument was executed or such other circumstances in the line of time as may indicate his age; the length of time that he occupied the property; the time when he abandoned the property; the time of entry by a mortgagee into possession; all acts indicating abandonment; the time of last demand upon defendant for payment of the indebtedness; the investigation that has been made to ascertain defendant's whereabouts; the inability to procure certificates from the Army and Navy Departments, reciting the regulations as set forth above; the form of return of the sheriff on any writ issued in the proceeding; and generally any other facts that might indicate the defendant is not in the service, followed by a prayer to the court to direct the entry of a judgment."

Mr. Umsted continues, ". . . Under Section 200 of the Act, the Court is invested with full authority to enter judgment where it appears the defendant is not in the service. . . .

The Act provides that the judgment may be opened, but it leaves the matter discretionary with the court provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. It would seem that where the judgment is entered under the order of court, innocent parties acquiring title on the strength of the judgment, unopened at the time of entry, would be protected, for it evidently was not the intention of Congress to destroy the confidence of the public in foreclosure sales to the extent that titles coming through them would not be secure."

Inclusion of Affidavit Data in Decree

At the Mid-winter Conference of the American Title Association in Chicago in February, 1941, one point considered highly important was presented, being the point that over the years affidavits and other documents in court files become lost. Accordingly, it is suggested that favorable consideration be given to (1) inclusion of the pertinent facts of such affidavits in the decree itself; (2) that the affidavits themselves be recorded in the office of the Register or Recorder of Deeds.

Some of the California title insurance companies have proposed that all affidavits be executed in triplicate, one executed copy being given to the title company for retention in its file. This practice undoubtedly would have its benefits and could be carried out well in cases where the foreclosure, or whatever else form the action might be, were carried on at a time the title company itself was in the picture by reason of an application in hand in a pending action.

In the case of applications for policies based upon an action now closed, it probably would not be possible to obtain these executed affidavits. Thus, as a safeguard not only to the title insurance company but also to the attorney in private practice and desirous of protecting his reputation in the years to come, the suggestion has been advanced that the decree itself contain the facts set forth in all affidavits.

Claims of Unmarketability

At the 1941 Mid-winter Conference of the Association, much discussion turned on the point of the sufficiency of the decree, following the filing of Affidavit that it is not known whether the defendant is or is not

in the military service, insofar as marketability of title be concerned.

In any discussion on this point, there necessarily must be given recognition of the fact that in a union of 48 States, with their 48 types of custom, of practice, of statute, and of decisions of their courts, there will likewise be (speaking somewhat liberally) forty-eight pictures on that (1) which constitutes a marketable title; (2) which renders a title unmarketable; (3) that which the Court can or will accept to establish a judicial finding of marketability.

Since no hard and fast rule can be laid down which will be equally applicable to all jurisdictions, it should be borne in mind this presentation obviously does not indicate or reflect the position on all points of all of the title insurance companies of the country. To each will be reserved final decision to act as to it seems appropriate.

At the 1941 Mid-winter Conference of the Association, the majority of opinion expressed indicated a belief the title insurance companies could approve with reasonable safety titles based upon an affidavit that it is not known whether the defendant is or is not in the military service, and decree of the Court finding for the plaintiff, and that the title companies could issue policies including coverage against loss by reason of unmarketability.

This was not the unanimous opinion. And, by reason of the statutes and decisions of some jurisdictions, there is undoubted merit in the argument advanced by some attorneys at the conference mentioned that such titles may become the object of attack on the ground of unmarketability; and, further, that here is a title the marketability of which perhaps cannot be established.

In other words, if the title companies are ever to become the objects of suits of frivolous character, here is a situation where the company has agreed to indemnify against loss by reason of unmarketability, and, in a suit for (let us say) specific performance, it may not be possible to establish judicially that the title is a marketable title and/or that the title is not an unmarketable title.

The establishment of marketability of title presents difficulties to the title insurance companies and practicing attorneys in numerous jurisdictions. The company desires to insure free of objections to title under Schedule B; the attorney in private practice wants to be able to approve title without later becoming the object of criticism by reason of later examinations of the same title by other examiners.

Both the title company and the attorney thus engaged would have greater freedom of action if, on claims of unmarketability, it became the duty of the challenger to estabish that the title was NOT marketable. Unhappily, we find in some jurisdictions, it is not necessary to establish unmarketability. The challenger avers the title to be unmarketable; it becomes the duty of the title insurance company to establish its marketability.

Solace in this picture will be had from a study of *Morse v. Stober,* 233 Mass. 223, 123 N. E. 780, 9 A. L. R. 78. This was a suit in equity for specific performance of an agreement to buy real estate. It was held that a mortgage foreclosed without the court's order, after passage of the 1918 Act, does not prevent the title being good and clear if it is shown that no one interested in the property was in the military service; that such question was one of fact and not of law, and the case which came up merely upon the bill and answer was remanded for hearing with the direction:

> "If the plaintiffs succeed in maintaining the burden of proof and demonstrate to the satisfaction of the court that no person in the military service had any interest in the property, according to the principles heretofore stated, then they will be entitled to a decree; otherwise, the bill must be dismissed."

It was believed by the great majority of the attorneys attended the 1941 Mid-winter conference of the title association that the courts would look with disfavor upon such claims of (technical) unmarketability of title; and it was felt by the executive officers of practically all of the title insurance companies attending the conference that they would issue their policies of title insurance, depending upon the decree of the court.

One member company felt that, strictly speaking, such titles may not meet the full requirements of marketability as set forth in cases of its state of domicile. But it also expressed itself as feeling our courts will follow the rule announced in *Morse v. Stober,* 233 Mass. 223, 123 N. E. 780, 9 A. L. R. 78, that the question whether any one interested in the property was in military service is one of fact and not of law.

Power of Sale

We have been in contact with the executive officer of a title insurance company domiciled in a so-called "power of sale" state. His conclusions were reached after a canvass of the law and in conferences attended by representatives of life insurance companies and mortgage firms of his community. Specifically, his company has been asked whether it would require an order of court in each foreclosure case authorizing and approving the foreclosure sale, or whether it would accept in lieu thereof evidence by affidavit or otherwise that the owner, at the time of foreclosure, was not in the military service.

It was decided the company would not require an order of court or a decree of foreclosure with respect to all mortgages or deeds of trust executed prior to August 27th, 1940; that in lieu thereof the company would accept evidence by affidavit or otherwise concerning the military service or non-military service of the mortgagor at the time of foreclosure; that the character of proof so submitted probably would be different in any instances arising, but that the company would require no more than reasonable evidence to be submitted to it of the same character as would actuate a court in passing a decree of foreclosure.

Of course, when this investigation shows the debtor is actually in the military service and his obligation comes within the terms of the Act, there will be no other legal course to pursue than a court foreclosure under sub-section 3 of Section 302.

Insofar as observations made at the mid-winter conference of the Association be concerned, it would seem the position referred to in the three paragraphs next preceding is the minority opinion. Attending the conference was an attorney from one of the Federal Land Banks. While it was made plain his remarks were not the official position of the legal division of his Land Bank, nevertheless one is inclined to place no slight weight upon his remarks. This attorney indicated he felt it wise to abandon (with respect to ac-

tions which come within the scope and purview of the S & S Act) sale under the power and to require an order of the court or decree of foreclosure. It is our observation that other domiciled in power of sale states share this view.

Exclusion of Military Service from Periods of Limitation

Section 205 of the Act reads:

> "The period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators or assigns, whether such cause of action shall have accrued prior to or during the period of such service."

Mr. J. A. Nagl, Vice-President and Attorney, Washington Title Insurance Company, Seattle, Washington, in commenting upon the point that the Act does not use the words "Statute of Limitations" does reach the conclusion that the words "any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service" are broad enough to include every form of action by which a soldier's or sailor's right is affected.

That a mechanic's lien may be enforced under the Act though under the state statute the limit of the very existence of the lien may have expired. From Mr. Nagl and also from Mr. Edward D. Landels, Counsel, California Pacific Title & Trust Company, San Francisco, come words citing *Clark v. Mechanics American National Bank,* 282 Fed. 589.

Held the Civil Relief Act extended the time within which an action might be brought upon a mechanic's lien. The statute (Arkansas) provided that the lien should not be effectual unless suit should be brought upon the claim or the claim be filed by order of court with the receiver of the railroad within one year after the claim accrued. The claimant was drafted into the Army shortly after he supplied the material. It was held that the time he was in the service should not be included in computing the year within which suit should be filed and a suit filed after the year was held filed within time.

Seemingly this would permit enforcement of claims not filed timely under the state statute in decendents estates, in guardianships and absentee estates, would permit execution sales on judgments the lien of which expired under the state statute, and would perhaps extend periods of redemption on sheriff's sales.

As to the last mentioned point, it was held in *Wood v. Vogel,* 204 Ala. 692, 87 So. 174, that the right of redemption given by the code from judicial and quasi judicial sales is a mere personal privilege and must be exercised within the statutory period.

The court said:

> "It is clear, we think, that the quoted section of the Civil Relief Act, extending periods of statutory limitation for the bringing of actions by or against any person in military service, does not apply to the period of statutory redemption here involved, and we are satisfied that such an extension of the protective purpose was not intended by the Congress."

In *Ebert v. Poston,* 266 U. S. 548, 45 S. Ct. 188:

In reversing the Supreme Court of the State of Michigan, the Supreme Court held the provisions of the Civil Relief Act did not operate to extend statutory rights to redeem from a foreclosure sale under a mortgage effected pursuant to a power of sale although the owner was in the service during part of the time that the period of redemption ran. The Supreme Court said:

> "Section 205 (the section tolling the Statute of Limitations) does not apply to transactions which are effected without judicial action. The statutory right to redeem from a sale by advertisement is not a right of action."

In answer to the contention that the broad purposes of the Act should be taken into account, the Supreme Court said:

> "A casus omissus does not justify judicial legislation."

Mr. Landels reaches the conclusion the provisions of Section 205 cannot be construed as extending the statutory periods within which an act must be performed such as the provision limiting the time within which a mechanic's lien can be filed, the time within which claims may be filed in a probate proceeding, and the like.

In support of his position, he cites not only the cases heretofore mentioned, but the following additional:

Bell v. Buffington, 244 Mass. 294, 137 N. E. 287.

In Massachusetts, a mortgage could be foreclosed by the mortgagee entering and taking possession and holding possession for three years without a redemption being effected. It was held in this case that the Civil Relief Act did not operate to extend the three year period even though the mortgagor, during such period, was in the military service. In answer to the contention that Section 205 was applicable, the court said:

> "That Section merely provides that the period of military service shall not be included in the time limited by statutes for the bringing of actions."

Steinfield v. Massachusetts Bonding & Insurance Co , 80 N. H. 39, 112 Atl. 800.

Held that Section 205 applied to provisions in an insurance policy requiring an action to be brought within ninety days of the loss.

Halle v. *Cavanaugh,* 79 N. H. 418, 111 Atl. 76.

Under the law of New Hampshire, apparently, when a plaintiff in an action died, his administrator might at any time within the next two terms of court have himself substituted as plantiff and proceed with the action. In this case, a woman who was plaintiff died and her husband was appointed administrator. During the two terms of court involved, he was in the military service. He endeavored to appear in the action after the two terms of court had expired. The court holds that he could not do so as he was merely the administrator and the Civil Relief Act did not apply to him. The court holds by way of dictum, however, that if he personally as an heir of the deceased plaintiff had seasonably made a request within the proper time after his discharge from the service, he would be entitled to do so. The court holds that in the absence of an administrator taking this action any heir would have the right to do so.

It would seem the Courts have held the 1918 Act should be liberally construed. In the light of this experience, perhaps it is appropriate that we conclude the courts of today will construe the 1940 Act as broadly as may be required to effectuate its purposes.

With further reference to Section 205, our observations as to the probable positions of numerous of the title insurance companies which have been contacted and subject at all times to the fact that in all applications placed with it the member company reserves right of action as to it seems appropriate under the particular circumstances of such files, might be summarized in the following fashion:

On Mechanic's liens, judgments and redemption rights which have not expired prior to August 27th, 1940, that credible proof of non-military service be established to the satisfaction of the insuring company.

That, as to searches for judgments, these searches will have to be extended to take into consideration judgments which otherwise would be barred on August 26th, 1940, in order that there be inquiry to the non-military service of any and all named in such judgments.

Where there are, in the chain of title under examination, probate proceedings, guardianship proceedings, or absentee proceedings, and where the title insurance policy is for the benefit and use of a bona fide purchaser for value, that all such proceedings be passed without reference to Section 205 and the raising of objection to title. This on the theory that it is the object and aim of the title insurance companies contacted, whenever possible, to assist in the marketing of real estate; or, phrased another way, based upon a belief that the hazard in thus approving title is one to be assumed by the title insurance company. This is with full recognition by the companies contacted of the presence of contingent liability placed upon their reserves.

The provisions of the foregoing three paragraphs to be subject, however to the following:

If the distributees in a decedent's will are to be named beneficiaries under the policy of title insurance, that there should then be raised, as a general exception under Schedule B of the policy, the rights of any creditor's claim which may be enforceable because the claimant has the benefit of the extension of time under the Soldiers' and Sailors' Civil Relief Act of 1940.

As to installment or land contracts and leases claimed to have been forfeited:

That there be followed the practices heretofore appilcable of insuring in cases where acceptable showing of forfeiture prior to August 27th, 1940, is made.

That, when the forfeiture is claimed to have occurred on or after August 27th, 1940, there should be inquiry raised and credible proof required of non-military service of the holder of the vendee's interest or of the leasehold; and if such proof is not forthcoming, require an adjudication of the forfeiture in an appropriate action.

REFERENCE

Further cases dealing with questions arising under the 1918 Act are referred to in the United States Law Week (issue of September 24, 1940), Volume 9, Section 2, page 2186; see also 41 Corpus Juris p. 213 f. n. 7 (a). It is singular few cases involving construction of the 1918 Act reached the Federal Courts, and there seems to have been a dearth of cases adjudicated in the State courts. Evidently, our forefathers did not enter so enthusiastically into installment buying as does this generation.

OUR THANKS

Our sincere thanks for valuable contributions to this copy are extended to C. H. Barsch, Title Officer, and F. J. Lawniczak, Assistant Secretary, The Title Guarantee & Trust Co., Toledo, Ohio; to Lawrence L. Otis, Associate Counsel, Title Insurance & Trust Co., Los Angeles, California; to John C. Adams, Vice-President and Manager, Commerce Title Guaranty Co., Memphis, Tennessee; to John R. Umsted, Honorary President, The Pennsylvania Title Association, and member of the Philadelphia Bar, Philadelphia, Pennsylvania; to Charlton L. Hall, President, The American Title Association, and Manager, Washington Title Insurance Company, Seattle, Washington; and to Mr. J. A. Nagl, Vice-President, same company, whose copy has freely been used; to Mr. Sedgwick A. Clark, Solicitor, Title Guarantee and Trust Company, New York City; to E. B. Southworth, Executive Vice-President, Title Insurance Company of Minnesota, Minneapolis, Minnesota, and Treasurer, The American Title Association; to Edward D. Landels, of San Francisco, Counsel, California Pacific Title & Trust Company; and to Charles H. Buck, President, Maryland Title Guarantee Company, Baltimore, Maryland, and Chairman, Title Insurance Section, The American Title Association.