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TITLE NEWS

OFFICIAL PUBLICATION

The American Title Association

Proceedings of the
1941 National Convention
French Lick, Indiana
(continued)

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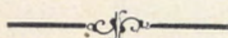

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Proceedings of the Thirty-Fifth Annual Convention
— of the —
AMERICAN TITLE ASSOCIATION
(continued)
September 29 to October 1, 1941 — — French Lick, Indiana

Stabilizing Titles Through Title Insurance

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When the President first suggested that I take part in this program, he wanted me to give incidents based upon my experience in litigating real property questions in connection with title insurance policies. The subject had to do with the defense of titles which had been insured, thereby assisting the insured in the enjoyment of his property and also preventing the imposition of liability upon the insurer. However interesting these incidents might be to myself, having participated in them, I considered that a whole speech based on this subject would neither be interesting nor much of a contribution to the betterment of title insurance service or to its increased usefulness in the social order. This explains why I selected the broader subject "Stabilizing Titles Through Title Insurance."

It was not until after the program had been printed that it occurred to me to consult the dictionary to see if I had used exact terms in expressing the thought I had in mind under that title. I then did so and find that the word "stable" means "firmly established, not easily moved, shaken or overthrown." "Stabilize" means to make stable, steadfast or firm—to make or hold steady." Not being able to find a definition of "title" which means exactly what I have in mind in this talk, with at least commendable courage, if not discretion, I have made up my own. "Title" for the purpose of this paper will mean "the aggregation of rights under which one may own, possess or enjoy property or a described interest therein."

What I intend to discuss, therefore, is to stabilize, hold firm and make steady the aggregation of rights which we call 'title' so that there will be less disturbance in the social order resulting from conflicts regarding title, and so that there will be greater vendibility of land and larger opportunity to put it to its highest use. The stabilizing of these rights is to be encouraged and protected through title insurance, and the question is what can you who are engaged in that business do to further this end, which we will all agree is desirable.

This is not an academic subject, particularly in the United States. Whatever may be the situation regarding holding, tenure and utilization of land in other countries, in the United States we are firmly committed to the private ownership of land, its wide distribution and to such procedure as will best assist and facilitate its vendibility. I do not mean to say that land can be made as easily and safely transferable as a pound of butter, or even an automobile, nor do I think that would be desirable. There is still some survival of the idea that permanency of ownership and difficulty of vendibility of land is a security upon which our social institutions, the family, the church and the nation rest, and that these would be disturbed by making real estate too easily traded in.

Now, however, as an incident of the American Principle of Government and our relatively high standard of living we have wide spread private ownership of homes. As a result of long term mortgage credits furnished by the government and other sources upon increased percentages of valuation, distribution of real property has substantially increased. Furthermore, as a result of the improved service furnished by title insurance companies, it is possible to close real estate transactions with greater safety and speed than formerly.

All of these things promote the social order because they make for the highest economic use of land. If marketability is impeded, the use of property for its best purpose is discouraged. If property cannot be sold freely, investment in land becomes slow, mortgage loans become fewer, credit is contracted instead of expanded and our individuality, which is characteristic of the American way of life, and which is fostered by private ownership, is impaired. A nation of individual farm owners and home owners imbued with a sense of the dignity of the privilege of private ownership, cannot go very far along the road to totalitarianism, whatever its other name or distinguishing characteristics may be. It is, therefore, clear that the subject of stabilizing titles and improving vendibility and furthering the highest economic use of land is of great importance to our present social order as a whole. This is emphasized by the fact that there is abroad in the world under various systems of totalitarian regimes, a contrary philosophy which would make all land and improvements the property of the state and solely for its aggrandizement.

Title insurance represents one further step in expediting the transfer of titles. It has been a long struggle. Starting with the private examination of records, with an opinion based thereon; then the abstract system; then the abstract and attorney's opinion system; then the certificate of title system; then to title insurance; and finally, closed approximating the goal, title insurance, with a minimum of general exceptions and with the special exceptions arising out of individual cases reduced by improved service and by willingness to facilitate transfers by insuring against minor risks. I believe both general and special exceptions can be reduced and risk minimized by the greater service we can render.

No business deserves to succeed, nor can it succeed unless it performs a service necessary or useful in our social order. The measure of success which any business deserves to receive and will receive depends upon the quality of its service as compared with that furnished by like enterprises or others attempting to achieve the same result by different methods.

Those free enterprises engaged in some form of title business such as ab-

stract companies, title companies and title insuring companies are skeptical of the good faith of the periodic agitation for some system of title registration, compulsory or otherwise, to facilitate the transfers of title. Such skepticism is justified when we consider,

(a) The improvement in title insurance service as an aid to social development; and

(b) The fact that public title registration in this country has mainly been a failure as evidenced by the study of unpartial investigators; and

(c) That it is agitation carried on mainly by politicians who seek to create new patronage for distribution.

Yet, if any one should be alert to sense possibilities of improvement in title matters, it is you who are in the heart of the industry. I have read with considerable interest the book by Professor Powell on "Registration of Title to Lands" and another by Dr. Gage on "Land Title Assuring Agencies." The conclusions as to the improvement of title insurance and its powerful contribution to social advancement are gratifying. Notwithstanding this, in my opinion, these points are not so important as the suggestions they make as to possibilities of improvement in our future service. Professor Powell and Dr. Gage both state as fact that realtors have been irked by the difficulties encountered in the sale and mortgaging of lands traceable to the existing recordation system.

Let us not spend all of our time in self-congratulation on the growth of and the improvement in title insurance service and the increasing dependence placed upon it by the land owning public. Let us see what we can do to improve such service, to lessen its risks, to reduce its cost, if possible, to the public, and at the same time as a free enterprise make it profitable to those who make it possible by their capital support.

The industry has already made great progress in facilitating transfers of title and assuring the public mind upon title marketability. As each community grows older questions concerning and defects in title tend to become ironed out, and thus, time in itself affords a certain degree of stability. It is still true, however, that a variety of questions arise, such as matters off the record of which the purchaser has no notice, forgeries which have not been detected, bankruptcies in other jurisdictions, concealed tax liens and the like, which impose formidable difficulties to an insurance company issuing policies unless great care is exercised. Stabilizing titles against these dangers so as to facilitate issuance of title insurance is a function of those engaged in this service.

One illustration of how the title insurance industry can assist in stabilizing titles is found in the case of one Byron, a former police officer in Seattle, who in the prohibition era engaged in the more profitable business of bootlegging. He purchased a property in 1927, procuring funds to pay a portion of the purchase price by giving a mortgage for which a title company issued a mortgagee policy. Several months later, June 9, 1928, the Marshall of the Western District of Washington levied execution upon the property under a purported judgment in favor of the United States. Upon learning of this the mortgagee called upon the title insurance company to defend under its policy. Neither the judgment docket or index nor any company records showed any such judgment but investigation disclosed that it consisted of a fine of $1500 and costs orally imposed in 1926 but not entered on the judgment docket nor indexed until June 9, 1928. The title insurance company contended that the mortgage had priority (a) because it was a part purchase money mortgage; (b) because the minute entry of June 21, 1926, could not be construed as a judgment of which a purchaser would have constructive notice; and (c) that the entry as a judgment on the docket June 9, 1928, was subsequent to the recordation of the mortgage.

The title company felt Byron's equity was sufficient to protect it so, instead of litigating the question, it took a second mortgage and paid off the judgment. However, it informed the clerk that if in law the minute entry of the criminal fine was a judgment, he was remiss in not entering it on the docket under the appropriate statute, 28 U. S. C. A., Sec. 813.

No effort was made to impose a liability upon the clerk but he was quite disturbed over the possible liability that might have ensued, so he went through his minutes and docketed and indexed all such minute entries which had been made in the past, and future occurrences of this kind were avoided. At the present time under Rule 79, Federal Rules of Civil Procedure, such docketing and indexing is required. Incidentally, in that case the depression came before the property was sold, and so the title company did not recover its loss.

The point I make is that the title insurance company was able to and did help stabilize titles by suggesting improvements in the methods of a public officer, which would thereafter result in actual notice of claims of this kind.

How frequently it happens that a title insurance company where it is known there is a substantial question which may afterward become the subject of litigation. This question may be one of general application to considerable property, all affected by the same problem. It may have been considered and discussed for years, yet nothing done about it.

Is it not the function of a title insurance company, knowing that it will be one day called upon in a hurry to close a real estate transaction by the issuance of a policy, to anticipate that fact and bring the question to interested parties to have the matter determined? In this way the public would be benefited and the risk to the company minimized.

In Seattle we had such a problem which taught us a lesson. I have tried scores of cases on behalf of title insurance companies where the insured title was upheld. However, for the purpose of my subject today more advantage is gained by narrating some of the instances where a loss was incurred.

One of these which might have been avoided by anticipating that a controversy would some time arise and causing a test suit to be brought before title insurance was even requested, was that of *Commercial Waterway District No. 1 v. King County* (1939), 200 Wash. 538, 948 Pac. (2d) 941. In this case King County acquired a large tract of land, including an island in the Duwamish Waterway, for a dock site, and the necessary funds were raised by selling a bond issue, in which it was stated that the money would be used for the purchase and improvement of the property for docks, harbors and waterway development. The waterway development proceeded in another direction and no improvement and little use of the property for harbor purposes was ever made. Meanwhile portions of the property were leased out to various persons, and finally in 1937 a portion of it was sold to a private corporation which intended to make extensive improvements for industrial purposes. It appeared by testimony of the county officers that the property was not presently necessary for the purpose for which it was purchased and except for a small part had never been used for such purpose.

In the suit to determine the county's right to sell, it was held that the county had acquired the property in its governmental capacity and was required to hold it for the particular purpose for which the bonds had been issued. The fact that the property was not then needed for the use intended was not sufficient to defeat the public trust under which the property was held. The court said that ultimate harbor development might occasion such a use.

In this case the liability was limited and the cost was small and the policy was written because it was believed that the danger was not sufficient to hold up the transaction which was desired for industrial purposes. Yet an early suggestion to the county authorities to take steps to determine their rights might have avoided this loss and considerable inconvenience.

This matter of stabilizing titles perhaps finds its most frequent opportunity in relation to tax titles.

One of your members, Mr. Wyckoff of Newark, New Jersey, wrote a letter calling attention to his problem of insuring titles made in foreclosures of tax sales. He said the depression forced municipalities to purchase large amounts of properties for nonpayment of taxes. He believes that title companies can be of service to the state

and to the municipalities if they will have the courage to insure titles coming through tax sale foreclosures. I agree with Mr. Wyckoff in principle, and every effort should be made by title executives to suggest procedure to officers having the responsibility of tax sales that will make for greater certainty in tax titles and thus make possible the more general issuance of title insurance concerning them. I know of one instance in which a county officer, angry because sales of tax property were made difficult through inability to get title insurance, made a strenuous effort to have his county register under the Torrens law all tax title property. In many instances this agitation, ill advised and expensive to the public, could be avoided by work of the constructive type I have described.

The tax title problem differs according to the state where the property is located. In states where tax sales are judicial sales, as distinguished from administrative sales, Title insurance can, subject to certain provisions, be more safely written. Fortunately, in the State of Washington tax deeds issue on judicial sales and there is a statute of limitations barring actions to cancel tax deeds unless brought within three years from date of issuance. In Washington we insure tax titles because we can ascertain the validity of these judicial proceedings just the same as any other court proceeding. However, we must make collateral inquiry as to possession and if the tax deed is less than three years old, we have the possibility that pursuant to the statutory provision, the property may be redeemed by a minor or an incompetent. Hence, collateral inquiry must also be made upon these subjects.

In *Napier v. Runkel* 109 Wash. Dec. 289, our Supreme Court held void a deed based on tax foreclosure where the property was described solely by reference to an unrecorded plat. Such a description was neither a legal description nor an abbreviated description as authorized by statute.

In *Moller v. Graham*, 106 Wash. 205, it had been held that the description in a published summons must be the same as the description upon the tax rolls for the year for which the taxes were being foreclosed rather than as revised on later rolls.

Under Rem. Rev. Code, Sec. 11137 authority is given to refer in the tax rolls to descriptions by Assessor's tax numbers upon an assessor's plat.

Now, insuring tax titles as to property in unrecorded or unofficial plats gave title men great difficulty under the former procedure of the county in foreclosing on an illegal description by reference to the unrecorded plat alone. Finally in 1939 officers of the title insurance companies suggested to the County Attorney, County Assessor and County Treasurer a method of description under the existing statute by referring to the Assessor's tax number on the Assessor's plat in addition to the inadequate unrecorded plat description used on the old roll. Under this procedure based upon the statutes and decisions above cited we are now insuring titles based upon a tax sale of property in unrecorded plats where the summons and judgment contains the Assessor's tax number which is used in describing the property upon the current assessment rolls even though of necessity under the *Moller* case the property must be also illegally described as a part of an unrecorded plat. I think we are safe in this procedure and are fulfilling our function of expediting transfers without waiting for a decision of the Supreme Court upon the validity of this particular practice. It may be that we could perform a further service by initiating an appropriate test case to have our own opinion confirmed by the decision of a court of proper jurisdiction. This is stabilizing titles through title insurance.

PORTER BRUCK
Los Angeles, California
Treasurer, American Title Association

To summarize on this phase of my subject, title insurance executives have been giving and can give voluntary and gratuitous assistance to public officials. This accomodates the investing public and helps to remove elements that hinder the acquisition and development of real estate. It encourages public officials to perform better public service in removing as far as possible at the source many questionable features of tax titles. This can be extended to cooperate in the initiation, prosecution and defense of adequate test cases to clarify doubts concerning administrative procedure and jurisdictional matters, such as,

(a) Sufficiency or legality of the publication in particular classes of newspapers;

(b) Validity of publications on holidays;

(c) Ascertaining the length of time of publication of notices under varied wording of the statutes applying to these situations;

(d) Determining the power of an administrative municipal board to sell property acquired by it but which may possibly have been subjected to a different public use.

(e) Generally clarifying administrative procedure in conducting sales of public property, title to which may have been acquired either by tax purchases, regular purchases, condemnation or grant.

Closely allied to this subject is the matter of suggesting and initiating legislation that will eliminate concealed liens and title traps which even careful search may fail to discover. An illustration of this is found in the case of Kennedy Estate (1936) 188 Wash. 84, 611 Pac. (2d) 998 and the legislation resulting from it.

In this case the executor under a non-intervention will with power of sale sold certain real estate and used the proceeds to pay the cost of administration and the debts and obligations of the estate. He considered that no inheritance tax was due and failed to make any return to the proper authorities. Seven years later the State Tax Commission filed a proceeding to fix the amount of inheritance tax due from the estate to the State of Washington and to impose a lien upon the real estate which had been sold by the executor and the proceeds used to pay estate charges and debts. A title insurance policy had been issued upon the property to a bona fide purchaser. It was the general belief among realtors and I believe the universal judgment of title men that the correct interpretation of the statute made the tax a lien only against the net estate after payment of administration charges and debts. Yet the Supreme Court in the decision above noted held to the contrary by a 5 to 4 decision. This, of course, presented a serious problem in that it prevented issuance of title policies upon property sold under executor's sales except at the risk of the title insurance company being a guarantor of the faithful performance by the executor of his duties in relation to ascertaining correctly the amount of the inheritance tax and paying it. With the cooperation of title insurance companies in the State of Washington, this unjust result was cured as to future sales by a new law enacted by the Legislature which is found in Washington Laws of 1937, Chap. 106, Rem. Rev. Stat., Supp. Sec. 11201. This consisted of an insertion in the Inheritance Tax Law of a sentence as follows:

> "Such part of the gross estate as is sold, pursuant to an order of the court, for the payment of charges against the estate and the expenses of its administration, shall be divested of such lien and such lien shall be transferred to the proceeds."

Similar efforts to stabilize titles by obtaining either corrective legislation or clarifying Supreme Court decisions have been attempted, not always with success, in some of the following instances:

(a) The validity of sales by executors under non-intervention wills under different forms of language used in conferring the power of sale.

(b) The liability of property which may have been distributed in liquidation proceedings of dissolving corporations for corporate license fees and various tax claims under social security or Workmen's Compensation statutes.

(c) A simplified procedure for quieting title to lands acquired by county tax foreclosure, to correct specific defects and to determine adverse claims not theretofore legally determined. Wash. Laws of 1931, Chap. 83.

(d) Legislation protecting purchasers of real property against reserved rights of vendors under conditional sales contracts to machinery, apparatus or equipment sold for attachment to a building. The Washington companies had considerable trouble concerning claims for reserved balances on contracts for personal property which became fixtures even though there was nothing in the real property records to indicate any such reserved interest. By the Washington Laws of 1933, Chap. 129 this difficulty was overcome by a clause that every such conditional sale contract should be absolute as to personal property affixed to real estate, whether it became technically a fixture at common law or not, unless the contract contained a legal description of the real estate to which the property was to be affixed and was filed and recorded.

(e) Legislation fixing with certainty, and shortening where justice permitted, the time within which real property could be affected by,

1—Creditors claims in estates.

2—Mechanics liens.

3—Special tax liens.

4—Judgment liens.

5—Municipal utility service liens. With reference to the latter see, Moran v. Seattle (1934), 179 Wash. 555, 38 Pac. (2d) 391; Metropolitan Life v. Hansen (1934), 179 Wash. 537, 38 Pac. (2d) 397,

Laws: Wash. Laws 1933, Ch. 135.

This portion of my subject would be incomplete unless it contained some reference to service which has been performed and could be performed in various states in stabilizing titles by revising and modernizing the existing recording acts so as to eliminate obsolete, cumbersome and contradictory provisions and so as, where possible, to make them uniform in the several states. Professor Powell in his work notes that some of the difficulties in selling and mortgaging lands were traceable to existing system of recordation and Dr. Gage says "No doubt a spring house cleaning of the statute books might have a salutary effect on the condition of land titles." But Dr. Gage further points out that this is only part of the problem because new conditions surrounding land utilization require new laws. He further says:

> "If society wishes to encumber land with myriad rights in order to utilize it effectively, it must be willing to endure the inconveniences which the morass of rules governing these rights creates in all land dealings."

It would encumber this talk unnecessarily to go into the many instances in which corrective work can be done on old laws and care used in the drawing of new laws to prevent unnecessarily clouding or encumbering titles to land. However, some of these instances have been or will be referred to in connection with other subjects in this discussion.

Title company executives can exercise vigilance and promote title stabilization in three more additional respects:

1. Vigilance to insist upon the certainty, security and integrity of public records.
2. Vigilance to oppose creation of multiplicity of records and places of record.
3. Vigilance to oppose general and blanket liens for local improvements, general excise tax indebtedness like sales, occupation, compensating, license, corporate fees, social security, unemployment compensation premiums, workmen's compensation and industrial insurance premiums, and the like, unless constructive notice is timely given in the way which I have described.

There has been an increasing tendency toward this character of secret liens in practically all states and territories. In the Territory of Alaska, with which we have frequent occasion to deal, there are many occupational license fees under congressional and territorial acts which are a blanket lien on all assets, without any recording.

While there is no title insurance company in the Territory of Alaska, yet title matters there are becoming of increasing importance. This is because there is now substantial development of Alaska incidental to the general defense work involving the construction of many naval air stations and ship and submarine harbors and because business concerns from all parts of the United States are supplying material and equipment for this expansion.

To illustrate the matter of secret liens in Alaska, there is a workmen's

compensation act which provides a fixed and certain recovery to an injured workman and also limits the employer's liability, but no public insurance fund is maintained to pay claims nor are employers required to carry any insurance coverage. The act, however, makes any workman's compensation claim for injury or death a lien on all property of the employer. A pre-existing mortgage lien is allowed priority over the compensation claims, provided the mortgagee can show that he has posted on the mortgaged property a conspicuous notice that the mortgagee asserts a lien upon the property prior to compensation claims and that such notice was maintained on the property within ten days of the accident giving rise to the disability or death claim. This practically means that a mortgagee, to be certain of the priority of his mortgage lien, should sit on the premises with a shotgun and guard his notice so that he can always prove its existence. Insuring the prior lien of such a mortgage is more hazardous in the face of that type of unrecorded lien.

It also goes without saying that such legislation is opposed to the public welfare because it freezes credit and hinders the making of mortgage loans necessary for business expansion.

Bankruptcy proceedings are pertinent to the question of title security.

Although on principle the filing of a petition in bankruptcy is a caveat anywhere in the United States, yet under the old bankruptcy law, the California Supreme Court held in *Beach vs. Faust*, 40 Pac. (2d) 872, that adjudication of bankruptcy was not of itself notice per se and that the trustee was required within 30 days after the adjudication to file a certified copy of the decree in the office where conveyances are recorded in order to give constructive notice of the bankruptcy. In that case conveyance to an innocent purchaser by the bankrupt was sustained for the failure of the trustee so to do. The soundness of this decision has been questioned, but be that as it may, under the present bankruptcy law there is no protection to purchasers in counties other than the one where the bankruptcy was brought, unless a certified copy of the petition, of the decree of adjudication or of the order approving the trustee's bond, has been recorded, there being a state statute permitting such recordation, 11 U. S. C. A. (Supl.) Sec. 44-g.

Washington is one of the states having no conformity statute permitting such recordation and for that reason at present a purchaser from the bankrupt instead of from the trustee of property even in another county would hardly be safe.

Our title insurance company encountered one thoroughly honest bankrupt. A man from an Eastern state came to the office and said he was arranging to sell certain property and ordered a policy of title insurance. We examined the title and found that this party was the record owner and were prepared to issue a purchaser's policy. However, when the record owner looked at our title report and saw where we had stated that he was the owner and that we would insure the title under his ownership, he said, to our embarrassment "Hell, this is wrong, I'm not the owner. I am in bankruptcy and I came here to help the trustee sell this property." Needless to say our face was red.

Some companies except matters not shown by the official records of the Federal District in which the land is situated, thus not insuring against bankruptcy in districts other than where the property is situated. The company with which I am identified takes the position that such insurance is a proper insuring function and makes no such exception. So far we have had only one such loss amounting

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to $1700 involving the case of bankruptcy, Western Bond & Mortgage Co. in an Oregon District. We still believe that our policy represents a proper insuring function but, of course, too heavy adverse experience might compel change of policy.

Generally every effort should be made by the title insurance service to renovize existing laws and prevent new laws which add to the tendency of imposing secret liens. How many times has a bona fide purchaser, in reliance upon the record title as certified and insured to him by a title insurance company, found his title later defeated or impaired by the existence of a blanket lien or interest arising under laws for social welfare, against which he or his insurer could not protect themselves by careful search. Our insurance protects the purchaser as far as money can go, but I say we owe the higher duty of stabilizing titles.

The fundamental theory of the recording acts is that instruments and claims affecting real property other than those evidenced by actual possession should be actually filed of record and indexed so as to constitute public notice. The very purpose of the recording laws is defeated by the existence of these secret liens imposed by legislative act which otherwise may have a worthy intention.

Your American Title Association and its state and regional associations have legislative committees. Much of their attention is devoted to examining proposed legislation which might be unduly restrictive upon title insurance as a business. The expert knowledge within the title insurance group imposes a higher duty upon them and that is to do their part in warning legislators who may intend no harm and yet through inexperience or the desire to perform a social service, favor the passage of laws which disturb and jeopardize titles by creating secret liens or other secret title traps. Laws of this kind are unequal. They penalize one group for the benefit of another group. In this country we have reached the point of getting equal justice under the law. At the same time we have been unconsciously surrendering to the clamor for unequal laws, which in themselves make equal justice impossible. It has been well said that the inscription on the U. S. Supreme Court Building at Washington should be changed from "Equal justice under the Law" to "Equal Justice under Equal Laws."

The bogie of every title insurance company is the fear of forgeries. They are hard to protect against. There are some cases in which an investigation outside of the record prior to the writing of the policy, carried to the ultimate degree, might have avoided the covering of a bad forgery risk. Notwithstanding this, it is impractical and exceedingly expensive to make collateral investigation regarding genuineness of signatures unless something arouses suspicion. Our practice is to generally rely upon the genuineness of instruments without collateral investigation even though Dean Wigmore once said that "Careless Notaries are making real property titles unsafe."

Customers, including principally realtors and attorneys, should be encouraged to report every circumstance which might seem to them to justify suspicion upon which a collateral investigation should be predicated. I once had occasion to participate in an instance of this kind. This was very shortly after I began the practice of law, and a client of mine, or I may say "the" client I then had, was negotiating for the purchase of a large piece of unplatted acreage within the city limits. Certain incidents in the conversation with the seller, who was a real estate man of not very high repute, aroused by suspicions, and so before going further I decided to make an investigation.

It occurred to me that the best place

to do so was at the office of the title company. I did so and called upon Mr. Charlton L. Hall, who is now President of this Association. He examined his records and found that the seller had received a deed, purporting to come from the owner in a distant state, just a few weeks before. Mr. Hall suggested that we send a wire to this former owner, innocently phrased, asking if this property was on the market.

Notwithstanding my suspicion, I was surprised to receive an answering telegram that he still owned the property and was anxious to sell it. Further inquiry developed the fact that the deed bearing his purported signature was forged. We then took the matter up with the Prosecuting Attorney, the forger was arrested, prosecuted and convicted. Thus my client was saved the expenditure of time and effort on a platting enterprise that would have proved unavailing, the title company was saved certain loss on its title policy and a criminal received his just deserts.

The aftermath, however is interesting. After serving time in the state penetentiary, the convict came back to Seattle and again engaged in a small curbstone real estate business. He had a transaction which again required title insurance and again went in to Mr. Hall's company, Mr. Hall by this time having been promoted to manager. Mr. Hall saw this man at the counter and when he had gone out, looked at his order and made an investigation similar to the previous one and found that the man was back to his old trick of forging deeds. He was again prosecuted and convicted and this time when he got out he took to forging checks instead of title deeds, evidently thinking banks were easier victims, but this was also of no avail and he ended his days in the penitentiary.

The point of my illustration is that even though we cannot generally delay closing pending transactions to make collateral investigations for forgeries, still the practice of being constantly on the alert and following up suspicious circumstances will in many instances not only avert loss but in fact promote the stability of titles.

I have heretofore referred to the fact that unavoidable losses are sometimes caused by defective recording acts or by the failure of the courts to give recording acts the effect intended and which the public interest requires. An interesting case of this kind is one where one Lundy commenced suit against Connor who was the owner of a highly improved Island in Puget Sound. Lundy caused a writ of attachment to be issued against Connor's real property and gave such writ to the sheriff to levy by filing it with the County Auditor (recorder). Lundy made no effort to see that notice of the writ was properly filed or properly indexed. The auditor in indexing the writ reversed the names of the parties so that when the record was searched it was impossible to ascertain that an attachment existed against this island in the name of the true owner. Connor, the owner, subsequently sold the island to Dr. Bates, and a purchaser's policy was properly issued. Thereafter, the personal representative of Lundy, who had since died, had an order of sale issued directing sale of the property. Bates, the purchaser, brought suit to enjoin the sale and quiet title. It was contended on behalf of our insured that without proper indexing and filing of the writ it was not constructive notice. By a 6 to 3 decision the Supreme Court held that the mere filing of the writ was sufficient to constitute constructive notice without proper indexing or even without any indexing, and upheld the validity of the attachment. It is submitted that this decision is wrong as violating the principle that the intention of the recording acts and general public interest are in agreement that the ready transfer of land is facilitated by dependence upon the indices which are a required part of the recording system. I may add that this decision has been generally criticized and even though no legislative effort has been made to correct it I question whether the same result would be obtained under similar facts.

Bates v. Lundy (1934) 178 W. 9, 33 P. (2d) 664.

There is a series of cases in Washington known as the Mehlhorn cases that achieved considerable publicity. They are typical of the many cases that plagued title men during the depression. In all of these the titles we insured were upheld and in one case in particular the title insurance company received the strong commendation of the Supreme Court for its care in investigating matters outside of the record. Again I emphasize that this investigation outside of the record in certain cases is a part of the duty of a title insurance company to facilitate and safeguard transfers of title.

August Mehlhorn was the sole owner of the stock of Osner & Mehlhorn, a mortgage investment firm of previous high standing. He had a secret fraudulent practice of taking mortgages securing one or more notes and selling these notes to individual clients. Because of their faith in him these clients generally did not take assignments of the mortgage pro tanto or at all, or if they took them they failed to record them This was particularly true of the purchasers of a part of the notes in a series secured by the same mortgage. Mehlhorn would collect the interest and principal when due and some times would remit to the owner. More often he retained the principal but kept on paying the interest. Then he would cause the mortgage to be satisfied of record. When the inevitable disclosure came and he absconded, various holders of the mortgage notes secured by the released mortgages brought action to foreclose upon the ground that the notes had never been paid, that the mortgage followed the debt and that the releases by Osner & Mehlhorn were void. In all cases where there were subsequent purchasers or mortgagees the titles insured by policies of title insurance were upheld because the record afforded them protection. It was otherwise in cases where the mortgagor attempted to pay the debt without taking up the note, these cases being decided according to their facts under the doctrine of comparative innocence.

The problem of the conclusiveness of the satisfaction of the mortgage by the record holder is of course open to two questions. First, the question of effective payment by one obligated to pay, and second the question of the protection of a bona fide purchaser for value under the recording statute. As to the latter question, by reason of the recording statute it was uniformly held in a long series of cases that a bona fide purchaser for value without notice may rely upon the record satisfaction by the record holder, made before payment of the purchase price, because in such case the purchaser is not making payment of the note and is under no obligation to ascertain who held the note, but is purchasing the property from the record owner.

Some of the cases are:

Pfeiffer vs. Heyes, 166 Wn. 125, 6 P. (2d) 612; Koppler vs. Bugge, 168 Wn. 182, 11 P. (2d) 236; Nicklisch vs. Flynn, 168 Wn. 310, 11 P. (2d) 1066; Liska vs. Beckman, 168 Wn. 489, 12 P. (2d) 599; Ross vs. Johnson, 171 Wn. 658, 19 P. (2d) 101; Beckmann vs. Ward, 174 Wn. 326, 24 P. (2d) 1091; Hink vs. Mehlhorn, 174 Wn. 3351, 24 P. (2d) 1061; Bloxom vs. Deitchler, 175 Wn. 431, 27 P. (2d) 720; Dunn vs. Neu, 179 Wn. 351, 37 P. (2d) 883; Von Normann vs. Woodson, 182 Wn. 271, 46 P. (2d) 1050.

The most interesting of these Mehlhorn cases was Dunn v. Neu where we insured the fee free of a prior mortgage on the strength of a release such as I have described. Mrs. Neu was the sister of Mehlhorn and the premises involved were in a group of properties which came to her by voluntary partition between her brother and herself of their father's estate. She, however, evidently knew her brother better than we did so she insisted on title insurance upon the property coming to her by the partition. The partition was effected through a title company as escrow holder which also became the insurer of the title Mrs. Neu got in the partition. One of the properties had been subject to a mortgage to Osner & Mehlhorn securing a series of notes held by Dunn, the plaintiff.

The examination of the title of course showed the mortgage. Thereupon the escrow officer brought this to the attention of Mr. Mehlhorn and was advised that the mortgage had been paid and would be satisfied of record. The title officer requested a written satisfaction, but instead Mehlhorn satisfied the mortgage on the margin of the record, as is permissible under our statute. The title officer objected to the marginal satisfaction as being

signed by Mehlhorn alone as secretary and requested a written satisfaction executed by two officers. Mr. Mehlhorn answered by delivering his affidavit that he had satisfied the mortgage as secretary of Osner & Mehlhorn and that he was the only officer of the corporation and the sole owner of its capital stock. The officer inquired as to the notes which had been secured by the mortgage and called for their surrender. Mehlhorn replied that the notes had been cancelled or destroyed but was asked to make a search. The following day he delivered to the company the original mortgage and notes secured thereby to the amount of $21,000.00 principal, and reported that these notes were the only ones not destroyed and that he had supposed until he found those that all of the notes had been destroyed. These representations were believed and relied on.

After the disappearance of Mehlhorn, it developed that notes in the principal sum of $15,500.00 were outstanding and unpaid, the action was brought by Dunn, the holder, to foreclose the mortgage which stood satisfied of record. It was conceded that Osner & Mehlhorn, acting through Mehlhorn, sold the notes before maturity for value but the purchaser took no assignment of the mortgage and nothing was placed of record showing that he had any interest in the mortgage. Judgment went against the plaintiffs, which was appealed and affirmed. The Supreme Court in the course of the opinion said:

"It seems to be argued, however, that enough occurred between the escrow holder and Mehlhorn to put the former on notice and require it to pursue the inquiry further. It is difficult to say just what, if anything, further could have been done. The marginal release was questioned, and an affidavit was supplied which apparently established authority in Mehlhorn, as the sole officer and sole owner of Osner & Mehlhorn to so release the mortgage. The original mortgage and the notes were demanded, and the demand was met, in part. A reasonable excuse was given for the failure to produce all of the notes.

"The only suggestion now offered as to what more might have been done is that the books of Osner & Mehlhorn might have revealed the truth, and an inspection of those books should have been demanded. It must be remembered that the escrow holder was dealing with a reputable business man, that it had no legal right to inspect the books and records of Osner & Mehlhorn, Inc., and could not have enforced such a demand. To make such a demand under the circumstances as they then appeared would have been discourteous and offensive in the extreme, and quite beyond ordinary business practices.

"The public record showing a release of the mortgage and the assurance of a reputable business man in corroboration of the record, we feel convinced would have satisfied any one of ordinary prudence, and therefore there was no culpable negligence in failing to go further. Mrs. Neu must be held to be a purchaser for value without notice."

This case may well serve as an illustration that a purchaser for value will be protected when he makes a reasonable inquiry concerning unrecorded interests whose existence is suggested, even though the inquiry does not uncover all the facts and that the loss falls not upon the purchaser who exercised ordinary diligence, but upon the claimants who failed to exercise ordinary diligence.

Also, and more important, the case serves as an illustration of the care which a title officer should exercise not only in the protection of his company, but also of his customer.

A high executive of one of our life insurance companies once said, "Is it not possible to make more improvements in service and to reduce claim controversies by a much larger percentage than heretofore with all due regard to the company's rights. If we neglect opportunities of this kind are we not voluntarily exposing our companies to danger." He might well have said, "*Are we not thereby voluntarily lessening the value of the insurance to the public.*" This is particularly true of title insurance. I have attempted in this discussion to give you instances not only where title service of the highest type has been rendered but also some instances where even higher service might have been rendered increasing the value of title insurance to the public and making it a more effective instrument in fulfilling its social purpose of increasing the vendibility and promoting the highest economic use of land.

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Because I have discussed a number of cases where litigation occurred it should not be assumed that title insurance companies have as a primary purpose the encouraging of litigation respecting titles. In fact, it should be avoided wherever possible because of the disturbance and feeling of insecurity which litigation promotes.

What is the viewpoint which a title insurance company should take towards litigation? Title insurance has a two-fold function. One is service in investigating and passing upon titles. The other is insuring the title so investigated. The function of litigation upon or under title insurance policies is fundamentally different from that in connection with other insurance. In fire insurance, for instance, the existence of a physical loss is easily determined and the amount is subject to measurement. The loss, therefore, is generally paid unless there are violations of the policy provisions, fraud or arson. The same general statements are true in relation to life, health and accident insurance, subject to qualification in the latter two groups as to the classification of the loss which determines the amount.

In title insurance, however, the risk having been insured, the first notice of possible loss comes in the assertion of an adverse claim, or the discovery of an unexpected lien. If it is a lien which can be verified the solution is simple. Payment should be made promptly and the title cleared for the benefit of the owner or mortgagee. If a defect is subsequently ascertained which should by the exercise of sound underwriting judgment have been met by a general exception, or a refusal to write the risk, that is the responsibility of the underwriter and should be promptly met.

In title insurance, however, an important element of claim work and of consequent litigation arises out of adverse claims against titles which in the opinion of the title insuring company are not valid. In claims of this kind litigation has its definite place. It is the duty of the company to defend the title and to stabilize it for the benefit of the insured against the claim asserted. Such litigation should be conducted from the viewpoint primarily of satisfying the insured and making him safe in the title he expected to get and not merely from the standpoint of avoiding the duty of paying the loss which may be established. Protection of the customer is the first consideration.

James E. Rhodes, of The Travelers Insurance Company, who spoke at your Convention last year, said:

"The insurance of the title represents in many ways a decided advance upon the other methods of evidencing the title to property, par-

ticularly the method of evidence 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."

You of the Title Insurance Section of American Title Association have a definite duty to meet the responsibility implied in this quotation.

After I had been well along in the preparation of this paper I had the pleasure of reading the article by Mr. H. Laurie Smith of Richmond, Virginia, one of your members, published in February 1939 "Title News". His article stimulated my own investigation and with very much of it I agree, particularly that part having to do with the extension of coverage as far as possible consistent with sound underwriting principles. I furthermore particularly agree that much can be done by this association and its members in preventing losses and thereby serving a great social purpose in increasing the confidence of the American public in the titles they secure. To me it seems highly appropriate that special committees under your legislative committees should consider and definitely act upon specific issues designed to lessen title controversies and increase title vendibility. A few of the respects in which this may be done has been suggested in the course of this discussion. If this is done, the time may come when relatively the cost of investigation and service may be lessened to title insurance companies and a greater proportion of its charges absorbed by the insurance backing which title insurance policies give. This to my mind is a desirable object to strive for. We must never lose sight of the relation between easily marketable titles and the welfare of the community which you serve. That, after all, is the paramount consideration, to furnish quick, dependable service at a cost as low as can be afforded consistent with good underwriting principles, proper compensation to the title examiners and reasonable return upon the capital invested in the risks that you write.

Investments by Title and Abstract Companies

JAMES D. FORWARD

President, Union Title Insurance & Trust Co., San Diego, California

California is no different than other states in this respect: The problem of safely investing surplus funds for ourselves and for others for whom our company handles trust estates is ever present. The banking and insurance laws of our state do help us by placing limitations on the character of our investments, so we can look in the Banking Regulations and the Insurance Code and readily see in what it is lawful to invest.

None of the company's trust department surpluses (its own funds) can go into stocks, but the title department is not so limited although we are not inclined to get into the stock market for any purpose except when customer trust accounts require it. These state regulations, in substance, allow company funds to be put into Government and Government guaranteed bonds, state and municipal, as well as school bonds, and other bonds that have been approved by the State Banking Department as legal investments for savings banks. Also we may buy investment certificates in savings and loan associations, both state and federal, and may invest in first mortgages and trust deeds on real property up to sixty per cent of the appraised value.

That, in effect, is our field for the placement of surplus funds.

In our own institution, we have a Finance Committee to pass on securities which we contemplate either buying, selling or exchanging, and this committee in turn gets its principal information from Moody's Investors Service and from an independent investment advisor who has nothing to sell except his services. And right here I would like to say that in ten years, last past, these services have never once given us bad advice in the innumerable transactions we have had involving many hundreds of thousands of dollars in securities. So much for securities which are handled mostly in customer accounts in our trust department.

In the title department, we stick principally to real estate loans, for three reasons:

1. We get 5% to 6% with safety.
2. We get the title business.
3. The money is invested at home where it is earned and where we may get another chance at it.

No commission or appraisal fee is charged by us, but if a broker brings in an acceptable loan we allow him to collect not over two per cent commission.

I said "We get 5% to 6% with safety" and that is literally what I mean, for our company did not lose one penny on real estate loans in the great liquidation period of the early thirties. True, some of our loans had to be nursed but having been made right in the beginning they finally came out right in the end. Probably the fact that we have seen our town grow from about 20,000 people when we started business in 1903 to 300,000 at the present time helps us to keep our loans out of the soft spots.

We will not go over fifty per cent of our own conservative appraisement, and if more than 6% is offered, we turn down the loan even if we think it looks good, for the reason that there may be some hidden trouble. In this day of eighty and ninety per cent loans we still find people who wish to borrow as little as possible and not as much as they can get. Unfortunately, that kind of people is scarce, so we must act quickly when such a loan is offered in order to land it; hence our Finance Committee usually only gets a chance to confirm the action of the management in approving real estate loans.

The reputation gained for quick action is also a factor in getting such business. We keep our loans small, seldom over $5,000.00, all payable in installments of one per cent per month on interest and principal; balance of principal payable in five years, at which time we may grant an extension. Interest is computed on diminishing balances.

Investments in savings and loan associations are limited to $5,000.00 in each association, so that we have the advantage of a fair rate of interest and the Government guarantee and at the same time give the associations additional funds to lend on real estate, which creates in turn more title business.

Competition for good loans is strong, but our funds are relatively limited and we do no competitive advertising. Rather do we depend on real estate brokers and salesmen who appreciate quick service in closing if they have a really good loan. The banks, life insurance companies, loan associations and other lenders are, of course, the major contenders for loans, large and small, and it is they that find the quite

considerable outlet for their money in the FHA field.

San Diego being in a defense area, there is much building being done right now under Title VI of FHA as well as under Titles I and II.

Incidentally, I might remark that we have a paradoxical condition in San Diego and possibly other California cities in that there is a building boom without a real estate boom. Most property is only bought for use and many good lots in San Diego can still be purchased at prices of ten years ago or maybe even a lesser price. For this reason, at least, we see no headaches from a collapsed realty market when the emergency is past.

S. W. JOHNSON

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In discussing the question, "Investment by Title and Abstract Companies," I am confining my suggestions to the problems of investments for the small abstracter living in a rural community.

Assuming that by years of hard work and rigid economy he has managed to accumulate a modest surplus of a few thousand dollars, his income is not sufficient to enable him to enjoy all of the advantages of a more abundant life, and his ability to enjoy some of life's luxuries depends quite largely upon the income which he is able to derive from his invested surplus. He can't afford to gamble with his life's savings and the speculative market is not within the category of his dealings. He would like to get the highest yield possible consistent always with the reasonable margin of safety. A certain portion of his assets must, of course, be liquid and readily convertible into cash in the event that some unforeseen emergency arises either in his family affairs or by reason of some claim which might arise in the event he should miss a judgment, taxes, etc.

Inasmuch as he is operating in a community where the values of the properties being abstracted by him are, except in a few instances, rarely in excess of five to six thousand dollars, a reserve fund for possible loss would probably not have to exceed two thousand dollars. Such a reserve should quite likely be invested in government or municipal bonds.

He still has a few thousand dollars that must be made to yield more revenue than can be derived from the blue chips of the commercial investment field. In my opinion there are two classes of investments available to him which will return the maximum yield and still be well within safe limits.

The first, and to my mind still the best, is a first real estate mortgage on *improved* property not in excess of 50% of a conservative valuation. The type of property most desirable is one which, in a small community of five thousand people, or less, would not be dollars. In all small communities there are a few homes which are worth from a physical valuation two or three times the average of the property in the community. A 50% loan on a ten thousand dollar house in a small community would not be too attractive, due to the fact that there are very few people in the community who can afford to live in a house of this type, and, in the event the present owner should die or suddenly decide to move, he might be required to take over the property which he could not move, and whose rental value would not be commensurate with the investment in the property. I believe he should limit the maximum amount to be loaned on any property to not over $2,000.00.

The second class of investment, which would normally bring a higher yield but entail considerable more su-

SOREN W. JOHNSON
Waupaca, Wis.
Vice President, Waupaca Abst. & Loan Co.

valued in excess of thirty-five hundred pervision, is the purchase of small homes for their rental values. There are usually many opportunities afforded to the abstracter to get in touch with properties which are well located but have been allowed to deteriorate through lack of proper care. These properties can quite often be purchased for considerably less than their physical value and a few hundred dollars judiciously spent in minor repairs will enhance the value of the property several times the cost of the repairs and make the house readily rentable at a good return on the investment.

As an example, take a house that is located in a good residential portion of the city. The average of rentals in that location is $30.00 per month. The house can probably be bought for in the neighborhood of $2,000.00. The total bill for repairs which might possibly mean a new roof, a couple coats of paint, and a little tinkering with the plumbing, would in most instances not exceed three to five hundred dollars. The total investment in the property would probably not be in excess of $2,500.00. Assuming that the taxes on the property are assessed at a rate of 3½% on full valuation, the tax bill would amount to $105.00, repairs and depreciation would in all likelihood not exceed 2%, and insurance would probably not exceed $10 per year. In most small communities at the present time there is little or no problem of unoccupancy. Most communities are under built and there are not enough houses to go around. There would be small likelihood of the house remaining vacant for any period of time so that the loss through changing of tenants will be negligible. The gross income from the house would be $360.00, taxes, depreciation, and insurance $175.00, leaving a net of $185.00, which is not a bad return on a $2,500.00 investment.

The investor is also sitting in a position to take advantage of any rise in the real estate market. There is one other factor that might also be considered, and that is the possibility of inflation. When, as, and if we are ever faced with such a condition we will at least have thrown out one anchor as a hedge against inflation. The history of the 1929 and 1931 debacle at least taught us one lesson, that of all the different types of investment which we may have had at that time, the ones on which we took the smallest loss was a good real estate mortgage and a good moderately priced home. I know of no better type of investment for the small abstracter consistent with a reasonable margin of safety and a fair return on his invested capital.

The investment field in a small community is not very intensive, and I humbly offer these suggestions in the light of my limited experience.

HARVEY PEARSON

Secretary, Vermilion County Abstract Co., Danville, Illinois

In considering an investment of either surplus or reserve of a title or abstract company, I think we should first consider the factors of investment. There are three main investment characteristics:

(1) Security of principal, (2) Reasonable return (3) Availability. It seems to me that we should emphasize the first and third of these characteristics and let No. 2 follow. Primarily our business should bring the profit and not the return from the investment of the reserve or surplus. Naturally, if we emphasize on No. 1 and 3 of investment characteristics, our return will be small. Larger returns can be secured only by sacrificing either security of principal or the availability feature.

As a matter of fact, all abstract and title companies are under large potential liabilities, and as long as the human element is such a vital factor in

the preparation of our product, we can not escape this potential liability. Since reserves and surpluses are primarily necessary because of this liability factor, the investment of these funds should be made only with the view of the funds being available as contemplated.

We must therefore reach this conclusion—that availability of funds intended to meet liabilities is the prime factor, and it is only when we think of investing these funds that the next two characteristics are to be considered. I am sure that no one would place the importance of returns on investments ahead of the security of principal of the investment.

The theory may be advanced that not all of reserves and surpluses are necessary to cover our potential liabilities and that therefore an attempt should be made to secure as high a rate as possible on any sum over and above the amount deemed adequate for protection of our customers. A possible answer to this theory would be that if reserves and surpluses exceed the amount necessary for protection, then this sum should be distributed to owners and stockholders, and they can assume the responsibility individually of investing these excess funds. In the smaller companies which do not have the advantage of having trained and experienced personnel within its operating makeup, it would seem as though the schedule of types of investment should be agreed upon rather than a re-occuring decision as to individual investments. Therefore, as a suggestion, I have listed the possible schedule of what reserves and surpluses should consist of:

(1) Cash; (2) Savings account; (3) Treasury notes; (4) Defense "G" or "F" bonds, and possibly a small end of the reserve account could be invested for larger returns and therefore be less available for cash.

Even though we are in the business of evidencing titles to real estate, that does not warrant us in attempting to get over on the customer's side in loaning money on or buying real estate for speculation. We will do better in the long run to handle the side of the transaction that we are experienced in and trained to handle, and let our customers take care of the other side of lending money upon, selling, or purchasing real estate.

FRANK J. BREAKER

President, American Title Guaranty Co., Houston, Texas

The investment of reserve funds is a subject which has caused us considerable worry during the past 18 months, and when I received the August letter which said that this subject would be discussed at the convention by several members, I was delighted to know that we were going to get some expert advice on the subject; however I was rather shocked to learn that I had been chosen as one of the experts. I do not want to be placed in the position of financial adviser to anyone, much less a group of fellow title-men, nevertheless I am going to attempt to tell you how my company invests its funds.

In Texas, Title Insurance Companies operate under the supervision of the Department of Insurance and we are only permitted to invest our funds in assets which are admissible for a Life Insurance Company; therefore, we are not allowed as much diversification as we would like. We have divided our investments into two broad classifications; first, those that can be readily converted into cash and items of a more permanent character.

During the depression we learned the advantage of having ready cash, or to put it more accurately, we learned the disadvantage of not having any cash, and we now maintain a cash balance equivalent to three months operating expenses. In addition to our cash we have other quick assets such as certificates of deposit, a few government bonds, and Federal Building and Loan Stock in amounts sufficiently large to meet any possible loss. While these securities have a very small yield, we believe that this loss of yield is more than offset by our peace of mind in knowing that the company is in a very liquid position.

As to stocks, we do not think that preferred stocks hold a candle to mortgage loans and for this reason we do not have any investments of this type. I am quite sure that all of you have learned your lesson about buying stock in various mortgage companies in order to secure their business. We have tried this; however, I do not think we will again soon. The Insurance Department does not consider a stock admissible as an asset unless it has an unbroken dividend record of five years. I am sure that there are quite a few listed stocks which would meet this requirement and which could be purchased at a price on which we could get a very satisfactory return, and with so much talk of inflation, I believe that it would be well to give these stocks more consideration than we have in the past.

I am certain that all title men have a love for land, and we are no exception. We earnestly believe that there is nothing better than revenue bearing real estate which has been bought at the right price. It might go down but it always comes back up. However, the insurance laws are in conflict with our thoughts in this matter and we are not permitted to acquire real estate other than a home office building except through foreclosure.

The larger portion of our investments are mortgage loans. We do not try to compete with our customers in the mortgage loan field; however, we have many opportunities to make small loans, with better than the usual return, in which they are not interested. These loans are made on the basis of 50% of our appraisal and in addition to the interest we also get the fee for the title work.

I guess the largest investment any of us have is one which does not appear on our financial statements, but in reality is the very life of our business. I am referring to trained personnel. We have been very fortunate in that we have had a very low turnover of help and we have tried to protect ourselves as far as possible from the loss by death of key employees with life insurance.

W. A. LINCOLN

President, Lincoln Abstract Co., Springfield, Missouri

When I received the request of Charlton and Jim to prepare a paper on investments of surplus or reserves this story immediately came to my mind. A young fellow was sitting on the curb of one of our streets, apparently writing. He would write a few lines then look around for further inspiration—then he would write some more. A gentleman walking along the sidewalk had noticed the young man and when he came close enough to observe, he found that the young fellow had neither pencil or paper. He was writing in the palm of his hand with an imaginary pencil. He was interested, so he stopped and asked the young man what he was writing about. The answer was: "I am writing myself a letter." Still amused, the gentleman then asked what the letter was about. The answer was: "Well, how should I know? I will not get it until tomorrow." Now I could not help but think that it was not more absurd to ask that young man what the letter contained before he received it, than to ask me, a country Abstracter, to write a paper on investing reserve and surplus funds.

In the first place my situation is quite different from nearly all of yours. I come from a small city located in the Missouri Ozarks and operate a one-man Abstract Company. My employees are all women. My company is not incorporated and I have no board of directors to consult. As this is the experience of a country Abstracter in the investment field it my be of interest to those owning abstract companies in the rural sections. It will be of little help in solving any of the investment problems of the large title companies in our large cities.

To begin with, most country Abstracters do not have a large surplus or reserve to invest. It would surprise most of you to know that a goodly proportion of our surplus is invested in these trips to our National and State conventions. I have always been firmly convinced: That if more of our rural Abstracters would spend some of their earnings in attending our State and National conventions they would have a larger surplus to invest the following year. It has paid me better and bigger dividends than any other investment I have ever made. In my case it has been the big factor in my having any surplus.

I seriously doubt that many abstract-

ers in our rural sections set up a separate fund as "Reserve or Surplus." A big majority are unincorporated one-man title companies. Their responsibility is the personal obligation of the owner of that company. Their losses (if any) are small and are paid out of their own accounts. Any investments they may make are made out of their personal funds and should be made just as carefully as the investments made by our larger companies, who have large surpluses and reserve accounts. It is just as important that a country abstracter be solvent as it is for a Title Company in our larger cities to have adequate reserves.

I have always thought that one should invest their money (surplus or reserve) in something they know the most about. I have tried to follow that rule. It has been my experience that in 80% of the cases where I have deviated from this course the investment has not been profitable.

If the country abstracter knows anything outside of compiling title evidence, it should be Real Estate Values. The larger part of their working day is taken up with problems concerning real estate. He knows the inside facts in a big proportion of the real estate transactions in his community. Many such transactions are either made or closed in his office. His advice is constantly in demand relative to the procedure necessary to complete the sale or mortgage loan. The country title man is not only the abstracter who compiles the abstract, but is also the escrow department of his company. He knows what sections of his city are progressing as quickly, if not before any one else could know. He is in a better position to know where the best farms are located and the prices they are selling for than any one else in the community. In fact just a little time spent in going over his daily take off, should in the course of time give him a complete picture of the development of his city and county. He should know what people are seeking in the way of home sites. What the chain stores consider 100% locations. What kind of farms are being sold and whether they are increasing in value. What values our large mortgage companies place on property in the county as shown by their loans. Where the new highways are to be located and many other facts relative to values that necessarily come to him on account of the nature of his business.

THE COUNTRY ABSTRACTER SHOULD BECOME THE REAL ESTATE EXPERT IN HIS COUNTY.

Now I ask you, Where should the Country Abstracter invest his money? Should he invest it in stocks and bonds? He could not possibly know whether the company was well managed, burdened with debt, adequately financed, sufficient plant facilities and a thousand other facts that he should know to purchase stocks or bonds intelligently and with any chance for a successful investment. The rural title man does not have the facilities with which he can obtain proper knowledge relative to stocks and bonds and must buy entirely by ear. If the stock sounds good he buys. Too many times he discovers that the dulcet sweet music of the stock salesman oft times turns into discordant sounds and sour notes, much to his discomfort and chagrin.

I once knew an Abstracter who met a friend of his on the street. This friend seemed all down and out, so he stopped him to inquire what his trouble might be. He informed the Abstracter that he had diabetes at 35. The Abstracter in turn told his friend not to worry too much, that he had Cities Service at 68.

No, I firmly believe that the Country Abstracter should stay close to home and invest in the one thing he knows best, "Real Estate and Real Estate Mortgages."

It is my experience that the abstracter can become known in his County as an authority on real estate values. This will bring to him investors, real estate agents and many others interested in buying or selling real estate, who seek his advice. Many good investments come to him through these sources. If he has learned his lessons well from day to day, it should not be too difficult for him to know whether the investment was safe and the return adequate.

Now as to what proportion of surplus or reserve should be invested in real estate or real estate loans, I do not know. I do not know what proportion should be invested in city or country property. I doubt that there could be any fast and set rule. It should be left to the investor's own judgment. The conditions of his County would not be the same as the conditions in my County. I have thought for some time that good business or residential properties were the best investment in my County. It just seems to me that there is too great a spread between interest rates and return from city property. This condition may not continue long, but so far there is nothing to indicate that the condition is changing. In many instances properties can be purchased that will return a net income of 8 or 9 per cent and compared with interest rates of 3½ to 5 per cent, it would be poor business indeed for us Country Abstracters, who have limited reserves to invest, to do other than buy real estate.

I think real estate is the safest investment one can make, provided the property is bought after consideration of the inside information a rural abstracter should have accumulated. You know the old saying: "A thing well bought is half sold." Who should know better than the Country Abstracter if it was being well bought. A good piece of Real Estate well located is not only your best investment, but your best advertisement.

Vacant properties—that is unimproved City lots and farm lands are a most difficult problem. I am not just sure but that from the abstracters standpoint they should be left alone. It is my experience that they have to be improved to become an asset. The building of improvements is a business all its own. I cannot see where the experience gained in an abstract office would be of much help in constructing buildings. The one thing I do not like to talk about is the vacant lots I bought and still own.

In conclusion let me say that it would indeed be most difficult to bring to you all a program for investment that would help everyone. If I were able to do so I would be a genius and not have to compile title evidence for a living. I once heard of a sheep herder, who lived in a mountainous country and spent many cold winter days looking after his sheep. He noticed that the bears hibernated in the winter time, did not eat anything and required no care. He thought what a wonderful thing it would be if he could cross his sheep with the bears. It would relieve him of the care and feeding of his flock. He finally succeeded in raising just such an animal and he most happy. What a disappointment it was when he found that the sheep end could not raise enough wool to cover the bear end.

So I say the perfect investment, where there is absolute safety and at the same time large returns is still a thing to dream about.

"Thank You"

By

MICHAEL A. SCHMITT

Assistant General Counsel, Farm Credit Administration, St. Paul, Minnesota

Mr. President. Ladies and Gentlemen of the Convention: My associates in the Farm Credit Administration were unable to remain for the closing moments of this convention. As their duly authorized spokesman, I wish to express on behalf of Mr. Clarence A. Patterson, General Counsel of the Farm Credit Administration of Baltimore; Mr. William C. Goodwyn, General Counsel of the Farm Credit Administration of Louisville; Mr. Guy V. Head, General Counsel of the Farm Credit Administration of St. Louis; and myself, Michael A. Schmitt, Assistant General Counsel of the Farm Credit Administration of St. Paul, our sincere appreciation for the kind invitation to us to attend your convention. The location for the convention was most delightful as well as health inducing, and the gracious and cordial reception tendered us, together with the able presentation of the conference agenda, made our attendance one of pleasure coupled with professional benefit. I wish also to express the sincere regret of Mr. John Thorpe, General Counsel of the Farm Credit Administration of St. Paul, at his inability to attend this convention.

The Abstracters License Law In Operation

L. B. CARDON
President, Cardon Abstract Co., Salt Lake City, Utah

Before one can accurately appraise the Utah License Law in Operation one must examine briefly into the conditions existing prior to enactment of the present license law. Our former law was in existence from about the time our first abstracts appeared. This law provided that applicants for a license to abstract must be made to the County Commission of the County in which the abstracter wished to operate and the applicant must also file a bond for $10,000.00. The statute reads in part: "If they deem said applicant a proper and competent person they shall issue a license," etc. This, of course, made the County Commission the sole judge of qualifications. Under this law just about every ex-recorder or ex-clerk, and a good many ex-surveyors and ex-commissioners, ex-judges and so on, were admitted to practice as abstracters without any other qualification than the limited experience in their previous office or because Commissioner Brown knew Applicant Smith's uncle or some other equally weighty reason. As a result every four years there was a deluge of new abstracters.

Most of these applicants filed personal bonds; there were in 1931 only four or five abstracters in the state with surety bonds, renewable annually. Bonds were difficult to obtain from the bonding companies and in order to get one you had to have all your family put up the family treasure chest as security to the bonding company and be worth about $30,000.00 and pledge it all to the surety company. As a result, personal bonds were almost exclusively used. I made a survey of the bonds in use in the State at that time; there were four abstracters operating who could find no record of their having been licensed or a bond of any kind ever having been filed; this was probably due to errors in the County Records but the facts were missing. One abstracter was operating on a bond originally signed by 10 substantial citizens of 35 years ago, but all 10 were deceased by 1931 and their estates closed.

This law made the abstracter liable for damage done by him or his employees to the county records and made him liable "to the person aggrieved for mistakes and errors in abstracts for the amount of actual damages sustained, provided that such liability shall not accrue in favor of any person who had actual notice of the error or mistake complained of." We were never quite able to figure out what that meant and in as much as no one ever sued an abstracter under that clause, knowing the recovery on a judgment would probably be small, the court's never explained that clause to us.

Under this law the abstracters were entirely disorganized, uninterested in what happened to their competitor or the fellow in the next county and generally very unco-operative.

Following the survey I just spoke of I started a one-man campaign to get a licensing act through our legislature and even succeeded in getting elected to the legislature to help get our bill through, but I soon found that I could get farther by being a lobbiest than by being a legislator so, working this first session almost single-handedly, I finally got the abstracters of the state interested in the matter and a legislative committee of the state association became expert at the gentle art of lobbying and we got our bill passed.

This act was based largely on a similar act previously passed by the State of Montana, with this important difference, that the Utah act does not require in and of itself a plant. The commission set up gives due weight to the possession of or the lack of a plant. Utah has a very fine system of public indices and although, to some extent, subject to the usual objections common to public indices these records have been found sufficiently reliable that, with but a few exceptions, all abstracters in the state rely upon these indices, even our local title insurance company depend entirely on the public index for their tract search.

Our law sets up a by-partisan commission of three, appointed by the governor. We attempted to have this commission elected by the State Association disregarding political lines but this was found to be impractical, for political reasons. Two kinds of licenses are issued by the commission. One is issued upon an examination as to the personal qualifications and knowledge of the individual. A Certificate of Registration is issued to one successfully passing this examination and this entitles the holder to take charge of any abstract office or group of employees of any abstract company in the State, to search records and supervise the compilation of abstracts. A Certificate of Authority is issued to any person, firm or corporation, which have the facilities for conducting an abstract business, who have a Registered Abstracter in charge of that business and who puts up the required bond or other securities, such Certificate is limited to one County but one company may operate in other counties if they have sufficient facilities and file a separate bond for each county. Thus each firm must have a Certificate of Authority to engage in the business and must have one or more Registered Abstracters engaged in the actual work of preparing abstracts. In the smaller offices the same individual will usually hold both certificates but in the larger counties a corporation will frequently hold the Certificate of Authority, put up the bond, etc., and will employ one or more Registered Abstracters in the completion of their work.

The original fee for examination is $25.00, which includes the Certificate of Registration for one year, if the applicant passes the examination. The annual re-newal fee for each certificate is $5.00 per annum, which amount we have found to be more than sufficient for the operation of the commission and when a proper opportunity arrives to amend the law it is generally agreed that these fees should be reduced to about $3.00 per annum, but the examination fee should remain at $25.00.

Our liability to the public was clarified and the broadest possible liability was voluntarily assumed by the abstracters. We provide that "Any person suffering a loss because of having relied upon an abstract shall have a right of action for the amount of damages sustained; provided that such liability shall not accrue in favor of any person who had actual notice of the error or mistake complained of." Some thought this too broad but the view finally prevailed that when an abstract was once issued we should stand back of it regardless of who held the abstract, that our liability should not be limited only to the one for whom we did the work.

The commission must give an examination at least once each year and in between examinations may, at their discretion, issue either type of certificate, good until the next examination. They have the right to cancel certificates upon due hearing, the process is set out rather in detail in the act, for a list of offenses which are also set out in the act. We wanted rather badly to include in this list the granting of rebates or discounts from a published fee

but it was thought advisable to pass that matter for the time being at least.

Since the act was passed only one license has been revoked. This was under the provision which made it possible to revoke a license when a holder was convicted on a charge of having used c ounty funds while he was in office as the County Treasurer. There are several other reasons given for which the board may revoke licenses. A few copies of the act are available and if any of you are interested in the detailed provisions of this clause, or any other portion of the act, I would be glad to let you have them as long as they last.

Now as to the results of the act. The first thing that brought itself noticeable to our attention was the change in the attitude of the bonding companies. Only one company had previously been willing to consider applications and as I stated above they wanted your eyeteeth before they would bond you. And now we find five or six companies competing for this business, anxious to get it and without one-half the red tape previously required. As a result the surety companies are writing bonds on all but two abstracters in the state. Incidentally, the new law reduced the amount of bond required to $5,000.00 in all counties of the state except the four counties having in excess of 25,000 population.

A second noticeable result of the act was the added strength that was given to the state organization and while there is much to be desired in that regard we have made progress. As a concrete example of what can be done in this regard I might cite my own county. Fifteen years ago discounts ranged from 25% to 40% of the gross amount of the bill, rates were 75 cents per *entry*, and other charges correspondingly low. We have now raised our fee to $1.00 per *page*, we have added $1.00 to the certificate charge, we have cut discounts to a uniform 20%, which of course is 20% too much, and we have increased our fees for probate proceedings, etc.

We have also received the co-operation of the County Officers Association of the State in repealing an old provision of the Statute which required County Recorders to prepare Abstract of Title at 75 cents per entry, and for a $3.00 certificate. Now the statute provides that only in counties where there are no duly authorized abstracters can a County Recorder prepare an abstract and of course we don't care what fee they charge in those counties. There are two counties in the State which do not have regular abstracters, and these counties have a combined population of about 2,000, so of course there is not enough business in those counties to warrant anyone setting up in business.

We had a few adverse criticisms when the act was first passed. In order to obtain the support of one of the big shots in the legislature we had to eliminate the "grandfather clause." This party rightfully claimed that if some of the present abstracters did not know their business they should be put out of business by the examination. The Governor objected to this provision and would have vetoed the bill without the assurance of the prospective Board Members that they would make the first examination easy enough that anyone then in the business could pass it. This was done and one or two abstracters, who really knew their business, were so disgusted with the easy type of questions asked that they severely criticised the commission. The commission got even at the next examination by making it so tough that two persons, who had previously been abstracters but were out of the state when the first examination was given, were failed and had to study up on triangulation, platting, etc., before they could pass another examination.

Our commission has used some of the funds available in doing a splendid job of educating abstracters and standardizing their work throughout the state. Bulletins have been issued which go a long way in assisting the boys in the smaller counties to produce abstracts which will meet the approval of the most exacting examiners in Salt Lake City and the legal departments of F. H. A. and the eastern investors. A few years ago we frequently received calls for help from some of the examiners and often had to make a trip to some of the outlying counties to dig up the information which should have been in the original abstract. Since this educational campaign became effective such calls are almost unheard of.

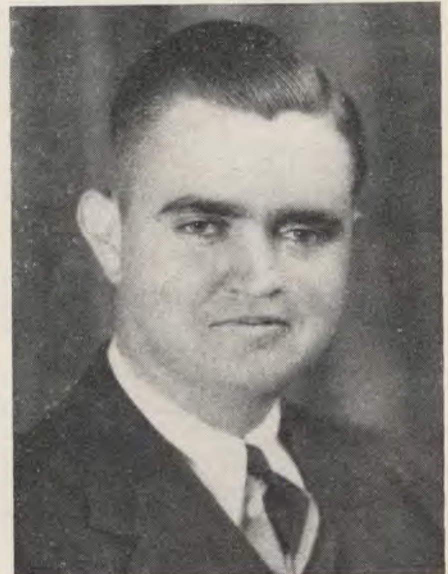
Some feel that the present requirements of the commission are a little too strict but we who are in the profession are anxious to build up a reputation that when one says that he is an abstracter it really means something. Why should the laws make strict requirements and a tough examination for accountants, architects and lawyers and then let every Tom, Dick and Harry be licensed as abstracters?

We in Utah feel that our act, although perhaps neither perfectly drawn nor perfectly administered, has been a big boon to our business. It has raised the standards of the profession, it has put better men back of the certificates and better financial strength back of the job, it has given us a stronger organization and above all it has vastly improved the quality of the abstracts turned out in the state, particularly in the smaller counties. The full fruits of this act are still in the future, better abstracts and better service are bound to result and with that will come, in due time, better financial returns to the abstracter. And, after all, we are in this business for the purpose of making available the daily livelihood of ourselves and our families. By better serving the public, by better quality of abstracts, by better organization we can go a long way toward solving the problem of providing a higher standard of living for all engaged in the business from the owner to the office boy.

ROY C. JOHNSON

President, Albright Title & Trust Co., Newkirk, Oklahoma

At the request of John Dozier of Topeka, Chairman of the Abstracters' Section, I have prepared a brief discussion for you of the Oklahoma Abstracters' law. First I want to thank the Program Committee for allowing me this opportunity, and next I want to express my sincere regret for not being able to attend the convention. I had previously planned to attend, but some very important matters have come up, which prevented me from attending, so I want to take this means of expressing my good wishes to the many friends I have made through the American Title Association. On March 29, 1937, the Oklahoma State Legislature passed the abstracters' law declaring it an emergency. The act related to the abstracters' records and indexes



ROY C. JOHNSON
Newkirk, Oklahoma
Member Abstracters Section; Secretary Albright Title & Trust Co.

in addition to the bond required by a previous section of the Oklahoma Statutes of 1931.

ABSTRACTER'S BILL

Section No. 1

Any person, firm or corporation not now engaged in the business of abstracting and desiring to enter into that business after the passage of this act shall have for use in such business, individual sets of indexes *compiled from the instruments of record affecting the real estate in the office of the County Clerk, and not copied from the indexes of said office*, showing in a sufficiently comprehensive form all instruments affecting the title to real estate property on file or of record in the office of the County Clerk or Court Clerk of the

county wherein said business is conducted.

Section No. 2—Certificate of Authority, Application in Hearing

Provides that a certificate of authority shall be issued by the County Clerk upon written application which shall be heard from the clerk within not less than 20 or more than 30 days. After the filing of said application with the County Clerk, the County Clerk shall advertise said notice and post said notice in three places in the county and then that a hearing shall be held at which time it must be proven that the applicant has complied with the first section of this act and has complied with the previous act relating to a bond that has been approved by the Board of County Commissioners.

Section No. 3—Cost Deposit

The applicant shall put up a deposit of $25, $10 to be retained by the County Clerk as a fee, the balance to be used for cost of filing the application, advertising, etc.

Section No. 4—Appeals

Which gives the right to the applicant, or any protestant, appealing the said hearing held before the County Clerk to appeal hearing to the District Court which provides that a cost deposit of $200 must be paid.

Section No. 5—Bond

That the certificate of authority shall remain in full force and effect so long as the holder of said certificate shall have on file with the County Clerk, a bond acceptable to the County Commissioners, and provides that a certificate can be reinstated providing a new bond is placed within 90 days after the cancellation or termination of the certificate.

Section No. 6—Action for Damages

Provides that action for damages by reason of any imperfect or false abstract compiled can be brought within five years from the date of the abstract or certificate.

Section No. 7—Repeals

All acts or parts of acts in conflict herewith are hereby repealed.

You will notice under Section No. 1 that any person, firm or corporation not already engaged in the business of abstracting and desiring to enter into such business, that after the passage of the act it became necessary that an individual set of indexes be compiled from the instruments of record affecting the real estate title in the office of the county clerk, and not compiled from the indexes of said office, showing in a sufficiently comprehensive form all instruments affecting the title to the real estate on file or of record in the office of the county clerk or court clerk of the county wherein said business was conducted. Since the passage of this act more than four and one-half years have passed and its validity, as yet, has not been tested.

So far all abstracters engaging in the business throughout the state have complied with the law since the passage of the act. However, very recently in a certain county in the southern part of the state a man desiring to engage in the business of abstracting employed a number of high school and junior college girls to make a set of card indexes from the indexes of the county clerk. I don't have information, at the writing of this, as to whether any records were made from the records of the county court clerk. At the time application was made to the county clerk for the certificate of authority to engage in the business, such application was rejected upon the basis that the card indexes were not sufficiently comprehensive. Under Section No. 4 of the act the applicant has appealed to the district court for a hearing. Undoubtedly, the validity of the Oklahoma act will soon be known. Every step is being taken in order to employ good legal counsel for the defense of the act.

C. W. DYKINS

President, Realty Abstract Company, Lewistown, Montana

The Montana Title Association was organized in the year 1909 and has fostered all legislation which became law and is now expressed in what is known as the Abstracters' Law of Montana. To go back to the inception of laws in Montana affecting the abstracter I find the first act was passed by the Fourteenth Legislative Assembly, approved February 27th, 1915 and became law April 1st, 1915. The title of this act expresses clearly its objects in the following language.

"An Act to compel abstracters of title to real estate to file a bond for the protection of those with whom they deal, and to procure a seal; to provide for the issuance of a certificate of authority to such abstracters: providing that their fees are a matter of contract; also that any properly certified abstract of title shall be prima facie evidence in the courts . . ." A violation constituted a misdemeanor carrying $500 fine.

The bond provided for was for $5,000 to run one year and must be renewed annually. It was to secure the payment of any and all damages that any person may suffer by reason of any error, deficiency or mistake in any abstract or certificate of title or any continuation thereof.

Upon filing the bond an abstracter was issued a certificate reciting that he or it is entitled to engage in the business of making and compiling abstracts of title to real estate in the State of Montana, which certificate shall be valid so long as the bond was unimpaired.

Sec. 3 of the act provided: "The compensation to be charged and received by abstracters of title shall be and remain a matter of contract between the parties."

The Act also provided that abstracts duly certified by abstracters holding a valid and subsisting certificate of authority shall be received by the courts of this state as prima facie evidence of its contents.

It was not my privilege to be a member of the Montana Title Association until shortly after the passage of this Act, but I am informed by those who were, some of whom are still very active in the Association, that the matter of better protection for the users of Montana abstracts was deemed of sufficient importance to warrant legislation and after discussion at several of their meetings the Act was brought forward and put through the Legislature. I might add here in passing that it seems to have been the aim and intent of the Association, not only to evolve and make the best abstract possible, but also to see that its users are amply protected in every way. I can conceive of no higher or more worthy ideals for an Association than these.

This continued to be the law under which the abstracters operated until the passage of what is now known and referred to as the Abstracters Law by the Twenty-Second Legislative Assembly which was approved March 9, 1931, and became law April 1, 1931. The objects as expressed in the title are:

"An act relating to abstracters and to the business of abstracting; providing for the creation of a board of abstract examiners, fixing the compensation of its members, and providing for the organization and the operation of the board; defining the qualification of abstracters and requiring their registration; defining registered abstracters; providing for the examination of the applicants by the board of abstract examiners; the issuance of certificates of registration and certificates of authority, and designating the contents of certificates, prescribing the license fee to be paid by the applicant or the abstracter before taking the examination or engaging in business; requiring the filing of a bond, or securities in lieu thereof and prescribing its form, penalty and amount; designating a seal to be used; granting to the board of examiners power to cancel and revoke certificates of registration or of authority; providing for hearings on applications to revoke or cancel, and granting right of appeal from the decisions of the board cancelling or revoking certificates; fixing the penalties for the violation of this act and excepting from the provisions of this act county clerks and recorders and persons employed by counties in preparation of abstracts, and also any person, firm or corporation holding a valid and subsisting certificate of authority issued pursuant to said section 4140."

This law is very similar to other abstracters laws in various states with the possible exception of one provision which I believe is one of the outstanding features of the Montana law and is not contained in the laws of any other state. That is the provision for issuing Certificates of Registration to applicants after they have complied with the provisions of the law and passed the necessary examination. This certificate recites that the holder thereof has com-

plied with the provisions of this act relating to examination or otherwise and entitles the holder of such certificate of registration to take charge of any abstract office in the state holding a Certificate of Authority under this act and may be renewed annually upon the payment of the fee as provided therein.

There is also a provision in this law that does not seem to be mentioned in the title. It is found in Section 11 thereof as follows: After stating that the holder of a Certificate of Authority may engage in and carry on the business of an abstracter of real estate titles in the county or counties of Montana may for that purpose "have access to the public records in any office of any city, county or of the state during office hours to make such memorandum or notes therefrom as may be necessary for the purpose of making such abstracts and the compiling, posting, copying and keeping of all their abstract books, indexes or records, such access to be during ordinary office hours." This gives to the abstracter a right which in some places and under certain circumstances have been extended to him more in the nature of a courtesy.

Several years prior to the passage of the abstracters law, there had been a feeling among the members of the Montana Title Association that such a law would not only be beneficial to them but would provide additional security and protection to the users of abstracts in the state and it was discussed quite extensively at several of their annual meetings and finally took sufficient shape to be presented to the legislature at its session held in 1929. It failed to pass, the reason being largely because of a few abstracters outside the association who had sufficient prestige, pull or whatever you desire to term it, to defeat the measure. The lessons learned at this session proved valuable and further preparation was made and the bill was again presented to the legislature at its 1931 session, where after a lot of hard work, the bill became a law. One of the principal objections advanced by legislators was that the bill was monopolistic in tendency.

I hope in giving the history of the operation of this law in Montana I may be able to establish two outstanding facts that may be helpful to others in presenting this matter to their legislatures. One is that it is not monopolistic in its nature and the other is that while it benefits the abstracters of the state, the real outstanding benefit is derived through its protection to the users of abstracts prepared by individuals or companies operating in the state who complied with its terms and conditions. This is borne out by decisions of our Supreme Court.

This law has been in operation something over ten years and it has grown in favor not only with the public but with the abstracters and especially those who formerly opposed its enactment. We have been very fortunate in having members of the Board who have taken a liberal view of the provisions of the law and have at all times tried to interpret it in equity and with justice to all concerned.

The law has been amended once by the legislature meeting in 1939 and this amendment was approved and sponsored by the Montana Title Association. It grew out of a condition wherein it was found in at least one instance that the renewal of a temporary certificate of authority for the term of one year only would work a hardship upon an abstracter who had been unable for various reasons to comply with the requirement as to the completion of his abstract books and tract index. This amendment provides that a temporary Certificate of Authority may be renewed from year to year until and including the year 1943, providing it can be shown that there is an intention in good faith to complete the same.

PEARL K. JEFFERY
Columbus, Kansas

There was an attempt made to amend the law at the 1941 session of our legislature, growing out of a situation which arose in our largest city. The party offering the amendment had been in the employ of a large mining concern in the city doing abstract work for them. For some reason, he ceased to be employed by this company and desired to go into the abstract business in that city and the county in which the same is situated. The bill as introduced in the legislature attempted to exempt and make inoperative the abstracters law in counties of over a certain population. It was general in its nature, but was intended and would effect only this one county. It passed the house by an overwhelming majority but was killed in the senate.

There appeared before the Abstracters Board of Examiners a party who for a period of 16 years prior to July 1, 1932, had been continually engaged in the business of abstracting titles to real estate in a certain county of the state and during all of the period in which a certificate was required by law had held and at the time of his appearance before the Board, held a certificate as a registered abstracter. He had never been in business for himself, but had worked for a company owning an abstract plant and tract index. His relation with the company was severed and he applied for a Certificate of Authority to open and conduct a business of his own but did not have an abstract plant consisting of books and abstract indexes as provided by the abstracters law and was refused such certificate. He commenced an action in the District Court asking for a Writ of Mandate to compell the abstracters Board of Examiners to issue a Certificate of Authority to conduct an abstract business in Lewis and Clarke County. The Lower Court rendered judgment awarding the writ and the defendants appealed. This is the case of State ex rel. George O. Freeman, Rel and Resp. vs. Abstracters Board of Examiners et al, Defs. & Apps. 99 Montana 565; 45 Pacific (2) 668.

There are many interesting statements contained in the decision of the Supreme Court and I have given you the name of the case and reference so that if any of you should care to read it you may do so. I shall quote briefly from the decision:

"In support of the judgment it is first contended that relator's showing that he has access to the records of the county is a sufficient compliance with the requirements of the Act; that there could be no more 'comprehensive' index than that of the county, which is 'all-inclusive'. This contention cannot be maintained; it would render the requirements of sections 1 and 11, above, meaningless, and set at naught the manifest intention of the legislature to require an abstracter to have a plant or set of 'abstract books' from which he can compile abstracts accurately. The undisputed evidence received on the trial is to the effect that an abstracter cannot safely rely upon the records and indices in the clerk's office for use in his business, for the reason that, under the statutes, the county clerk merely indexes instruments under the names of the parties. (Sec. 4799, R. C. 1921.) A break in the chain of title, by name indices, would mislead the investigators into believing that he had reached the end of the chain. Numerous instances in illustration could be given;"

There are a number of instances set out to prove the contention of the Court:

"This court has heretofore had occasion to comment upon and compare the two methods of running down the title to a tract of land, i.e., from the indices in the clerk's office and from

a 'tract index', and has said: 'It appears that the latter is the only safe, reliable and feasible method.' It is undisputed in the record that 'the minimum requirement' of the terms used in the Act is 'a tract index showing all instruments affecting all pieces of property in the county'. Such requirement increased the protection of the public in relying upon the accuracy of abstracts.

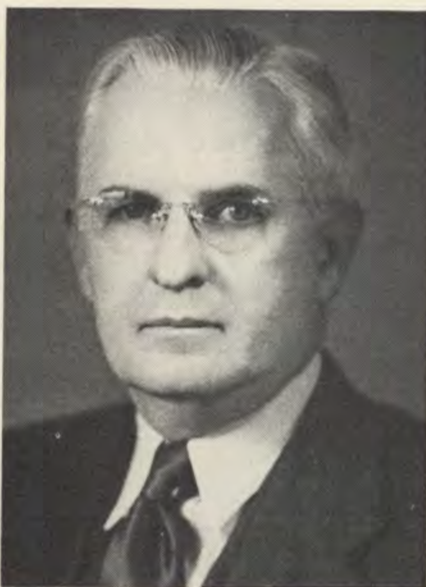
"It is contended, however, that the business of abstracting titles is not affected with a public interest and, therefore, the legislature is without power to regulate tnat business, under the 'due process of law' clause of our Constitution and the Constitution of the United States. It is true that power to fix rates and prices does not exist unless the business is "affected with a public interest" but the authority to regulate the conduct of a business . . . comes from a branch of the police power which may be quite distinct from the power to fix prices."

"While the relator is undoubtedly qualified as an abstracter and has received all that the Acts warrants because of that fact—his registration—the law goes one step further and, in effect, says: No matter how well qualified you are to make abstracts, unless you are equipped to do that work which experience has demonstrated cannot be done from the records and indices in the county clerk's office alone, you cannot conduct an abstract business unless you first show to the board that you have the necessary equipment. Owing to the particular nature of the business, the result of an attempt to make an abstract might be more satisfactory in a case where an unqualified man worked with a complete tract index or set of abstract books, than when a qualified man worked without the aid of such books. This additional requirement with reference to the instant business would, therefore, seem reasonable."

I have only quoted briefly from this decision but it brings out the point I mentioned that the abstracters law does afford protection to the users of abstracts which point is very strongly emphasized by the opinion of the Supreme Court. In this decision the power to enact such a law is established and its constitutionality upheld. As to its being monopolistic in its operation, we have an instance in this state in which before this law was passed, there were two abstract companies operating this county. At the present time, there are four.

Before our abstracters law instances arose which looked very much like the parties started to abstract in a county which could not support any more abstracters merely for the purpose of selling out. I think most of you are familiar with their method—commissions, cutting prices, etc. This practice ceased.

Shortly after our act became a law, we had our first experience with Federal Agencies. At the request of a representative sent out, we convened the executive committee and he presented their proposition to take a number of acres of our sub-marginal lands. Their first idea was some sort of a report and after explaining in detail what the Government would require he said they had contracted for the service in Maine I believe and quoted from that contract. Eight cents was what they were paying for each instrument shown and a similar charge for any certificate we might make to the report. We told him we could not meet those prices on either and after considerable more talk arrived at a conclusion. Later it was found they would require a regular abstract instead of the report and again we were told what would be



L. H. GROSS
Corpus Christi, Texas
President, Guaranty Title & Trust Co.

required and about the price the government expected to pay. Again we advised him we could not do the work for the figure he expected to get it for and upon further discussion we found the price expected to be paid was based on an investigation the Government had made of how much it would cost to establish an office in each county, furnish their own labor and produce the abstract. He was what we dubbed an else man. In other words before he got through, we were informed if we did not accept their figures for the work, they would put in the set-up and do it themselves. We suggested perhaps he was not familiar with the fact that Montana had an Abstracters Law that required certain qualifications for people engaged in that kind of work, and further provide that to do this work, the office must have certain equipment such as tract index, etc., and have a certificate of authority, operating without which was subject to quite a severe penalty for each offense. We were at once advised that it was the U. S. government that was proposing to do the work and we must certainly know we could not sue the government. Elementary we admitted, but we would most certainly bring an action under the law, and that anyone sent into the state to do that kind of work, was not the United States and we certainly would clamp down on them. The net result was eventually a contract entered into in each county at the uniform rate for such service which had been suggested by the Association and adopted by the abstracters throughout the state.

Later the policy of those in charge of work to be done changed, for when we were asked to enter into our present contract, the only request made was that we do not bid at a higher rate than the uniform schedule of fees charged for regular work. They also permitted us to make an abstract according to our idea of what it should contain—they only asked to be permitted to suggest how we abstract some matters. I might add their suggestions have been very much worth while to us. I attribute the net results of our dealing with the government agencies were largely a matter of being protected by the Abstracters Law.

Another instance of how the law protects the abstracter—at the time the United States government decided to build the Fort Peck Dam near Glasgow in this state, under the law it was compelled to and did submit bids for abstract work. As the number of acres involved was large, it offered an inducement for anyone interested to submit their bid. Had it not been for the abstracters law, from information which I have, I am satisfied that a number of parties would have submitted bids who could not qualify under the existing law. This work went to abstracters holding a Certificate of Authority and based upon the schedule of fees established by the association. Had it not been for the law, in all probability this work would have been done at a much lower figure and by others.

I spoke of our being fortunate in having members of the Board of Examiners who were liberal in the interpretation of the law, yet we have encountered several situations that have not been entirely satisfactory, which grew out of appointments made by the Governor. One of the appointees to the first board was an abstracter who had never belonged to the Association and seemed not to take any interest in its affairs. It also happened that in this same county was a member of the Association who might be said to be the father of the law. Again during the administration of another Governor, we had appointments made which reflected his political faith, and while there was no question as to their ability, nor the way in which they have conducted the business before the Board, it was not the intention of the act. Recently two vacancies have oc-

curred in the Board, and though recommendations have been made, no appointments have been made and we have been unable to ascertain what is holding the matter up. The old members hold until an appointment is made so the functions of the board are possible, yet in this instance, the work falls upon two of the members because one of the vacancies was caused by death. I would suggest the law contain the provision the Governor must make such appointments from names of members of the Association recommended to him. Our law does not contain this provision. I might mention we have had Governors of different political faith, yet the result is the same.

I would call your attention to the failure of our law in one respect to protect the abstracters. That is in the provision requiring a tract index, etc., I believe it would be well to have any law provide that such tract index, etc., should be compiled from the records. This would prevent anyone from going into a county which has a tract index, copying it and asking for a Certificate of Authority, either for the purpose of going into business for himself or to force those established to buy him out.

The Montana Abstracters Law has proven every contention made by the proponents and disproved every contention made by the opponents.

I have used the time alloted to me and wish to express my deep appreciation of this privilege.

Early American Title Association Days

HUGH H. SHEPARD

President, Shepard Abstract Co.,
Mason City, Iowa
First Treasurer, American Title Assn.

I have been asked to appear before this convention and to tell you something of the early American Title Association history. It is very kind of you to interrupt the important and interesting program that has been prepared for this convention and to take a few minutes' time in listening to a short sketch of the early history of your organization.

It was my privilege to be one of the 59 abstracters and title men who gathered at the Palmer House in Chicago on August 8, 1907, more than 34 years ago, for the purpose of organizing a national association of persons interested in the title business, then commonly known as the abstract business.

The meeting was called by W. W. Skinner of Chippewa Falls, Wisconsin, and 59 individuals from 15 States gathered for the purpose of completing a national organization. Mr. Skinner objected to the use of the name "abstracter" for obvious reasons so the organization was named "The American Association of Title Men" and included abstracters, representatives of title insurance companies and title examiners.

W. W. Skinner was the first president, A. T. Hastings, of Spokane, Washington was the first vice-president, H. L. McNeal, of Paw Paw, Michigan was the first secretary and Hugh H. Shepard of Mason City, Iowa was elected the first treasurer.

Harrison B. Riley, President, and William C. Niblack, Trust Officer of the Chicago Title and Trust Company, were in attendance; Carrol D. Judson, of the Realty Title and Trust Company, Jacksonville, Florida; A. T. Hastings of the Fidelity Abstract Company, Spokane, Washington; A. M. Mayo, of the Mayo Knapp Abstract Company, Lake Charles, Louisiana; M. P. Bouslog, of the Mississippi Abstract Title Company, Gulfport, Mississippi, John T. Kenney, of the Dane Abstract Company, of Madison, Wisconsin; Walter R. Taylor, of Kalamazoo, Michigan; George Wedthoff, of Bay City, Michigan, Varick C. Crosley, Webster City, Iowa, president of the Iowa Abstracters Association; Almor Stern, of Logan, Iowa; Charles E. Lambert, Rockville, Indiana, and many others.

This partial list is given to show that even the first meeting was attended by abstracters and title men from widely scattered places.

The survival and success of the American Association of Title Men was made possible by the various State organizations whose entire membership joined the national organization and the State organizations collected and remitted the dues to the national association for their individual members.

It was my duty as first treasurer of the Association to contact these various State organizations and to get them to join the national association as State organizations and to pay national membership dues for their individual members, and I can assure you that this was quite a task and required a great deal of correspondence and considerable perseverance.

Individual memberships in the national association were issued to title examiners and to abstracters in States that had no State organization. The membership of the national association has included many able men who have been students of their profession and have contributed addresses at the various national meetings that have been of great benefit and importance.

In the early days many abstracters were still writing the abstracts in long hand on wide form sheets. The typewriter had been in use in many offices for less than 10 or 20 years. The first public demonstration of the rectigraph was made at the organization meeting in 1907 by the Rectigraph Company of Rochester, New York, in charge of a Mr. Biedler who showed the members of the association how the public records could be photographed and these photographs be included in the abstract plant of the abstracter or title insurance company.

The so-called Torrens system has always come in for a great deal of discussion, and, like the weather, much has been said about it but very little has been done about it. The system does not seem to work well and it has not come into general and successful use so far as I know.

The problems of the abstracter in his own office, legislative difficulties, remedial laws, improvements in office system and countless other matters have received attention on the programs of the association during the 35 years that programs have been given.

The proceedings of the third annual meeting of the American Association of Title Men held at Seattle, Washington on August 10th and 11th, 1909 include a directory of the officers of 22 State organizations of title men. The treasurer's report shows that the treasurers of the State associations failed to respond to the request for funds and that a number of the State associations had failed to pay their dues so that the abstracters in general were solicited for additional funds at $2.00 apiece and the cash receipts for the year to August 1, 1909 were $405.00, the disbursements $433.10 and the balance remaining in the hands of treasurer was $61.31.

Two thousand copies of the proceedings of the convention held at Des Moines on August 19, 1908 were published and the treasurer reported that he still had 1000 copies on hand, and stated that these books are worth read-

ing for all time on account of the valuable material that they contain.

The meeting at Cedar Point, Ohio, on August 26, 27 and 28, 1913 was one of the high points of the Association's history. It was held at the Breakers Hotel. There were no outside diversions and the members of the Association who had been coming to the conventions for half dozen years got an opportunity to get well acquainted.

The report of T. M. Scott, Treasurer, from Paris, Texas, showed receipts up to and including August 20, 1913 of $1263.83, with expenses of $551.01 and a balance of cash on hand of $712.82.

Reports showed that the Iowa Association paid for 138 members. The Texas Association had 149 members and there were 20 States who paid dues to the National Association for their members. The State of Illinois had 61 members, Missouri 69, Kansas 81 and other States had smaller numbers. The State of Louisiana reported but 5 members.

It was at the Cedar Point Convention that the committee on legislation, headed by Judge H. L. Burgoyne, made a report submitting 16 proposals for the simplification of the system of the conveyance and transfer of titles to real estate, suggesting limitations of actions to recover real estate to 10 years, a general lis pendens law, legalizing defective acknowledgments, permitting married persons to convey lands individually except homesteads. It was suggested that the inchoate right of dower should be abolished, that the foreclosure of mortgages should be barred 10 years after maturity, that a short statutory form should be adopted for deeds and mortgages which form should imply all the usual covenants, that claims against unadministered estates should be barred in 7 years, that certificates of acknowledgment should be simplified and separate acknowledgment for the wife should be abolished, that private seals and witnesses in deeds and mortgages should be abolished, that the property rights of parties should be adjusted where decrees of divorce are entered. There were other recommendations of lesser importance.

Judge Burgoyne was a very able chairman and was chief title examiner for the Union Central Life Insurance Company at the time.

At the Omaha Convention held on August 31, September 1 and 2, 1914 in his annual address, President M. P. Bouslog, of Gulfport, Mississippi, reported that prior to 1907 the abstract and title business in this country was in a state of uncertainty in some places, inertia in others and of undevelopment in still other sections. The business was threatened by hostile legislation in the guise of reform and individual title men could not combat this sentiment and meet conditions single handed and unorganized.

Mr. Bouslog referred to the ambitious program of work that was mapped out by the officers after the Cedar Point convention and reported that the association had made a great growth in membership and by its activities had accomplished much good of general interest and benefit to title men and was financially in a most excellent condition. The proposals looking to the simplification of the laws as recommended at the Cedar Point Convention had received much favorable comment from all sections of the country.

At the Omaha meeting Mr. Hugh H. Shepard as chairman of the committee on legislation reported his visit to Washington, D. C. in May to call upon certain members of Congress who were members of the Banking and Currency Committee of the House and were in charge of the Bulkley Bill, known as the Federal Farm Loan Act.

Senator Pat Harrison, of Mississippi, Congressman Bulkley, of Ohio and

L. J. TAYLOR
Phoenix, Arizona
Secretary, Phoenix Title & Trust Co.

Congressman Woods of Iowa were interviewed and the indications were strong that the farm loan act would be passed or presented for passage during the coming short term or session of Congress.

The farm loan act as originally drawn provided for systems of title registration but as a result of the visit to Washington, D. C. of the Legislative Committee the Federal Farm Loan Act was passed in a form that permitted abstracts of title to be used in the same manner that private concerns had been using them for a long period of years.

It was also my privilege as Chairman of the Legislative Committee of the American Association of Title Men to carry the 16 proposals of the Cedar Point meeting to the Farm Mortgage Bankers Association of America at its organization meeting held in Chicago, Illinois shortly after the Cedar Point meeting was held by our Association.

The Farm Mortgage Bankers were impressed with the fact that farm loans depend on the security of the title that must be furnished by the abstracters and title men and also on the sufficiency of the physical security that is determined by their own appraisers and representatives. The suggestions made by the American Association of Title Men at the Cedar Point meeting for simplifying our system of land titles were most favorably received by the Farm Mortgage Bankers Association of America and were recommended by them to various members of Congress and to various State Legislators with the result that we have come a long way in the last 34 years in getting our system of land titles simplified and many of the old troublesome matters have been fully cleared up by legalizing acts, curative acts, statutes of limitation and by other means.

It was my privilege to be personally acquainted with the first 19 presidents of the American Association of Title Men, now the American Title Association, whom I will name in order and who held office for one year each beginning with the year 1907.

W. W. Skinner, Chippewa Falls, Wisconsin.

A. T. Hastings, Spokane, Washington.

W. R. Taylor, Kalamazoo, Michigan.

Lee C. Gates, Los Angeles, California.

George Vaughan, Little Rock, Arkansas.

John T. Kenney, Madison Wisconsin.

M. P. Bouslog, New Orleans, Louisiana.

H. L. Burgoyne, Cincinnati, Ohio.

L. S. Booth, Seattle, Washington.

R. W. Boddinghouse, Chicago, Illinois.

T. M. Scott, Paris, Texas.

J. W. Mason, Atlanta, Georgia.

E. J. Carroll, Davenport, Iowa.

Worrall Wilson, Seattle, Washington.

W. H. Pryor, Duluth, Minnesota.

Mark B. Brewer, Oklahoma City, Oklahoma.

G. E. Wedthoff, Bay City, Michigan.

Frederick P. Condit, New York City.

Henry J. Fehrman, Omaha, Nebraska.

It is a privilege and a pleasure for me to be with you today after an absence of many years. I experience a great feeling of pleasure and satisfaction in noting the marvelous progress that has been made in the development of the organization. Conditions are serious now, much work of importance remains to be done, the future has many problems that must be solved. We will face the situation resolutely, fearlessly and courageously and I am sure that the American Title Association will carry on and will continue its splendid record of achievement.

Trading With the Enemy Act

EDWARD D. LANDELS

General Counsel, California Pacific Title & Trust Co., San Francisco, California

I think the title of the few remarks I am to make, would better have been, "The effect upon the title business of the Executive Orders issued by the President, freezing the assets of 'blocked' countries and of the nationals of 'blocked' countries."

I gather from some bulletins which I have read that there is perhaps some misunderstanding of the effect and of the purpose of these freezing orders occasioned by an attempt to relate them too directly to "The Trading With the Enemy act."

It is true that the Executive Orders do find their sanction in a rather obscure clause of The Trading With the Enemy Act, but otherwise have small relation to that Act which was passed during the last war to enable the President to seize all property belonging to Germans in this country. As a matter of fact, President Roosevelt, when he issued the second general order, announced that the purpose of the order was to prevent the liquidation in this country of the assets of foreign nationals which had been acquired by duress or conquest, to curb subversive activities in this country, and to prevent the use of the financial resources of this country in ways harmful to national defense.

I take it, Mr. President, that on this question none of us are interested in quibbling on the question of whether or not the President had authority to issue the orders which he did issue, and also that none of us are interested in quibbling over the interpretations placed upon those orders by the Treasury Department. We are prepared, I presume, to do our part, such as it may be, in the present emergency, and we are not interested in questioning the authority to issue these orders or the interpretation of them by various departments of government.

I think we can best understand the scope and effect of these orders and what to do about them, if we survey briefly their background.

On October 6, 1917, Congress passed The Trading With the Enemy Act. In Subdivision (b) of Section 5 of that Act, the President was authorized to prohibit or investigate under regulations, and by means of licenses, or otherwise, transactions in foreign exchange and transfers of evidences of indebtedness or evidences of ownership of property between the United States and any foreign country, by any person within the United States.

Presumably, President Wilson issued some executive orders under this power, but I have not been able to find the text of any of them. However that may be, there appears to have been little, if any, litigation arising out of that section during the last war.

Now, on March 4, 1933, Franklin Roosevelt became President. Two days later, he issued a proclamation which had the effect of closing all of the banks in the United States. That proclamation was issued ostensibly under the authority conferred by this Subdivision (b) of Section 5 of The Trading With the Enemy Act, (Proclamation No. 2039, 31 C. F. L. 120.1). Two or three days later, Congress passed a resolution ratifying the act of the President, and on March 9, 1933, after the proclamation had been issued, amended Section 5 of The Trading With the Enemy Act, in two particulars which are rather interesting.

The first amendment was to grant the powers conferred by that section, either "during time of war or during any other period of national emergency declared by the President," and secondly, there was deleted and taken out of the section authority to prohibit or regulate transfers of evidences of indebtedness or evidences of ownership of property. So that, as this section of the Act then read, the powers of the President thereunder were limited to transactions in foreign exchange, those affecting the currency, and transactions between banks.

Now, on January 15, 1934, a few months later, the President issued Executive Order 6560. The reason I mention that order is that it is the order which is purported to be amended by the orders with which we are now concerned. It dealt only with the exportation of gold and silver bullion and currency and certain types of transactions between banks.

That is the way the matter stood, from the standpoint of statutory authority, until the spring of 1940 when, as you know, Germany invaded Denmark and Norway. The President then issued, on April 10, 1940, Executive Order No. 8389 which is the one you have probably seen most frequently referred to. That order was issued as an amendment to Executive Order 6560 issued during the depression. That Executive Order freezing the assets of Denmark and Norway, and of the nationals of Denmark and Norway, referred solely to funds of such countries on deposit in the United States and certain types of financial transactions and did not extend to transactions affecting property generally.

On May 9th, however, a month later, Congress amended Section 5 of The Trading With the Enemy Act, so as to expressly give the President much the same authority as had originally been conferred by the section, namely: to regulate or prohibit, under regulations and by means of licenses or otherwise, any transfers or dealings in evidences of indebtednesses, or evidences of ownership of property in which any foreign country designated by the President or any national thereof has any interest. (48 Stat. 1). On that day, May 9th, when Congress so amended The Trading With the Enemy Act, the President issued Executive Order No. 8405 amending Executive Order No. 8389 so as to extend its provisions to dealings in evidences of ownership of property and also amended it so as to include Belgium, The Netherlands, and the Grand Duchy Luxembourg as "blocked" countries.

While that is the order which is the most frequently referred to, as we will see in a moment, it is not the order which is now of significance.

Thereafter, as you will remember, the President issued a series of Executive Orders which read like the timetable of Hitler's Campaign through Europe.

On June 17, 1940, France was included within the scope of the order. On July 6, of that year, Esthonia, Latvia and Lithuania; on October 9, Rumania; in the spring of 1941, on March 4, Bulgaria; on March 13. Hungary; on March 24, Yugoslavia, and on April 28, Greece.

In the meantime, a general license had been issued licensing all citizens of the United States residing in the United States as to transactions which would not be prohibited if the person had not been a national of one of the "blocked" countries under the definition of nationals contained in the original order. (General License No. 28). That is the way the matter stood until June 14, 1941, when the President issued Executive Order 8785. That is the order with which we are now primarily concerned. While that order purported to be an amendment of earlier orders, it completely revised Executive Order 8389, and is complete in itself.

That Executive Order prohibits, except subject to license, any transfer or dealing in any evidence of indebtedness or any evidence of ownership of prop-

erty by or on behalf of or pursuant to the direction of any of the designated foreign countries or of any national thereof, or involving property in which any of the foreign countries or any national thereof, has had any interest direct or indirect since the effective date of the order as applied to the particular foreign country involved.

It also prohibits the transfer or dealing in any security or evidence thereof bearing a stamp or seal indicating by its contents that it was affixed to the security or evidence thereof in any of the foreign countries designated.

Now, at the time of the issuance of that order, on June 14, 1941, the Secretary of the Treasury issued certain rulings in which the term property and the term evidences of ownership of property were defined. As so defined, the terms include every type of instrument with which title insurance companies or abstract companies ordinarily deal. The terms as defined include real estate and any interest therein, mortgages, leases, options, contracts of sale, and generally all instruments affecting title to real property.

General Order No. 8785 contained a definition of the term national. A national, under the terms of the order, is any person who was a subject of or domiciled in, or a resident of any of the designated foreign countries at any time after the effective date of the order, and any corporation, partnership, or association, which was organized under the laws of any one of the designated foreign countries, or which had its principal place of business in any of those countries since the effective dates, or which is owned or controlled by nationals of those countries as otherwise defined, or any corporation or association a substantial part of the securities of which are owned by nationals of any of such foreign countries.

The Secretary of the Treasury also issued a definition of what is a generally licensed national. The effect of the definition, as I read it, is that if a person is a generally licensed national, The Executive Orders simply don't apply to such person except to the extent specified in the General License.

Now, after the issuance of Executive Order No. 8785, which is the presently outstanding Executive Order relating to this subject, the Treasury Department has issued a series of General Licenses, the last of which I have seen is numbered 72. We are presently concerned with only a few of these.

The two most important General Licenses are those numbered 28 and 42, respectively.

General License No. 28, originally issued on August 8, 1940, was recently amended (September 9, 1941) and is now phrased differently from that set forth in the circular issued by the Treasury Department. This license, in effect, licenses any citizen of the United States who is now a resident of the United States, and who would only be a national under the Executive Order only by reason of having been a resident of or domiciled in one of the "blocked" countries since the effective date of the order. In other words, it frees from the restrictions imposed by the orders, any American citizen who may have been a resident of any of these countries since the effective date of the order, but who has now returned to the United States and is now a resident of the United States, and who is not acting on behalf of any "blocked" country or national thereof.

The other important general license is General License No. 42, which licenses any individual national of any of the designated countries who has resided continuously in the United States, and only in the United States, since June 17, 1940, or since the effective date of the order, if the effective date is prior to June 17, 1940. That means, in effect, that any individual national of any of these countries, who has resided in the United States since June 17, 1940, or if he is of Denmark or Norway, since April 8, 1940, or if he is of Belgium, Luxembourg, or Holland, since May 9, 1940, is released from the restrictions of the Executive Orders if the only reason he is a national is that he is subject or citizen of one of the "blocked" countries. That General License applies only to **individuals** and from some of the circulars which have been issued by the title insurance companies, I think that point has been overlooked. It does not apply to associations, corporations nor partnerships, nor does it apply to any individual who, in any capacity whatsoever, may be acting for another "blocked" country or national thereof.

As you know, on June 24, 1941, a General License was issued licensing The Union of Soviet Socialist Republics and nationals thereof. (General License No. 51). Then, there have been issued a series of restricted General Licenses relating to Sweden, to Switzerland, and to Spain. The General License covering Sweden, licenses all transactions made at the direction of Sweden or the Sveriges Riksbank generally and all transactions by or on behalf of any national of Sweden or involving property in which any national of Sweden has an interest unless the transaction is on behalf of any other "blocked" country or national thereof or involved property in which any other "blocked" country or national thereof had any interest. Before, however, the transaction can be consummated, the person desiring to consummate it, unless it is under the direction of the Government of Sweden or the Sveriges Riksbank, must obtain a certificate from the Swedish Legation in New York certifying that in its opinion the transaction is not by or on behalf of any "blocked" country or national thereof other than Sweden, but if this is done, no license need be obtained from the Federal Reserve Bank as I read the General License. A similar license has been issued relating to Spain, except that the certificate must be obtained from the Instituto Espanol de Moneda Extranjera unless the transaction is on its behalf or pursuant to its direction. A somewhat more limited license has been issued relating to Switzerland which is limited to transactions by or on behalf of or pursuant to the direction of the Government of Switzerland or the Banque Nationale Suisse. (General Licenses 49, 52 and 51).

On July 26, 1941, the Executive Order was extended to include China and Japan as of June 14, 1941, (Executive Order 8832). A General License was issued, however, licensing any transaction which would have been improper solely by reason of the fact that the property had been owned by a national of China or Japan prior to July 26, 1941, but not since that date. That was issued for the reason that the effective date of the order was June 14, 1941. For instance, if the property is no longer owned by a national of China or Japan, it can be passed even though prior to July 26, 1941, such national had an interest in it.

A general License was also issued, No. 68, which in effect, extends General License No. 42 to individual nationals of China or Japan who have resided solely in the United States since June 17, 1940.

In brief, the existing Executive Orders, Regulations and General Licenses taken together, in so far as they affect the title business, amount to this:

Except for the particular licenses applicable to Sweden, Spain and Switzerland, no transaction may be consummated without a license from the Federal Reserve Bank if it is made by, or on behalf of, or pursuant to the direction of any country of continental Europe, except Russia, or of China or Japan, or by or on behalf of or pursuant to the direction of a national of any of those countries, or if it involves property in which any of such countries or any national thereof has any interest, unless (1) the individual involved or whose property is involved is a citizen of the United States and is residing in the United States, though formerly domiciled in one of such countries or, (2) the individual involved or whose property is involved has resided continuously in the United States since June 17, 1940, or if of The Netherlands, Belgium or Luxembourg since May 10, 1940, or if of Norway or Denmark, since April 8, 1940, and is not acting for any "blocked" country or other national thereof.

I think with most transactions we will not have a great deal of difficulty in determining whether or not the transaction is one for which a license is required. If we are in doubt, I think as a matter of policy we should put the burden upon the person interested in the transaction, and insist that they apply for a license to the local Federal Reserve Bank.

The situation, however, which I think may give us some difficulty are those in which the person involved is acting in a representative capacity. For example, let us assume that we are asked

to pass a sale by an administrator of an estate of a decedent. As is so often the case, the petition for letters of administration or for the probate of the will, may disclose that one or more of the heirs or devisees are residents of one of the foreign countries covered by the Executive Orders. That is a very common situation, I imagine in any of our cities that have a very large foreign population. Secondly, we will be presented with situations in which a guardian is acting for minors or other wards who are residents in one of the foreign countries. We have a number of those situations.

Thirdly, we will be confronted with transactions by trustees of a trust, one or more of the beneficiaries of which are residents or nationals of one of the countries covered by the Executive Orders.

Now, I would have been inclined to this view that, at least, in the case of administrators and trustees, that a license would not be required merely because an heir or a beneficiary was a "blocked" national in those cases in which the administrator or trustee was merely dealing with the assets of the estate or trust and no distribution was being made to the heirs or beneficiaries.

However, I think we will have to take a contrary position except when the legal representative is a bank or trust company. The Treasury Department has issued General License No. 30, which expressly licenses transactions by a legal representative which is subject to the banking laws of any state or of the United States even though one or more of the persons beneficially interested may be a "blocked" national, except transactions performed at the request of a "blocked" national and, of course, except distributions to a "blocked" national. By clear implication, therefore, the Treasury Department, at least, must be deemed to entertain the view that a license is required before any executor, administrator, guardian or trustee other than a bank or trust company may consummate any transaction affecting property of the estate if any person beneficially interested is a "blocked" national.

The second question which presents itself, I think, and one which has given some of the companies some concern, is whether or not a transaction consummated without a license, when under the terms of the Executive Order a license should have been obtained, is ipso facto void. It is my opinion, which was reflected both by those with whom I spoke in the Federal Reserve Bank in San Francisco and at the Treasury Department in Washington, that the mere fact that the transaction was consummated without a license does not make it void, even though a license should have been obtained.

I don't think there is any escape from that conclusion. Obviously, the transactions which are prohibited by these Executive Orders are not what the lawyers like to say, "malum in se." They are transactions in which a license is required solely to give the Government some measure of control and perhaps in some cases merely to provide it with information.

At the Treasury Department, I was advised, however, that a transaction might arise in which the Treasury Department from the nature of the transaction would feel compelled to bring proceedings to have it set aside.

I think we must concede that such situations may arise but it is unlikely that in such a situation the parties would not also be prevented from recovering against the title insurance company. We are not insuring persons against the consequences of their own unlawful acts.

In other words, I think it very doubtful that a transaction would be void unless both parties were deliberately attempting to consummate the transaction without securing a license, and then probably only if the nature of the transaction is such that its consummation would defeat one of the announced purposes of the Executive Orders.

J. W. FOWLER, JR.
Louisville, Kentucky
Vice-President, Franklin Title & Trust Company

The second question is whether or not we are under a duty to investigate each transaction to ascertain if it is one for which a license is required.

Mr. Hall has shown me a letter from the Acting Secretary of the Treasury in which he states that the Treasury does not expect from those handling real estate transactions more than ordinary care.

There is nothing in any of the regulations or in the general rulings or in the Executive Orders which to me, at least, appears to place any affirmative burden on us to attempt to ferret out every transaction and find out whether or not it is in fact covered by the Executive Orders.

It is my own view that if those handling the transactions are instructed to make a full inquiry in any case in which any fact comes to their attention which would indicate that the transaction might be one covered by the Executive Orders, that we have done our full duty.

Frankly, I see very little danger in the situation from a title standpoint. If we honestly and conscientiously do our duty in cooperating fully with the purposes of the Treasury Department I think we have done all that can be expected of us, and I don't't think we will suffer any loss as the consequence.

There is one other situation, a corollary to this subject, that I think I should mention, although I am sorry I can't express any opinion worthy of the name on what to do.

The Dutch Government in exile in London, on May 24, 1940, issued a proclamation expropriating all the property of Dutch nationals resident in Holland and of Dutch companies controlled or owned by residents in Holland for the purpose of preserving as expressed in the proclamation such property for the rightful owners thereof, and with the provision that the property or its value should be returned to the rightful owners within three months after the end ofthe emergency as declared by the Queen.

Also, the Dutch Government in exile, executed a power of attorney with full control and dominion to the Dutch Ambassador in Washington, giving him full power by himself, or through deputies, to manage and control all such properties in the United States. The American Government, through the State Department, has officially recognized the government of the Netherlands, resident in London, as the de facto and de jure government of The Netherlands.

Likewise, it has given official cognizance to the proclamation of May 24, and also to the power of attorney to the Dutch Ambassador.

Now, the Belgium Government in exile issued somewhat similar decrees, but they do not go as far as those of the Dutch Government. They purport to vest in the representatives outside of Belgium of any corporation a majority of the directors of which are resident in Belgium full power to manage and control the properties of such companies outside of Belgium, and the Grand Duchy of Luxembourg has issued a similar proclamation.

Whether or not in dealing with property of Dutch companies in those cases in which the board of directors are resident in Holland and which may have been dissolved, for all we know, by the Germans, we would be warranted in relying on documents executed by the Dutch Ambassador as attorney-in-fact for the owners, I don't know. I do feel very sure, however, that in any such

situation we would not be warranted in passing or should not pass conveyances unless they are at least approved by the Dutch Ambassador.

It is my own curbstone view, that the proclamation and the power of attorney would be sustained because in the very nature of things some provision of that kind is imperative, and in view of the fact that the proclamation itself declares that the property is seized solely for the purpose of protecting the interests of the rightful owners, and further by reason of the fact that the proclamation requires that the property or its value be returned to the rightful owners at the end of the emergency.

I only mention those matters affecting Belgian and Dutch companies in order that you may be on your guard. I have not had an opportunity since I have obtained translated copies of those orders to make any examination of the law and the international comity affecting them. I don't venture to suggest that even then I would be able to express an opinion of any value.

I think, Mr. Chairman, that covers the subject to date.

I may say, that the Treasury issued on August 16th, a comprehensive bulletin entitled "Documents Pertaining to Foreign Funds Control," which includes everything to date, I think, of interest except the amendment issued September 9, to the General License No. 28.

Application for license may be filed with any of the Federal Reserve Banks and blank copies of such applications can be obtained from any of the Federal Reserve Banks upon request.

Report of the Chairman—Title Insurance Section

CHARLES H. BUCK

President, Maryland Title Insurance Co., Baltimore, Maryland

Your Chairman has been in constant communication with the Executive Secretary by mail, at his office, and in Washington on several occasions, and has kept in touch, particularly with the efforts of the Executive Secretary to create goodwill and business for all members of the American Title Association.

We are extremely fortunate in having available the energetic services of Jim Sheridan, who understands, better than any title man I know, the composite problems confronting the industry. I have observed Sheridan in action and in his conferences with Government Officials in Washington, and can assure you that his handling, of the delicate situations, which are bound to arise, has been masterly.

Correspondence has been maintained between the Secretary, President and other officers in attempts to settle the problems of the industry, most of which correspondence has been instigated, guided and capably handled by our most efficient Jim.

No doubt, you will conclude that the work of the Title Insurance Section of the American Title Association has been done by the Secretary of the Association, if so, your conclusion will be, in the main, correct.

Your Secretary has been in Washington for a number of extended visits during the past year, and in contact with your chairman repeatedly during those visits. The amount of good he has done all of the members of the Association at the Government agencies, is considerable.

The Association was recognized several months ago by the Quartermaster General of the United States Army, (the office of whom is in charge of land acquisitions for the United States Army throughout the United States), by the appointment to a Special Advisory Committee on Land Acquisitions, of your Secretary, Mr. Kenneth Rice, of the Chicago Title and Trust Company, and your Chairman.

I am convinced that the Directory of the American Title Association is in the hands of all large buyers of title evidence, including the Departments of the United States Government, and that the Directory is the first reference book of those users when land is to be acquired.

The sun is shining for the title industry through the entire United States, not only through acquisitions by the Government, but also because of the general speeding up of Industry, generally due to the Defense Program.

In every contact we will find that the necessity for good service is paramount. I do not mean to give the impression that no attention is paid to price, for I have found in the operations of my own Company that every effort is made on the part of those asking for bids on title services, to buy our services at the cheapest price obtainable.

Large quantities of title business seems now to be available from all quarters—from the Government agencies—from lending agencies—from industries acquiring plant sites and plants—from home buyers and home mortgagees.

Therefore, it seems to me that good mottoes for the industry would be: "Seek and ye shall find"; "Keep your pencil sharp"; but, "Do not contract for work for fees which will not return a fair profit"; and "So execute orders received that the best service obtainable will be furnished to your customers." If these precepts are followed, I have no doubt the amount you will contribute in the next few years under the *rules of Mr. Morganthau's latest Brain-child* will be considerable.

RESOLUTIONS

BE IT RESOLVED, that this Convention record its feeling of deep loss in the death of Henry J. Fehrman, one of our past Presidents, whose passing occurred on February 6th last.

Many of those present will remember his earnest and energetic work on behalf of our Association in various capacities and as President of our Association.

He was born on December 6, 1876 and graduated from the Northwestern University Law School at Evanston, Illinois in 1908, and was admitted to the Illinois Bar in 1909 and to the Iowa Bar in 1916. He specialized in title examinations in Council Bluffs prior to his entering the service of the Metropolitan Life Insurance Company on October 20, 1927, when he was appointed to the Farm Loan Division as Title Attorney and served in that capacity until late in the year 1939, when ill-health forced him to give up active work. He returned with his wife to their former home in the Fall of 1940, and was thought to be improving in health when the end occurred.

Mr. Fehrman was a member of the Nebraska State Bar Association, the American Bar Association, and the American Title Association; and during the years 1920 to 1923 inclusive, he was President of the Title Examiners Section of the Title Association.

He was noted among his associates for his kindliness and his geniality, and his presence among the staff of the Metropolitan as well as his presence in the councils of our Association was missed.

BE IT RESOLVED that this resolution be engrossed upon the minutes of this Association and that a copy thereof be forwarded to his wife to whom the sympathies of this Association are extended.

Members of the American Title Association throughout the United States were greatly shocked to learn of the death of Tom M. Scott, which occurred in Paris, Texas, March 4th, 1941, following a brief illness.

Tom spent his business career in the City of his birth, his father, Judge D. H. Scott, having organized an abstract and mortgage loan business in 1887. He graduated from Princeton University in 1904 and in that same year married his college sweetheart, Miss Carolyn Street, of Trenton, New Jersey, and brought her back to Paris, Texas, where he started his career in the abstract and loan business with his father. He became one of the leading citizens of his home city and took part in all of its civic affairs.

He never took much part in State and National politics, but when Woodrow Wilson, President of Princeton University, was candidate for the Democratic nomination for President of the United States, Tom attended the convention in Baltimore as one of the delegates from Texas, and was one of the members of the "Famous 40" which steadfastly stayed with Woodrow Wilson until they were victorious in securing his nomination. Tom and President Woodrow Wilson were warm personal friends.

Tom very early became interested in the activities of the Texas Title Association, and he soon became a member of the faithful "four horsemen," consisting of Henry Baldwin, Tom Dilworth, Ben Love and himself, to whom the Texas Title Association is due so much for the progress and accomplishments it has made since its organization in the year 1907. Tom was elected President of the Texas Title Association at the Galveston convention in 1912, just preceding the annual convention of the American Title Association held in the same city. He was at the same time elected Treasurer of the American Title Association, in which position he served until his election as its President at the Chicago convention in August, 1917. Tom worked diligently to help improve the standing of the abstract and title insurance business, not only in Texas, but through the country. He was one of the sponsors of the Title Insurance Bill passed in 1929 in Texas and was always a strong advocate of an abstracters bill. Even though he was elevated to the highest office in both the state and national associations, he never ceased to serve in some capacity in carrying on the activities of both Associations. In the death of Tom M. Scott, the title industry has lost a leader and one of its most valuable friends.

BE IT RESOLVED that this resolution be engrossed upon the minutes of this Association and that a copy thereof be forwarded to Mrs. Scott to whom we extend our sympathies.

Many of us remember Paul David Jones, a hard worker, hard player, and genial friend, who for many years served this association in many capacities. As assistant treasurer, vice president and executive vice president of the Guarantee Title & Trust Company of Cleveland, he appreciated deeply the value of our association.

Born April 30th, 1871, he passed on June 1st last. He moved to Cleveland as a young man from Bangor, Pennsylvania; served during the World War under the Department of Justice, served in Bay Village Council, was active in his church, and joined in the activity of Civic Groups in his community.

He is survived by his widow and two sons.

BE IT RESOLVED, THAT this memoriam be inscribed in the minutes of this convention and that we extend to his widow and family our deepest sympathy in their loss; which in a lesser degree is also our loss.

It is with solemn thought that we record the recent death of Roy S. Johnson at Wichita, Kansas.

He was formerly engaged in the abstract and title insurance business at Newkirk, Oklahoma. Having received his early training in business under the direction of his father, he early became identified with the activities of both the Oklahoma Title Association and the American Title Association, having served as president of his state association, and as a member of the board of our national association. He was also an active member of the Mortgage Bankers Association and for a number of years was a member of its board of governors. During the last few years and at the time of his death he was president of the Federal Land Bank of Wichita, Kansas.

Roy Johnson's whole life was spent in close association with the title and mortgage business. He brought to bear upon all of his work such intelligence, high ideals, enthusiasm and fidelity as lent new dignity to his field of endeavor and business connections. His unfailing friendliness, dependability and lovable personality have inspired all of

his personal friends to higher aims and greater service.

Though his passing is such a distinct loss to us, we recognize the vast contribution he has made to our association and to others with which he has been associated. The memory of his life shall continue to strengthen us individually and lead us to new accomplishments toward which he was ever striving.

The title industry has lost a most distinguished member and one of its best friends.

BE IT RESOLVED, THAT this resolution be engrossed upon the minutes of this association and that a copy thereof be forwarded to Mrs. Johnson, to whom we extend our sympathies.

Gone from our midst, following a life of integrity of purpose and active participation in the betterment of civic life, is one of the group which inspired this association and served as its president, John T. Kenney.

Born on an Indiana farm December 21, 1864 of Irish parents who hailed from County Mayo, he was a true and ardent Christian and American. Typical example of American opportunity, he started his adult life as a school teacher in 1880, became superintendent of schools at Mercer, Ohio. Studying during the summer months, he graduated as a student of science from Ohio Normal University in 1886 and later from Cincinnati Law School. He practiced law for twelve years at Celina, Ohio. As a representative of Mercer County he served in the Ohio legislature.

Having married Miss Sarah C. Connor, who still survives him, and who was a graduate of the University of Wisconsin, he located with his family in January, 1902 in Madison, Wisconsin; and in that state he entered the business of abstracting and through his organization of Dane Abstract of Title Company and Walworth Security Title & Abstract Company acquired that interest in real property title which led him to join in the organization of this association, also the Wisconsin Title Association.

In our field he was a leader imbued with a desire to advance the interests of the profession through organized cooperation; to do this through active service.

It is very fitting, therefore, that his name should be perpetuated in records of this association; that his family and friends may know that his service in our behalf has not been forgotten.

THEREFORE, BE IT RESOLVED, THAT we join in extending our sincere sympathy to his widow and family and cause this memoriam to be entered upon the minutes of this convention; and

That a copy hereof be forwarded by our secretary to his family, through his widow.

BE IT RESOLVED, THAT this convention express to our honored guests, to those who presented to it addresses on the assigned topics and to those representatives of Government agencies and lending institutions who honored us with their presence, our deep appreciation of their cooperation in contributing to the success of this convention.

BE IT RESOLVED, THAT this Convention extend to the Union Title Insurance Company of Indianapolis, Lawyers Title Insurance Corporation (Home Office, Richmond, Virginia), and the L. M. Brown Abstract Company of Indianapolis, our sincere appreciation of their fine hospitality in extending to the delegates and the ladies of this Convention the Tuesday evening entertainment.

BE IT RESOLVED, THAT this Convention extend to the Indiana Title Association this evidence of its deep appreciation of all of the efforts which they have put forth as hosts of this Convention in order to make it the instructive and entertaining meeting that has resulted from this cooperation and work on their part.

BE IT RESOLVED, THAT this Convention shall go on record as heartily endorsing the purchase of United States Defense Bonds, Stamps, and other securities designed to furnish our Government with the necessary means with which to complete full National Defense.

AND BE IT FURTHER RESOLVED, THAT it be suggested to the members of this Association that they arrange some method by which their employees may be allowed to subscribe for regular purchase of some one or more of these securities which will permit the collection from employees by the employer.

WHEREAS, Frank I. Kennedy, Vice President of the Association, and beloved by the Industry, has been called into the service of his Government and is now designated as Lieutenant Colonel Frank I. Kennedy of the United States Forces, and thus, in the service of his country, is forced to relinquish his active duties in the Title Industry:

BE IT RESOLVED, THAT we of the American Title Association congratulate the United States Government for its excellent judgment in using the services of Colonel Kennedy; that the Resolutions Committee records its feelings of loss by reason of the temporary separation of Colonel Kennedy from the Industry; and it expresses the hope that our Supreme Commander, in His infinite wisdom, shall bring to this troubled world peace in an early day; thus restoring Colonel Kennedy to us as Frank I. Kennedy, president of a member company.

BE IT FURTHER RESOLVED, THAT the Resolutions Committee urgently recommends the Officers and Directors then serving the Organization their diligent efforts to pursuade Colonel Kennedy to accept a place in the official family of the Organization.

Once more the time has arrived when those who have served us through the present year have, in the orderly course of the custom of this Association, come to the time when they relinquish their duties to succeeding officers.

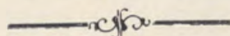
THEREFORE, BE IT RESOLVED THAT this Convention extend to Charlton Hall, the retiring president, and E. B. Southworth, the retiring treasurer, our deep appreciation for the exceedingly able and courteous manner in which they have performed their duties during the past year; which services we know have been given at the sacrifice of their personal convenience and comfort.

Both of these retiring officers have, in spite of the times, given whole heartedly and liberally of their time and service.

BE IT FURTHER RESOLVED, THAT while our efficient executive secretary, James Sheridan, will fortunately continue in office and continue to serve the successors to the officers now retiring, that it is the sense of this meeting that we should express our very definite realization of the able and diligent service which he has continued to render during the past year in that trying office.

EDWARD C. WYCKOFF, *Chairman*
JACK RATTIKIN
L. S. BOOTH

Presidents and Secretaries of State Title Associations



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Guarantee Title & Trust Co., Prescott

M. S. ROTH .... Secretary
Coconino County Abstract Co., Flagstaff

ARKANSAS

FRANCIS MATTHEWS .... President
Title Guaranty & Abstract Co., Inc., El Dorado

CARL MEDLOCK .... Secretary
Arkansas Abstract & Guaranty Co., Little Rock

CALIFORNIA

JAMES D. FORWARD .... President
Union Title Insurance & Trust Co., San Diego

MRS. HAZEL PARKER .... Secretary
C/o 411 W 5th St., Los Angeles

COLORADO

LLOYD HUGHES .... President
Record Abstract & Title Insurance Co., Denver

H. C. HICKMAN .... Secretary
Boulder County Abstract of Title Co., Boulder

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C/o Traurig & Traurig, Waterbury

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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.