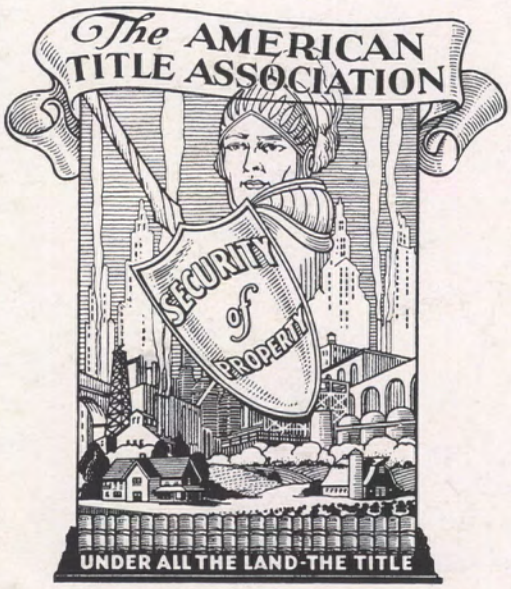
TITLE NEWS



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Including
Proceedings of the
1942 National Convention
Colorado Springs
(CONTINUED)

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Proceedings of the Thirty-Sixth Annual Convention

—of the—

AMERICAN TITLE ASSOCIATION

Colorado Springs, Colorado

Trading With the Enemy Act

Effect of Executive Orders and Regulations Pertaining to Foreign Funds Control on Transactions Involving Real Estate

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On April 10, 1940 the President of the United States, acting under authority conferred by Section 5 (b) of Trading With The Enemy Act, as amended, issued Executive Order No. 8389 regulating transactions in foreign exchange and foreign-owned property and providing for the reporting of all foreign-owned property and related matters. On several subsequent occasions this Order was amended, the last amendment having taken place on Dec. 26, 1941.

In their final form Sections 1 and 2A of the Order read as follows:

"SECTION 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

"A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

"B. All payments by or to any banking institution within the United States;

"C. All transactions in foreign exchange by any person within the United States;

"D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

"E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

"F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

"SECTION 2.

A. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this Order or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto; and

(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States."

Section 3 relates to the specific countries which are "blocked" by the terms of the Order and amendments thereof, and specifies the effective dates of the Order as regards the countries there enumerated.

Section 8, as amended refers to Section 5 (b) of Trading With the Enemy Act, which provides for the imposition of a penalty of not more than $10,000 upon any person who wilfully violates the provisions of the Order or any license, order, rule, or regulation issued thereunder, or for imprisonment for not more than ten years, or both such fine and imprisonment.

As contemplated by the provisions of Executive Order No. 8389, as amended many licenses, rulings and regulations have been issued by the Secretary of the Treasury amplifying, restricting, or otherwise modifying its terms as occasion may from time to time have required. It is not the purpose of this article to give an account of the history of the Order nor to discuss the meaning or application of the multitude of licenses, rulings, regulations and circulars which have emanated from the Treasury. Much has been written on these subjects and it is assumed that the reader is fully familiar with them and has given them the necessary study and consideration. It is rather our purpose to discuss the legal effect of the Order as modified or supplemented by the various licenses, rulings, and regulations upon title to real estate, and its general effect on the validity of certain transactions pertaining to real estate.

Set forth as briefly as possible, the status of the law at the present writing is as follows:

All transactions designated in Section 1 of Executive Order No. 8389, as amended, with the persons therein specified are prohibited unless authorized by the Secretary of the Treasury. These have been both generally and officially interpreted to include transactions involving delivery of options, preliminary sales agreements, deeds, assignments, real estate mortgages and practically every type of instrument affecting title to land. Per-

sons generally licensed by the Secretary of the Treasury to participate in such transactions are for the most part described or referred to in General License No. 42, as amended, though there are, of course, many other general licenses which should be consulted.

Any individual residing in the United States on February 23, 1942 is now generally licensed to engage in any transaction falling within the prohibition of the Executive Order provided—

(a) He has not since the effective date of the Order acted or purported to act directly or indirectly for the benefit of or on behalf of any blocked country, including the Government thereof;

(b) He is not a national of a blocked country by reason of any fact other than that such individual has been domiciled in, or a subject, citizen, or resident of a blocked country at any time on or since the effective date of the Order;

(c) He has not entered a blocked country since February 23, 1942;

(d) He is not a national of Japan; Japanese nationals being governed by General License 68 A;

(e) If not residing in the United States on June 17, 1940, he has filed with the appropriate Federal Reserve Bank a report on the form required;

(f) His name does not appear on the Proclaimed List of Certain Blocked Nationals.

Neither a general nor special license authorizes a transaction which involves trade or communication with an enemy national, as defined in General Ruling No. 11, unless that Ruling is therein specifically referred to, except that any specific license outstanding on the date of its issuance authorizing a transaction with a person whose name appears on the Proclaimed List of Certain Blocked Nationals is unaffected by this General Ruling.

All partnerships, associations or corporations which prior to February 23, 1942 were not generally licensed solely because a blocked national had an interest therein are now generally licensed by virtue of the amendment to General License No. 42 in cases where this amendment extended the general license to include the blocked national in question. They are not, however, authorized to enter into any transaction pursuant to this amendment until they have filed a report on form TFR-42 with the appropriate Federal Reserve Bank.

In cases where blocked nationals have not been generally licensed a special license to engage in any particular transaction otherwise prohibited by the Executive Order may be applied for from the Secretary of the Treasury or the Federal Reserve Bank of the district, and if a special license is granted the transaction in question may be lawfully consummated subject to the provisions of General Ruling No. 11 above stated.

Though much has been written on the subject of foreign funds control, we have been able to discover exceedingly little material dealing with the consequential effect on title to real estate where derived through a transaction consummated in violation of the Executive Order, or the effect of such a transaction on the validity of any instrument whereby land, or an interest therein, is sold, conveyed, assigned or mortgaged.

It would appear to the writer that in this connection the following questions are the ones which naturally present themselves, and that the answers to them are of vital interest to all persons intimately concerned with land titles and transactions involving real estate:

(1) If land is conveyed or mortgaged without the issuance of a special license in a case where one is required, is the transaction ipso facto void, so that no interest passes, with the result that every future owner in the chain who purports to derive title through the instrument in question acquires nothing?

(2) If such a transaction is not ipso facto void, and an absolute conveyance or mortgage is given, may it be set aside by any of the contracting parties?

(3) If such a transaction is not ipso facto void, is it unenforceable in accordance with the general rule which obtains in the case of an illegal contract? For instance, could foreclosure of a mortgage or land contract be successfully resisted on the theory that the transaction was in violation of the Executive Order?

I. Are Prohibited Conveyances Ipso Facto Void?

As to the first question, we are quite willing to venture an opinion that a transaction consummated without a special license where one is required by law is not for that reason ipso facto void. In the decided cases, courts have again and again referred to certain contracts as "void" but, as is well known to every lawyer, the term "void" is one very loosely and indiscriminately used and in most cases a different meaning is intended such as "voidable" or "unenforceable." As a matter of fact, it will be found that very few contracts are actually void for illegality unless specifically declared so by statute; and even then the term is often construed as meaning "voidable" or "unenforceable."[1] If a deed delivered without a special license having been obtained in a necessary case is void from its inception, no title can pass to the grantee or to anyone deriving title through him and safety in the purchase of land might be seriously threatened, although since February 23, 1942 the risk has been considerably minimized by the liberalizing amendment to General License No. 42 which was issued on that date. In any event it is scarcely conceivable that, had such a drastic result been contemplated or intended, the Order would have failed to specifically state that the prohibited transactions were void. Furthermore, the purposes of the Executive Order can be and are being successfully carried out without resort to such a severe remedy, so that we feel little hesitancy in expressing the opinion that conveyances in violation of the Order are not ipso facto void.

It is true that the decision in *Commission for Polish Relief, Ltd. v. Banca Nationala A. Rumanieli*, 288 N. Y. 332, which has very recently been handed down by the New York Court of Appeals, contains certain language which seems to indicate that the court considered any assignment of funds in a blocked account, and, by inference, any prohibited transfer of blocked property void by reason of the Executive Order alone unless licensed by the Secretary of the Treasury.[2] In that case it was held that funds belonging to the defendant in a blocked account, though nonattachable and nontransferable if unlicensed, might be attached subject to the subsequent issuance of a license by the Treasury Department, or, in other words, that "a seizure subject to license" was permissible. It is important to point out that in any event the transfer of property in a blocked account, as defined in General Ruling No. 12 is void according to the provisions of that General Ruling, and consequently the same decision could have been arrived at without considering the effect of the Executive Order on a transfer, at least if it be assumed that the retroactive provisions of the Ruling are valid.

II. Rescission of Prohibited Transactions

Assuming that conveyances in violation of the Order are not ipso facto void, may either party to an unlicensed transaction prohibited by the Order maintain an action to set the same aside or, in other words, is such a transaction voidable though not void?

According to the general rule applicable to contracts which are executed as distinguished from executory, and which have been entered into in violation of a statute, or are illegal for other reasons, (except where the contracting parties are not in pari delicto,

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[1] 5 Williston On Contracts, Rev. Ed., Sec. 1630.

[2] The language referred to is as follows:
"The Executive Order is a check upon trading with the enemy. Its prime purpose is to stop such uses of foreign property rights as might imperil national defense. The words of the Chief Executive of the nation must be taken to have deprived the defendant of power to transfer any interest in these blocked accounts except through the medium of assignment subject to a releasing of the credit by the Secretary of the Treasury."

that is to say, equally at fault), courts will refuse aid altogether and leave them in the position where they find them. This is also true of contracts which are partially executed to the point where the illegal purpose has been carried out. Thus, where a contract is executed to the extent that the illegal purpose has been consummated, a refusal of aid will leave the transaction completed, and a deed already delivered will be permitted to stand, so that a title having thus passed to the grantee will not be disturbed.[3] The same rule applies to contracts violating constitutional provisions and treaties of the United States,[4] and doubtless would also apply to executive orders such as the one in question.

The recent case of *Doherty v. McAuliffe* (74 Fed. 2nd 800), furnishes a good illustration of this principle. Doherty, a registered broker, under the Massachusetts Blue Sky Law, sold substantial amounts of a certain stock on installment contracts in violation of a state statute prohibiting installment sales except as approved by the Securities Commission. After the stocks had been fully paid for, several purchasers filed suit to rescind and Doherty applied for an injunction in the Federal Court to restrain these and other threatened proceedings. In granting the injunction the Court, after holding that the sales were not void, stated as follows:

> "A statute may have the effect of making a contract voidable while still executory but not void after completion. * * * Installment contracts made in violation of Section 8 may be voidable by the buyer while executory, but we do not think it was intended that they should be void nor that after they have been fully performed there is any right to rescind."[5]

A recognized exception to the rule that an executed illegal bargain cannot be rescinded exists where the statute in question has been enacted for the protection of a certain class of individuals.[6] It might be urged that the Executive Order was issued for the protection of nationals of certain invaded countries and that in accordance with this exception a blocked vendor, who has parted with his title, should be permitted to rescind and recover his property. While it is possible that some courts may take this view, it should be borne in mind that the order is not directed solely against persons who might deal with blocked nationals but against all participants in transactions of the type prohibited. Furthermore, the terms of the penalty clause are broad enough to embrace all parties to the transaction, and this is a point which has been considerably stressed by the courts in determining whether certain litigants fall within the classification of protected parties.[7] It should also be remembered that the purpose of the Order was not only to protect nationals of conquered territories, but also prevent the aid to the enemy which would result from the indirect plunder of their property. There are also other purposes underlying the freezing order, such as the protection of our banking institutions from liability arising out of conflicting claims and the prevention of the financing of enemy operations. Nationals of Germany, Italy and Japan have been brought within the terms of the Order and it may scarcely be assumed that this was for their protection. The paralyzing effect of the Executive Order on Japanese trade is, of course, a matter of common knowledge.

Another exception to the rule that an executed illegal bargain cannot be rescinded is to be found in cases where public interest requires, or will be best served by a rescission of the contract even though a guilty plaintiff may profit thereby.[8] This exception has been applied to a rather limited degree, however, and there are instances where rescission has been denied, even though the public interest would appear to have been promoted thereby. On the other hand, rescission has been allowed in cases where the public interest did not seem to urgently require it, so that the line of demarcation is anything but well defined. It is of course possible that some courts may consider contracts in contravention of the Executive Order as falling within the exception, since it is a war measure and certainly affects the public interest. It is significant, however, that courts did not adopt this position with reference to transactions in violation of the Lever Act of 1917, also a war measure, which was passed during World War I, to restrict prices and penalize profiteering. In the majority of cases arising under the applicable portion of this Act, courts denied recovery of the excess purchase price paid by the buyer where he was not under a compulsion which constituted an emergency, making it necessary to submit to the unjust demands imposed.[9] In the latter case the parties would not be in pari delicto. Moreover, in by no means all cases is a transaction with a blocked national injurious either to the public interest or to the national himself. If indeed a transaction with a blocked national is to be regarded as falling within this exception at all, it is believed that where no injury has resulted, but one of the contracting parties is seeking to rescind on purely technical grounds, the court will be guided by the circumstances of the case instead of basing its decision merely on principle,[10] and that rescission will accordingly be denied.

A. Rescission with Respect to Particular Types of Instruments

Where the parties are in pari delicto, and a transaction involving the delivery of a deed has been consummated, courts are very nearly uniform in not permitting a rescission because of illegality of the contract [11], subject of course to the exceptions above referred to, that is to say, where a statute enacted for the protection of a class of individuals has been violated, or where paramount public policy requires that the contract be set aside. However, rescission has been allowed even though a deed has been delivered, where possession has not been given to the purchaser, on the theory that the transaction remained unexecuted until surrender of possession of the premises conveyed.[12]

A mortgage is technically an executed transaction and courts will not ordinarily permit a rescission where delivered pursuant to an illegal transaction.[13] In one case, however, cancellation of an illegal note and mortgage was allowed on the theory that while the contract was executed to the extent that the consideration for the performance of the illegal act had been paid, it remained executory to the extent that it was unpaid.[14] In an Ontario case cancellation was allowed on

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[3] 6 Williston On Contracts, Rev. Ed., Sec. 1762.

[4] Gandolfo v. Hartman, 49 Fed. 181.

[5] A different result was reached in similar cases on the theory that the purchaser was not in pari delicto because the statute and penalty were directed against the vendor. *Reilly v. Clyne* 27 Ariz. 432, 40 A. L. R. 1005; *Doherty v. Bartlett*, 81 Fed. (2d) 920.

[6] 6 Williston On Contracts, Rev. Ed., Sec. 1762.

[7] *Reilly v. Clyne* 27 Ariz. 432; 40 A.L.R. 1005; *Tracy v. Talmage*, 14 N. Y. 162.

[8] 3 Pomeroy, Equity Jurisprudence, 5th Ed., Sec. 941; *Gilchrist v. Hatch*, 183 Ind. 371; *Forbes v. City of Ashland*, 246 Ky. 669; *Menzel v. Niles Company*, 86 Colo. 320; 65 A. L. R. 995.

[9] *Detroit Edison Co. v. Wyatt Coal Co.*, 293 Fed. 489: In this case the court recognized the fact that the primary purpose of the Act was to promote means of national defense and safety and to aid in the prosecution of the war.
New York and Pennsylvania Co. v. Cunard Coal Co., 286 Pa. 72; *Mancourt-Winters Coal Company v. Ohio & Michigan Coal Co.*, 218 Mich. 449.

[10] See Witmer v. Nichols, 320 Mo. 665; Cowley v. Union Pacific Railroad Co., 68 Wash. 558, 41 L.R.A. (N.S.) 559.

[11] Dent v. Ferguson, 132 U. S. 50; 33 L. Ed. 242; Roy v. Harvey Peak Tin Mine Milling & Mfg. Co., 21 S. Dak. 140; Fritts v. Palmer, 132 U. S. 282; 33 L. Ed. 317; P erkins v. Perkins, 206 Ala. 571.

[12] McCutcheon v. Merz Capsule Co., 71 Fed. 787; 19 C. C. A. 108; 31 L. R. A. 415; But see Hall v. Edwards (Tex.) 222 S. W. 167.

[13] 2 Jones, Mortgages, 8th Ed., Sec. 761; 6 Williston on Contracts, Rev. Ed., Sec. 1678; Rice v. Winslow, 182 Mass. 273; Smith v. Kammerer, 152 Pa. 98.

[14] Hodler v. Hodler, 95 Ore. 180. See Dissenting opinion of Harris, J.

the theory that failure so to do would result in the practical enforcement of the payments due on the mortgage in order to relieve the property of the lien.[15] In the ordinary case, where a loan secured by a mortgage or trust deed has been made to a blocked national, it would seem that the principal evil which the Order was designed to prevent has been accomplished and, if both parties are regarded as in pari delicto, rescission should not on theory be permitted.

In the majority of cases leases have been regarded as executory and the plaintiff has been allowed to rescind, although courts have refused any accounting as to past performance.[16] On the other hand, the contrary has in some instances been held.[17]

Land contracts are in their nature executory and there would seem to be little doubt but that either the blocked national or the other contracting party would ordinarily have the right to rescind where both are in pari delicto.[18]

B. Where Parties Not In Pari Delicto

Thus far in our discussion we have been assuming that the parties to the illegal contract were in pari delicto. Even where the transaction is fully executed, as in the case of delivery of a deed accompanied by surrender of possession, the grantor would have the right to set aside the conveyance despite the illegality, if it could be shown that he was induced to part with his property through coercion, deception or fraud, or if the circumstances otherwise disclosed that he was not equally at fault.[19] The grantee, of course, would have a similar right. On the other hand, it appears that a blocked national who induced an innocent party to enter into a prohibited transaction on the ground that he was properly qualified would be in no position to apply to the court for a rescission.[20] Furthermore, innocent persons dealing with a blocked national, who were thus misled, would not be in pari delicto, and could doubtless rescind or maintain suit for recovery on a quasi-contractual basis in a case where the Executive Order was not complied with, irrespective of whether the transaction had been fully executed. Thus, where there is the slightest doubt in the opinion of the individual who is about to enter into a real estate transaction as to whether the status of the other contracting party is such that he is fully authorized to alienate, mortgage or otherwise deal with real estate in a manner consistent with the terms of the Order, at least a considerable degree of care should be exercised. This would serve as a material safeguard, since the party who had taken the precautions would in all probability not be regarded as in pari delicto, should it subsequently develop that the other party to the contract was a blocked national. As it is our intention to confine this discussion to the legal aspects of the subject, we shall not attempt to outline the precautionary measures to be invoked.

III. Enforceability of Contracts in Violation of Order

We now pass on to a consideration of the question of whether contracts in violation of the Executive Order may be directly enforced by either of the parties thereto. The general rule is that courts will not enforce a contract which is in violation of a statute or is illegal for any other reason. The case of *In Re Mahmoud & Ispahani*, 2 K. B. 716 (1921), which arose in England under a somewhat analogous executive order seems to be directly in point. This order, which was promulgated under Defense of the Realm Act, prohibited "the purchase of seeds, fats and oils" unless the vendor had a license to sell, and the purchaser a license to purchase. Mahoudu who

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had a license, contracted to sell linseed oil to Ispahani under the latter's false representation that he likewise had a license. Upon Ispahani's refusal to consummate the transaction, Mahmoud sold the oil for the highest price obtainable and sued Ispahani for damages for the difference between the contract price and the price actually received. It was held that plaintiff could not recover, notwithstanding the fact that the defendant had falsely represented that he had a license to purchase, since a contrary decision would have in effect amounted to an enforcement of the illegal contract. This decision is in accordance with the general rule, and sitypical of what we might expect in this country, if suit were instituted to enforce a contract in violation of Executive Order No. 8389, as amended, irrespective of whether the proceedings were in the nature of specific performance or action to recover damages for breach.[21]

Where a mortgage, based on an illegal transaction, has been executed, courts are almost unanimous in refusing foreclosure.[22] In those jurisdictions where the mortgage may be foreclosed through power of sale without the intervention of the courts, there seems little doubt but that a valid foreclosure may be effected in this manner, notwithstanding the illegality of the transaction, and that the purchaser at the sale may thus obtain a good title.[23] Whether or not possession may be recovered by the purchaser is another question. In *Hall vs. Edwards* (Tex.), 222 S. W. 167, which involved a statutory foreclosure of a trust deed, it was held that the illegal transaction became executed by the trustee's sale and that the purchaser at the sale was entitled to possession as an incident of his title. This view, however, seems open to question.[24]

It seems obvious that foreclosure of a land contract would be denied for similar reasons and the same has been held with respect to specific performance of illegal land contracts.[25]

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[15] Steinberg v. Cohen, 64 Ont. L. R. 545.

[16] C. C. & St. L. Ry. Co. v. Hirsch, 204 Fed. 849; Glos v. McBride, 47 Cal. App. 688; Parthey v. Beyers, 238 N. Y. Sup. 412; Meredith v. Fullerton, 83 N. H. 124.

[17] St. Louis, Vandalia & Terre Haute Railroad Co. v. Terre Haute & Indianapolis Ry. Co., 145 U. S. 393; 36 L. Ed. 748, Campbell v. Gullo 142 La. 1012, L. R. A. 1918 D 251.

[18] Boyd v. Boyd, 112 Ore. 658; White v. Jacobs, 204 Cal. 334; Harris & Hull, Inc. v. McCarty-Vaughan-Evans Corp., 102 Cal. App. 461; Kozlowski v. Adams, 102 Cal. App. 578.

[19] 6 Williston on Contracts, Rev. Ed., Sec. 1789.

[20] Except possibly where he made the false representations under extreme pressure at the hands of the enemy.

[21] See Morris Adler & Co. v. J. E. Jones & Co., 208 Ala. 481 and discussion of same on this page.

[22] Miller v. Marckle, 21 Ill. 152; Riordan v. McCabe, 341 Ill. 506, 83 A. L. R 512; Hall v. Edwards (Tex.), 222 S. W. 167 (dicta); Jones v. Dannenberg Co., 112 Ga. 426; 52 L. R. A. 271; Johnson v. McMillion, 178 Ky. 707; L. R. A. 1918 C 244; 6 Williston on Contracts, Rev. Ed., Sec. 1678.

[23] Hall v. Edwards (Tex.) 222 S. W. 167; McLaughlin v. Cosgrove, 99 Mass. 4; Snyder v. Snyder, 51 Md. 77 (dicta);

[24] Was the court correct in deciding that the contract became executed by the trustee's sale rather than by delivery of possession? See discussion in 30 Yale Law Journal 85. See also McCutcheon v. Merz Capsule Co., 71 Fed. 787; 19 C. C. A. 108; 31 L. R. A. 415.

[25] Letteau v. Dumas, 99 Cal. App. 230; 278 P. 459 (dicta); Harris & Hull, Inc. v. McCarty-Vaughan-Evans Corp., 102 Cal. App. 461; 283 P. 111; Kozlowski v. Adams, 102 Cal. App. 578.

IV. Decisions in Federal Courts

In the Federal courts and in certain of the state courts, a somewhat more liberal attitude has been adopted with respect to contracts in contravention of statutory enactment. According to decisions of these tribunals, the court will examine the statute to determine whether it was the legislative intent to render the contract unenforceable, and govern its decision accordingly.[25] The rule prevailing in the federal courts is well stated in *Dunlop v. Mercer*, 156 Fed. 545:

> "The true rule is that the court should carefully consider in each case the terms of the statute which prohibits an act under a penalty, its object, the evil it was enacted to remedy, and the effect of holding contracts in violation of it void, for the purpose of ascertaining whether or not the lawmaking power intended to make such contracts void, and, if from all these considerations it is manifest that the Legislature had no such intention, the contracts should be sustained and enforced; otherwise, they should be held void."

Yet another rule appears in the case of *In Re T. H. Bunch Co.*, 180 Fed. 519:

> "There is another equally well settled rule of law so far as the national courts are concerned. When a statute imposes specific penalties for its violation, where the act is not malum in se, and the purpose of the statute can be accomplished without declaring contracts in violation thereof illegal, the inference is that it was not the intention of the lawmakers to render such contracts illegal and unenforceable."

If we are to apply to the Executive Order the tests quoted from Dunlop v. Mercer, that is to say, to consider the object of the Executive Order, the evil it was intended to remedy and the effect of holding contracts in violation thereof unenforceable, it appears that it was the obvious purpose of the Order to put an end to all transfers and dealings of the type therein mentioned, and that the accomplishment of this purpose was and is a matter of the deepest national concern. This would seem to indicate an intent that all contracts in violation of the Order should be unenforceable. The use of the term "prohibited" also favors this construction, and we are not without authority on this point. In *Morris Adler & Co. v J. E. Jones & Co.*, 208 Ala. 481, plaintiff entered into a contract with defendant for the sale of a certain quantity of sugar, delivery of which defendant refused to accept. The seller sued for breach of contract, and the purchaser defended on the ground that the contract was in violation of Sec. 5 of the Lever Act of 1917, which authorized the President of the United States to issue a proclamation prohibiting the importation or distribution of certain commodities without license, and forbade all transactions in contravention of the proclamation. The proclamation was issued on October 8, 1917 and sugar was among the prohibited commodities. Since the plaintiff failed to procure the required license the court held that the action could not be maintained, because the contract involved the importation of sugar, and thus violated the Lever Act and the presidential proclamation. The court, in rendering the decision, applied the rule above quoted from *Dunlop v. Mercer*, at the same time holding that it was the legislative intent that contracts in violation of the Act should be unenforceable. In the course of the decision, the court stated that the rule in Alabama was identical with that of the federal courts. The prohibitory language of Executive Order No. 8389, as amended, while differing in form, does not differ materially in substance from that of Sec. 5 of the Lever Act,[27] and it seems probable that Adler & Co. v. Jones & Co. would be followed in all jurisdictions, including those where the federal rule obtains, since it is most difficult to conceive of the courts lending their aid toward the direct enforcement of a contract in violation of the Order. On the other hand, it should be stated that there are a number of decisions of the federal courts where the validity of a contract prohibited by statute has been recognized, at least for certain purposes, although the prohibitory language was about equally strong.[28] Moreover, it should be noted that Adler & Co. v. Jones & Co. was in effect an action to enforce a contract prohibited by statute rather than a suit to recover money paid or property delivered thereunder, or its value, and there are few cases where even the federal courts have allowed direct enforcement of such a contract, although, where it is not the legislative intent to render a contract invalid, there should be no distinction in principle.

On the other hand, if we are to apply the test above quoted from *In Re T. H. Bunch Company* (supra), it is obvious that the act prohibited is not malum in se and that the purpose of the Order not only can be, but is being accomplished without declaring contracts in violation thereof unenforceable. In fact, so well is it being accomplished that it has been possible for the Treasury Department to very materially liberalize the freezing control restrictions through the amendment to General License 42 which was issued on February 23rd of this year. At the time of this amendment Treasury officials gave out a statement that persons dealing with residents of the United States might assume that the latter were not blocked unless they were affirmatively on notice to the contrary.[29]

Lastly, it should be pointed out that the subject is one involving the laws of the United States and therefore a matter of federal jurisdiction. We cannot, of course, undertake to predict the construction which will be placed upon the Order by the federal courts and those courts which follow the federal rule, but it seems improbable that a legislative intent will be found that contracts in violation of the Order should be valid, notwithstanding the fact that the application of the test quoted from In Re T. H. Bunch Company (supra) favors the latter construction.

V. Effect of General Ruling 12

A discussion of this subject would not be complete without reference to General Ruling 12. Section (1) of this Ruling provides as follows:

> "Unless licensed or otherwise authorized by the Secretary of the Treasury, (a) any transfer after the effective date of the Order is null and void to the extent that it is (or was) a transfer of any property in a blocked account at the time of such transfer; and (b) no transfer after the effective date of the Order shall be the basis for the assertion or recognition of any right, remedy, power or privilege with respect to, or interest in, any property while in a blocked account (irrespective of whether such property was in a blocked account at the time of such transfer)."

The term "transfer" is specifically defined as any act or transaction, the purpose, intent, or effect of which is to transfer or alter directly or indirectly any interest with respect to the property covered by the Ruling.

The term "property," as defined in the Ruling, includes, among other things, contracts, mortgages and liens, but specifically excludes real property "except to the extent indicated."

A blocked account within the mean-

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[26] Harris v. Runnels, 12 How. 79, 13 L. Ed. 901; National Bank v. Matthews, 98 U. S. 621; 25 L. Ed. 188; Dunlop v. Mercer, 156 Fed. 545; In Re T. H. Bunch Co., 180 Fed. 519; Reconstruction Finance Corp. v. Central Republic Trust Co., 17 Fed. Supp. 263; Adams Express Co. v. Darden, 286 Fed. 61; Fritts v. Palmer, 132 U. S. 282; 33 L. Ed. 317.

[27] (U. S. Com. St. 1918; U. S. Com. St. Supp. 1919, Sec. 3115-⅛ et seq.) The prohibitory language of this section is as follows:
"* * * from time to time, whenever the President shall find it essential to license the importation, manufacture, storage, mining, or distribution of any necessaries, in order to carry into effect any of the purposes of this act, and shall publicly so announce, no person shall, after a date fixed in the announcement, engage in or carry on any such business specified in the announcement of importation, manufacture, storage, mining, or distribution of any necessaries as set forth in such announcement, unless he shall secure and hold a license issued pursuant to this section."

[28] Fritts v. Palmer, 132 U. S. 282; 33 L. Ed. 317; In Re T. H. Bunch Co., 180 Fed. 519; Harris v. Runnels, 12 How. 79; 13 L. Ed. 901; Dunlop v. Mercer, 156 Fed. 545, 86 C. C. A. 435.

[29] Press Release 31.

ing of General Ruling No. 12, according to paragraph (c) of section (5) thereof, refers only to an account actually treated as blocked by the person with whom the same is maintained, and not to an account which is merely blocked by virtue of the Executive Order alone because of a blocked national having an interest therein. Undoubtedly a transfer of a mortgage or lien in a blocked account, and possibly an assignment of a land contract interest, would be considered void in the full sense of the term, at least, if we are to assume that the expression "null and void" is used in its correct and literal sense.

However, the question naturally arises as to the effect of this Ruling on a deed or other conveyance of real estate paid for out of funds or property in a blocked account. That a court, after compelling restoration of the consideration, on the theory that it constituted a transfer of property in a blocked account, would permit the purchaser to retain title to and possession of the land, seems contrary to every principle of equity, even if we are to assume that the parties are in pari delicto.[30]

It should be observed that section (3) of General Ruling No. 12 specifically provides that where there has been an unauthorized transfer of property in a blocked account, a special license may be subsequently applied for, which, if granted, would validate the transfer, subject to the provisions of Section 5 (b) of Trading With the Enemy Act, as amended. Whether a prohibited transaction with a blocked national, which does not involve a transfer of property in a blocked account, may also be validated by the subsequent issuance of a special license is a question which thus far remains unanswered. Inquiry has been made of the Treasury Department and we are informed that the matter is receiving the attention of their legal staff. If an unauthorized transfer of property in a blocked account may be thus validated, it would seem that the same should be true of any other transfer prohibited by the Order.[31]

Viewed from another standpoint, General Ruling 12 seems to have a highly important bearing on the question of whether a conveyance of real estate without a special license having been obtained in a necessary case is ipso facto void where the consideration is not paid out of a blocked account. The Treasury Department in issuing this document has limited the scope of void transfers to transfers of property in a blocked account, and has therein specifically stated that property held in a blocked account does not include real estate, with certain exceptions which are therein set forth. Moreover, it has gone to considerable length to define the terms "transfer" and "property" as employed in the Ruling. If the Treasury Department considered all transactions with a blocked national in violation of the Executive Order void, why was not General Ruling No. 12 so framed as to cover them? It would have been easy to do so in very simple language, and the fact that the Treasury chose rather to limit the scope of the Ruling to transfers of property in a blocked account, and especially the further fact that the term "property" specifically excluded real estate with the aforementioned exceptions, are very strong indications that other transactions in contravention of the Order are at least not considered as null and void.

VI. Transactions Under Section 3A of Trading with the Enemy Act

It is important to note that many blocked nationals are also alien enemies with whom trade or communication without license is entirely forbidden by the terms of Section 3A of Trading With the Enemy Act. In cases such as these the principles which we have discussed would doubtless be applicable except that it seems probable that where the effect of the contract is to furnish aid to the enemy or diminish our own war efforts, the public welfare is so vitally concerned that even executed transactions might be set aside on this ground. It is believed, however, that not many contracts in violation of this section would be likely to involve interests in real estate.

Conclusion

As previously stated there have been practically no court decisions of any value involving the effect of Executive Order 8389, as amended, on real estate titles or real estate transactions. Any article on this subject is therefore necessarily, to a large extent, speculative, and the writer is not in a position to express a definite opinion as to what can or cannot be done with respect to the problems above considered, much as he would like to be able to do so. To attempt to predict the positions which will be taken by the courts on any given question in the absence of any substantial authority is foolhardy, and even if one should venture to do so, his opinion would be of little value. For the reasons above stated, however, we do feel that there is sufficient background to enable us to go so far as to express the opinion that conveyances (and in this term we include land contracts, mortgages, leases and assignments) are not ipso facto void for failure to comply with the Executive Order, and that no title should be considered unmarketable on this ground alone. According to well established principles of law the title of a bona fide purchaser, derived through an illegal transaction of which he knew nothing, would nevertheless be valid.[32] We are also inclined to the opinion that in a fully executed transaction, as where a deed has been delivered and possession surrendered, an interest has been transferred which cannot be successfully assailed for illegality in any jurisdiction, except where the parties are not in pari delicto. There is a possibility, however, as previously pointed out, that courts may take the view that paramount public interest dictates that even fully executed contracts should be set aside, or that the primary purpose of the Executive Order was the protection of a certain class of individuals, and that such a transaction may be rescinded on that theory. A deed, although delivered, might also be set aside, if the consideration were paid out of funds or property in an account actually treated as blocked as designated by the provisions of General Ruling No. 12. For these reasons it cannot now be stated that a deed, although delivered pursuant to a fully executed transaction in violation of the Order, conveys a marketable title. In any event, from the point of view of insurability of the grantee's title, the question would always arise as to whether the parties were in pari delicto or whether the consideration was furnished from funds in an account treated as blocked.

In conclusion, it would appear that persons engaging in real estate transactions would have little to fear insofar as rescission at the instance of the other contracting party is concerned, provided reasonable precautions are taken with respect to making inquiry into his status. If his representations as to status prove to be false, it is altogether improbable that the court would set aside a transaction at his instance. The principal source of danger seems to lie in the fact that, regardless of representations or information received, a contract in violation of the Order probably could not be directly enforced in any court. For this reason it is important that one who has the slightest reason to doubt the status of the person with whom he is dealing should not rely on his statements alone, but should supplement the same by inquiry from disinterested sources, in order to secure a greater degree of protection. All things considered, it is our belief that the danger is not great where proper precautionary measures have been taken. Furthermore, the amendment to General License No. 42 has greatly reduced the number of blocked nationals in this country, and the risk involved in transactions in which they are possible participants has accordingly been proportionately reduced.

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[30] Smith v. Bach, 183 Cal. 259; Harris & Hull, Inc. v. McCarty-Vaughan-Evans Corp., 102 Cal. App. 461; 283 P. 111; Kozlowski v. Adams, 102 Cal. App. 578.

[31] See Commission for Polish Relief, Ltd. v. Banca Nationala A Rumaniei, 288 N. Y. 332, which appears to support this supposition. However, as previously pointed out, the blocked account in this case fell within the provisions of General Ruling No. 12, which specifically provides for validation by the issuance of a subsequent license.

[32] 66 C. J. 1097; East Birmingham Realty Co. v. Birmingham Machine & Foundry Co., 160 Ala. 461.

Some Legal Aspects of the "Trading With the Enemy Act"

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Any one who is not acquainted with the problems involved in "trading with the enemy" should read Sections 3 and 5 of the "Trading with the Enemy Act," General Ruling No. 11, General License issued by the President 12-13-41, then read Executive Order Number 8389 together with all amendments, and then read through the General Licenses, particularly License No. 42. I think that copies of these things may be obtained from your Federal Reserve Bank. In passing I must call your attention to the fact that you will be confronted with an Act of Congress, various Executive Orders and promulgations issued by the President, Regulations, General Rules, General and Special Licenses all put out and issued by the Secretary of the Treasury. In reading each of these, you should keep in mind as to whether it is an Act, an Executive Order, or a Regulation or License by the Secretary of the Treasury.

The "Trading with the Enemy Act of 1917" has been continued in effect and Section 5(b) thereof has been amended. Section 5(b) of the 1917 Act was confined primarily to giving the President power to regulate or prohibit transactions in foreign exchange and had primarily to do with the regulation of the use of gold. Section 5(b), as amended, gives the President tremendous new powers including the right to regulate, nullify, void, prevent or prohibit any transactions in which any property is involved in which any foreign country or national thereof has any interest. This is not limited to personal property, and, therefore, definitely includes real property. Further, the President may designate any agency he wishes to handle these matters. Pursuant to these provisions, the President issued Executive Order No. 8389 which has been amended several times and which in effect prohibits any transaction by or on behalf of or pursuant to the direction of any foreign country or any national thereof or transactions involving property in which any foreign country or any national thereof has at any time on or since the effective date of said order had any interest of any nature whatsoever. This Order sets out the particular countries which it effects. Thus this order generally has the effect of freezing all property in which countries or nationals of countries named in this Order have any interest whatsoever.

Further, Section 3 of the Act in effect provides that it shall be unlawful for any person in the United States, except with the License of the President granted to such person or to the enemy, to trade or attempt to trade for, to, with or on behalf of any other person with knowledge or cause to believe that such other person is an enemy or ally of the enemy. In this connection General Ruling No. 11 has been issued by the Treasury Department as of March 18, 1942 defining the terms "enemy nationals" and "enemy territory" and provides that no license hereafter issued shall be deemed to authorize any transaction with an enemy national unless it refers to General Ruling No. 11. It should be here noted that Section 3 does not provide for the President to delegate his powers to the Secretary of the Treasury and there may be some question whether or not the Secretary of the Treasury could issue a license permitting any act prohibited by Section 3. Be that as it may, the President has issued a General License under Section 3(a) on December 13, 1941 providing that a General License should be granted licensing any transaction or act prohibited under Section 3(a) provided that the transaction or act is authorized by the Secretary of the Treasury. The Government thus condones and authorizes this practice, and as a practical matter the only thing we can do to complete one of these transactions is to act on the strength of the Treasury License.

In the event you are dealing with a prohibited transaction, you should first check all of the General Licenses which have been issued by the Secretary of the Treasury and in the event you find nothing covering your specific transaction then it would be necessary to apply for a special license. The Secretary of the Treasury has issued some eighty odd General Licenses which permit a great many things—for instance, General License No. 5 allows the withdrawing of the funds of an alien to pay taxes and most important to us is General License No. 42 which was amended the last time on February 3, 1942 which licenses a great many transactions. Do not fail to check General License No. 42.

I will not go into the terms of these Licenses, Executive Orders and the Acts as I assume you are familiar with them or that you may obtain copies of these.

In the event you are not covered by any General License then you apply to the Federal Reserve Bank upon application Form TFE-1 which forms can be obtained from said bank. In this connection, I think it advisable to request that if a Special License is granted that it specifically refer to General Ruling No. 11 put out by the Secretary of the Treasury for the reason that General Ruling No. 11 provides that "No license or other authorization now outstanding or hereafter issued, unless expressly referring to this General Ruling shall be deemed to authorize any transaction which, directly or indirectly, involves any trade or communication with an enemy national." Here I call your attention to the fact that the Regulations issued by the Secretary of the Treasury provide that his decisions on the issuance of these Licenses shall be final and there is no appeal therefrom.

Another pitfall to be watched is that the President put out a Proclamation, being No. 2497 dated July 15, 1941, in which he authorized the compiling of a list of persons which have been acting or purporting to act, directly or indirectly, for the benefit of Germany or Italy or any national thereof, and so long as such person's name appears on such list, he shall for the purpose of Section 5 of the Act of 1917, as amended, be deemed a national of a foreign country and shall be treated for all purposes under Executive Order No. 8389 as though he were a national of Germany or Italy. All of the property of a person named on this list has been frozen. Thus, if we are technical about the matter it will be necessary that we maintain at all of our offices, copies of this list and check to see if any party involved in transactions we are handling are named on this list. I would like to have a showing of hands to see how many people have attempted to keep a copy of this List at the office and check each deal to see that their parties are not named on this list. Personally, I do not know of any companies that are doing this. In this connection, I suggest that any affidavits which are taken as to citizenship include a statement that the affiant's name does not appear upon the proclaimed list of "blocked nationals."

Passing from these generalities I think that the primary thing that we are interested in is what would happen in the event a transaction took place which violated this Act and what would be the legal situation of the parties and what if anything could be done about it.

In the event you find a transaction has been consummated through your office without a license, I suggest that you refer to General Ruling No. 12 issued by the Secretary of the Treasury providing that the Secretary of the Treasury, before, during or after a transfer may validate such transfer by the issuance of an appropriate license. I am not sure whether or not this ruling refers to real estate transfers and I have written to the Secretary of the Treasury for a construction of this; however, I will give my views on it. Paragraph five of this General Ruling

No. 12 provides the word "transfers" means any right or interest in property and includes conveyances, deeds, deeds of trust, etc. Section 5(b) of General Ruling No. 12 provides that the term "property" includes gold, silver, bullion, etc. and then states "the term property shall not, except to the extent indicated be deemed to include chattels or real property." Paragraph number three of said General Ruling No. 12 provides for the validating of transfers using the word "transfers" and does not use the word "property" and since the word "transfers" is defined to include deeds it would appear that transfers of real property made in violation of the Act may be validated by appropriate license. Thus, it would seem that General Ruling No. 12 applies to real estate transactions. In any event, I think this is the first step that should be taken.

Now, failing in this, what is the position of the parties? The "Trading with the Enemy act" and Executive Order No. 8389 provide that if any one wilfully violates the provisions of the Act or the Order, or any Rule or Regulation issued thereunder who shall upon conviction be fined not more than $10,000.00 or imprisoned not more than ten years, or both.

In passing I might state that Section 5(b) of the Act provides that transfers may be voided or prohibited by the President or someone that he may designate; however, Executive Order 8389, together with the amendments thereto, merely provide that such transactions are "prohibited" and do not provide that they are rendered void. It should be noted that the courts under the 1917 Act, which Act has been continued in effect, held that neither the Act nor any of the Rules issued thereunder prevented vesting of an interest in property in an alien enemy where propery was being willed to an alien or a national of a foreign country. In re. Kielsmark's Will, 177 N. W. 690; Gregg's Estate, 109 Atl. 777, Certiorari denied in 252 U. S. 588, 40 S. Ct. 396. The same cases indicate that the alien enemy, however, would not be able to take possession of the property in that the Alien Property Custodian would take the property to be returned at the end of hostilities. Further, I wish to call your attention to the fact that Section 8 of the Act specifically provides a party holding a mortgage on property in which an alien enemy has an interest may nevertheless foreclose his mortgage if he complies with the provisions of said Section 8. Of course, this Section contemplates mortgages lawfully entered into.

The constitutionality of the Act has been upheld. Norman v. B. & O. R. Co. 294 U. S. 240, 55 S. Ct. 407; Nortz v. United States, 294 U. S. 317, 55 S. Ct. 428; Perry v. United States, 294 U. S. 330, 55 S. Ct. 432. However, Section 5(b), as amended, has not been before the courts of the country insofar as I have been able to discover.

We have seen that a violation of this Act is subject to penal prosecution and the question now arises whether transactions and conveyances which violate the Act are void. The word void is used rather loosely and is frequently used when the word voidable is meant. I do not think that the conveyances would be void but that they may be voidable. The general rule is that where a statute imposes a penalty on the doing of an act without either expressly prohibiting it or declaring it void, such an agreement founded on the doing of such an illegal act are void but the true rule seems to be one of legislative intent and the court will look to the language of the statute, the subject matter, the evil which the statute seeks to prevent, the purpose sought to be accomplished by the statute and other matters and from all of these the court will determine whether the legislature intended to render the prohibited act void or voidable. The Union National Bank of St. Louis v. Elizabeth A. Matthews 98 U. S. 621, 25 L. Ed. 188; Borger v. Brand (Texas Comm. App.), 1938, 118 S. W. 2d 303; Griffen-Gillespie Oil Co. v. Wright, 1922, 281 F. 787; Reconstruction Finance Corporation v. Central Republic Trust Co., 1936, 17 F. Supp. 263; Christophersen & Kiser v. U. S. Navigation Co., Inc., 202 N. Y. Supp. 902. It is to be noted that Section 5(b) of the Act, as amended provides that the President may prohibit, nullify, regulate, render void or prevent any of the transactions falling under said Section 5(b). Thus, it would appear that Congress has left this up to the President and the President in his discretion could render these actions void. Thus, you would have a good argument that Congress did not intend transactions which violated this Act to be void unless the President so declared them; however, it is to be noted that the transaction may violate section 3 of the Act which merely says that transactions falling within section 3 are unlawful and does not leave the question of rendering these transactions void up to the President. Section 3 and Section 5(b) were passed by different Congresses and I think it is safest for us to assume that all transactions which violate the "Trading with the Enemy Act" are voidable and to run our offices on this assumption. Further, it is generally held that where the direct object of the parties is to do an illegal act, the agreement is void and it is immaterial that either or both of them did not know that their object was illegal because as a general rule ignorance of the law is no excuse. Church v. Proctor, 66 Fed. 240; Brown v. First National Bank, 37 N. E. 158; Stewart v. Thayer, 47 N. E. 420, Leien v. Mechanics & Traders Bank, 130 N. Y. Supp. 436; Oldham v. Briley, 118 S. W. 2d 797. Thus from these cases we see that mere ignorance that the act which the parties intend to do violates the "Trading with the Enemy Act" will be no excuse. Of course, where good faith and ignorance are present the court will naturally be prone to be easier on such party. Here, I might say that as a general principle of criminal law, an honest mistake excuses and in the event you have a mistake of fact instead of a mistake of law, or ignorance of the law, you will have a basis for avoiding penal liability and this may affect the rights of the parties as well.

It is generally held that a party cannot come into a court of law and ask to have an illegal object carried out and, therefore, one would not be able to come into court and prove up a case in which he must necessarily disclose and rely on his illegal purpose as the groundwork of his claim. The St. Louis Vandalia & Terre-Haute R. Co. v. The Terre-Haute & Indianapolis Ry. Co., 145 U. S. 421, 12 S. Ct. 884, 36 L. Ed. 750; Weil v. Neary, 278 U. S. 160, 49 S. Ct. 144, 73 L. Ed. 243; Vitagraph, Inc. v. Theatre Realty Company, 50 Fed. 2d 907; Shaughnessy v. D'Antonio, 100 Fed. 2d 422; Marshall v. Lovell, 19 Fed. 2d 751, Certioriri denied 48 S. Ct. 207. The law usually leaves parties in pari delicto where it finds them and refuses relief to either. Thus, even though an alien conveyed property to a citizen of the United States which conveyance was made illegal by the "Trading with the Enemy Act" such aliens could not complain and ask to have the conveyance set aside. Of course, the United States Government would still have grounds for complaint as they were not a party to the transaction and I see no reason why the Alien Property Custodian could not take the property from the party to whom it had been conveyed. A little later I will go into the attitude of the government in the matters as reflected by cases under the 1917 Act. The dangerous thing in this situation is that, where you have a conveyance prohibited by the Act and a part of the consideration may be represented by notes and secured by vendor's lien and deed of trust lien held either by the vendor or a third party. From the line of cases above cited and from the cases which I will here cite it would appear that a holder of the note and mortgage who was a party to the illegal transaction will not be able to enforce his note or lien. Teal v. Walker, 111 U. S. 242, 1883; Winchester Electric Light Co. v. Veal, 41 N. E. 334; Dewitt v. Brisbane, 16 N. Y. 508; Monroe v. Snelly, 25 Tex. 586. From these cases it appears that the court will leave parties in pari delicto status quo and will not hear a suit to enforce a contract based on an illegal transaction. Further, there is authority to the effect that even though the notes and mortgages get into the hands of third parties who are in good faith and who have no knowledge of the illegal transaction on which the notes and mortgages are based that still said notes and mortgages in the hands of said innocent persons may not be enforceable. Reynolds v. Nichols & Co., 12 Iowa Reports 398; Norton v. Fletcher, 12 Am. Dec. 366; Monroe v. Snelly supra. The cases which I am citing throughout this paper do not purport to be complete citations because there are hundreds of cases involving illegal transactions

and the rights of parties thereunder. These cases which I am citing merely represent the general trend and show the dangers which are present in the violation of the "Trading with the Enemy Act." Further, the cases which I have cited here are not cases arising under the "Trading with the Enemy Act" unless I so indicated.

Looking at the cases decided under the 1917 "Trading with the Enemy Act" we find that the declared purpose of the Act is to conserve property instead of confiscating it and to preserve the property of aliens pending the outcome of the war. In re. Gregg's Estate, supra. Of course, the primary purpose is to prevent any act resulting in detriment to the United States in time of war, Keppleman v. Keppleman, 103 Atl. 27, but the courts as I have just said have definitely held that the purpose of the Act is to conserve instead of to confiscate. Most of the cases which arose under the old Act dealt with personal property instead of real property and the cases dealing with real property were cases where the Alien Property Custodian was seeking to take property over or had taken the property over where the property was still owned or claimed by an alien enemy. I do not find any cases which had a situation where the alien enemy had conveyed real property to a citizen of this country and then the Alien Property Custodian sought to declare the conveyance void and take the property over. Thus, it would seem that our government has been very considerate and lenient in this respect and that a broad plan of conservation instead of confiscation has been followed. Of course, the "Trading with the Enemy Act" contains provisions allowing the Alien Property Custodian to seize any kind of property in which an alien enemy has a legal or beneficial interest and under this provision we found the Alien Property Custodian took over various interests in real estate. In re. Gregg's Estate, supra; in re. Kielsmark's Will, supra; Keppleman v. Palmer, 108 Atl. 432, certiorari denied 40 S. Ct. 292; in re. Bentheim's Estate, 209 N. Y. Supp. 141, Affirmed 209 N. Y. Supp. 794.

Where I have used the term alien enemy, national of a foreign country etc., these terms shall have the same meaning as is given to them by definitions in the Act, Treasury Orders and Rulings, and Executive Orders.

Thus, it appears that we do not have any cases under the 1917 Act which will absolutely answer our question on the validity of transfers in violation of the Act or the enforcement of notes and mortgages given as a part of the consideration in a transaction which violates the Act, but the cases which have arisen under other Acts show us that it is very dangerous to issue title insurance on any transaction which violates the "Trading with the Enemy Act."

Applicability of the Act to a Lending Institution

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A question of utmost importance to title men is how far and in what ways the "Freezing Orders" and regulations apply to real estate transactions.

The prohibitions of Executive Order No. 8389 as amended extend (Sec. 1, E) to "All transfers, withdrawals or exportations of, or dealings in, any **evidences** of indebtedness, or **evidences** of ownership of property by any person within the United States." This would seem to have been drafted with bonds and stocks particularly in mind, but the language is broad and in Section 130.2 (c) of Treasury Department Regulations the word "Property" as used in the Executive Order is defined as including among other things—notes, real estate mortgages, land contracts, real estate or any interest therein, leaseholds, ground rents and contracts of any nature whatsoever. All real estate transactions must therefore fall within the intended scope of these regulations.

Now, is an unlicensed transfer of real estate merely prohibited or is it void?

It was held in the case of "Commission for Polish Relief v. National Bank of Rumania," reported in the New York Law Journal for November 10, 1941, that the freezing orders merely provide a regulatory plan operationg **in personam** and subjecting the violator to a maximum fine of $10,000 and imprisonment for a maximum of ten years.

Prior to December 18, 1941, the President had authority only to investigate, regulate and prohibit, but by Public Act No. 354 he may now "investigate, regulate, direct and compel, **nullify, void,** prevent or prohibit any acquisition," transfer, etc. A search of the regulations, licenses and interpretations shows only one exercise of this power to nullify or void. It appears in General Ruling No. 12 issued by the Treasury Department on April 21, 1942, declaring void unlicensed transfers of blocked assets. I quote paragraph 5 (b) of the ruling to show its coverage:

> "The term 'property' includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2 (1) of the Securities Act of 1933 as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts, claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term 'property' shall not, except to the extent indicated, be deemed to include chattels or real property."

We can understand the need of declaring void certain transactions in intangibles and easily transported valuables in order to discourage the buyer from an attempt to evade. The same need does not extend to real estate which is immovable and which can be controlled as to possession and use by other governmental means. Apparently the Treasury Department has recognized this distinction. So, although the President may have statutory authority to declare a real estate transaction void, the present orders and regulations do not go that far and would not seem to constitute an additional hazard in title underwriting.

W. R. NETHERCUT
Milwaukee, Wisconsin

Assistant Counsel, The Northwestern Mutual Life Insurance Co.

I have been asked whether a lending institution has a responsibility to investigate the status of its mortgagor when its mortgage lien is insured by a title company. The freezing orders apply to **all** parties to the transaction. It may well be that a lending institution will rely upon its title company to make any necessary investigation, especially if the loan is disbursed by the escrow department of the title company. However, such an arrangement cannot relieve the lending institution of its liability for penalties if the transaction is in fact prohibited under the Executive Order. I am assuming

that the title company in spite of its desire to be of service, has not gone out on a limb and expressly contracted to pay the $10,000 fine and to sit in jail for ten years in place of the insured lender if trouble develops. The Northwestern Mutual Life Insurance Compuany has taken the position from the first that its responsibility is primary and independent of any investigation or lack of investigation on the part of the abstracter or title company.

Our experience with the freezing controls has been almost exclusively in connection with the payment of life insurance claims and dividends to individuals in blocked countries. We usually have little trouble in securing a license to remit unless the payee is located in enemy occupied territory, and in such cases no license will be issued. In connection with mortgage loans we have not yet found it necessary to drop a loan application or to request a special license. The applicant in each case has fallen outside of the definition of a blocked national or within the exemptions of a general license. One loan was made to a British subject, a long time missionary to Japan, but now retired and residing in this country under a permanent license. Subsequent to June 17, 1940, he had been called to Bermuda to act as a mail censor for the British government, but had been back in this country for some months at the time of his application. Other loans have been completed to refugees from countries now blocked, who were residents of the United States prior to the effective date of the order.

What investigation other institutional lenders are making is beyond my definite knowledge. I have seen a very complete and detailed form of affidavit required by one large life insurance company and have been advised that some other companies were making similar requirements. The Northwestern Mutual Life Insurance Company has been using a printed form of certificate, not sworn to, covering citizenship, length of residence in this country, representation of a blocked national, and interest of any blocked national in the premises in question. If the applicant could not sign this form of certificate without change, further inquiries were made and an affidavit required covering all material facts. However, since the amendment of General License No. 42 and the liberalizing interpretations thereof, the use of this certificate has been discontinued.

Treasury officials are reliably quoted (Commerce Clearing House War Service, page 14,840) as stating that persons dealing with **residents** of the United States may now **assume** that such residents are not blocked unless they are affirmatively on notice to the contrary. This position has been confirmed by discussion with officials of the Federal Reserve Bank, and in reliance thereon agents of The Northwestern Mutual Life Insurance Company are now instructed to make no inquiries on the subject but to report promptly if any suspicious circumstance comes to their attention indicating that the party may be acting in the interests of some one in enemy or enemy occupied territory or engaged in subversive activities in this country. Also, they are instructed not to do business with Japanese interests unless specially authorized.

The original freezing orders and regulations were so broad and so vague as to seem very drastic. However, as experience has accumulated they have been limited and interpreted so as to interfere as little as possible with legitimate business. At the present time, unless there is a special problem in your district which leads your Federal Reserve Bank to rule otherwise, I am satisfied that we may rely on the officially expressed assumption that, in the absence of affirmative notice to the contrary, any resident of the United States is not to be considered a blocked national.

Office Practices Required by Reason of Provisions of the Trading With Enemy Act

GORDON B. CAIRNS

Manager, Napa County Title Co., Napa, California

The provisions of the Trading With the Enemy Act and of the Executive Orders issued pursuant thereto have imposed additional obligations on title companies, and of necessity, have required the adoption of new office practices, and my portion of this discussion will be confined to such new practices.

There are two reasons why extreme care should be exercised by any title company and by the employees of any title company. One is because of the fact that any transfer after the effective date of the order has been held to be null and void in General Ruling 12, unless such transfer is licensed or otherwise authorized by the Secretary of the Treasury before or after the transfer. The other is that anyone aiding in the completion of any transaction in violation of the Act might be subject to its punitive provisions.

A title company should obtain a list of the blocked countries, the effective date of the freezing order affecting each of such blocked countries, and of the definition of a national. This information may be obtained from your local Federal Reserve Bank. Thereafter, it must be determined whether or not any party to a transaction, in which the title company is involved in any capacity, is a blocked national. This is necessary as to any transaction involving a transfer of real property, title to which is to be insured because of the ruling set forth in General Ruling 12 and the punitive provisions of the Act, and in any transaction involving real property, title to which is not to be insured or which involves personal property because of the punitive provisions of the Act.

GORDON B. CAIRNS
Napa, California
Vice-President, Napa County Title Co.

After the nationality of each party to a transaction has been determined, and this includes all parties regardless of the extent of the interest owned, it is necessary to determine:

1. The place of residence of the parties since the effective date of the freezing order affecting such country.

2. That the parties to the transaction were residing in this country on February 23, 1942, and have not entered any blocked country since that date.

3. That none of the parties have since the effective date of the order acted or purported to act directly or indirectly for the benefit of or on behalf of any blocked country, including the government thereof.

4. That none of the parties would be a national of any of the blocked countries by reason of any fact other than that such individual has been domiciled in or a subject, citizen or resident of a blocked country at any time on or since the effective date of the order.

5. That none of the parties are na-

tionals of Japan or if a national of Japan, has resided only in this country since June 17, 1940, and has filed the reports required by General License 68A, as amended, and is not:

(a) An individual, partnership, association, corporation or other organization on the premises of which the Treasury Department maintains a representative or guard or on the premises of which there is posted an official Treasury Department notice that the premises are under the control of the United States Government, or

(b) A bank, trust company, shipping concern, steamship agency, or insurance company, or

(c) A person who, on or since the effective date of the Order, has represented or acted as agent for any person located outside the continental United States or for any company owned or controlled by persons located outside the continental United States, or

(d) A person who on or since the effective date of the Order has acted or purported to act directly or indirectly for the benefit or on behalf of any blocked country, including the government thereof, or any person who is a national of Japan by reason of any fact other than that such person has been domiciled in, or a subject or citizen of, Japan at any time on or since the effective date of the Order.

In the event any of the parties, although residing in this country on February 23, 1942, had not resided in this country since the effective date of the freezing order affecting the country of which the party was a national, it would be necessary that such party then file a report in triplicate on Form TFR-42, with the appropriate Federal Reserve Bank. As the provisions of General License No. 42 do not extend to anyone required to file such report, unless such report is filed, it is necessary to verify from the Federal Reserve Bank that such report was in fact filed.

Statement of Identity

For the purpose of obtaining the information above required, the California companies have changed the statement of identity form which has been used by such companies for a great many years as a method of reducing the forgery risk, so that such statement will disclose the birthplace of the parties signing the statement, the date and place of naturalization, if naturalized, and the place of residence during the past five years. In addition to such information, the statement of identity contains the following statement which is over the signature of the person from whom the statement of identity is obtained:

> I am not acting, in this transaction, for or on behalf of any foreign country, transactions with which have been "blocked" or subjected to regulation by the United States government, nor for or on behalf of any resident or citizen of any such country, nor for or on behalf of any company organized in or controlled by residents or citizens of any such country, nor by or on behalf of any person or firm included in "The Proclaimed List of Blocked Nationals."

This information has enabled the title companies to determine whether or not any of the parties were included within the definition of a blocked national, and the statement, although self-serving, does establish that the company did attempt to ascertain if the party was barred by reason of being excluded from General License 42 by reason of the fact that he was acting on behalf of a blocked country or the government thereof.

A transfer as defined in General Ruling 12 is:

> Any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or other fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power; provided, however, that the term "transfer" shall not be deemed to include transfers by operation of law.

Under General Ruling 11, trade or communication with an **enemy** national is prohibited, unless pursuant to a license which specifically refers to General Ruling 11. Said Ruling contains a definition of an **enemy national.** Such Ruling also defines trade or communication with an enemy national as sending, taking, bringing, transportation, importation, exportation, or transmission of, or the attempt to send, take, bring, transport, import, export or transmit

1. Any letter, writing, paper, telegram, cablegram, wireless message, telephone message or other communication of any nature whatsoever, or
2. Any property of any nature whatsoever, including any goods, wares, merchandise, securities, currency, stamps, coin, bullion, money, checks, drafts, proxies, powers of attorney, evidences of ownership, evidences of indebtedness, evidences of property, or contracts directly or indirectly to or from an enemy national after March 18, 1942.

"The Sun Do Move"

H. LAURIE SMITH

President, Lawyers Title Insurance Corporation, Richmond, Virginia

The officers of your Association charged with the responsibility of preparing a program for your edification, information and entertainment, honored me with an invitation to appear before you in hopes that I might bring some message to assuage our common grief over the premature demise of the late lamented F. H. A. Title II, to ease our anxiety over the critical condition of F. H. A. Title VI, or to dispel the enshrouding gloom of priorities, freezing orders, and rationing.

I cannot predict the increasing severity of priorities or the duration of freezing orders, but I venture a forecast on rationing. Brother titlemen, when our time comes for rationing, we need not expect an allowance of 60 or 40 per cent of our normal quota of orders. Nope, we won't be holding B-3's, much less X cards. We aren't Congressmen, and continued national safety and existence is not dependent upon our ability to perpetuate our jobs. We will get A cards and be drawing field-hand rations, four ounces of sowbelly, corn meal and sorghum.

Your President suggested as a mirth-provoking, gloom-dispelling subject that I might speak on the title losses of my company during the past year. I concede that to titlemen, operating in one city or in a restricted area, there is no subject which affords such ghoulish glee or sadistic satisfaction as recounting the title losses of companies operating under the so-called national plan. Fellow-competitors, I am good enough sport to come through with factual data on title losses whenever the news is bad enough to cheer you up. Yeah, I am big-hearted that way—because the information is available through our annual report to Insurance Bureaus. I hate to disappoint you, but our title losses in 1941 were too nearly

normal to be a source of interest or rejoicing. However, you may derive pleasure from the fact that by reason of doing business over an extended territory our cost of establishing and maintaining safeguards against title loss are substantially in excess of the average title losses of local title companies.

The only excuse for my appearance on the program is the possibility that a different and helpful viewpoint on some of the problems confronting the title industry might be made available from the surveys, studies, and experiences of a company operating over a widespread territory.

Brethren, I take my text from the tenth chapter, verses 12 and 13 of the Book of Joshua:

"The Sun Do Move"

x x x x x "and he said in the sight of Israel, Sun, stand thou still upon Gideon, and thou Moon in the valley of Ajalon; and the sun stood still and the moon stayed until the people avenged themselves upon their enemies."

On July 4, 1812, there was born in Fluvanna County, Virginia, a negro, John Jasper, destined to become the greatest orator and preacher of his race. He was the youngest of twenty-four children. (Planned parenthood followed a more prodigal pattern in those days). He was first a cart-boy until his brightness attracted attention and he was made a house servant. Later he was hired out for service in Richmond, and it was there in 1839, while working as a stemmer in a tobaaco factory, that he got religion. A fellow-slave had taught him out of a New York Spelling Book to spell out the words in the Bible. Otherwise untutored and illiterate, he was, for twenty-five years as a slave and thirty-five years as a free man, the outstanding preacher and leader of his people. It is said that he preached his amazing sermon, "The Sun Do Move," more than two hundred and fifty times, and that he expounded the Zetetic doctrine with such fervor and profundity that in spite of the fallacy of his position, he was able to draw scientists, philosophers, and students from all over the world to his Mount Zion Baptist Church in Richmond, Virginia.

In recent months I have been greatly intrigued by the philosophy of John Jasper, born slave, humble tobacco-stemmer, illiterate preacher, as reflected in the fundamentals of concept and approach in the current philosophy of the average American, born free, supposedly literate, and heir to the knowledge, wisdom and culture of our own and all prior civilizations.

John Jasper translated the movement of celestial bodies in the light of his personal experience and observations. The mysteries of nature's laws had significance only as they affected him personally. John Jasper, goading his oxen through the red clay of Three Chopt Road, rolling Marse Peachey's tobacco to the Richmond market, observed in the early dawn the majestic sun rise in the east, and to him that meant the beginning of a long day of toil. As the sun moved leisurely overhead he thought he could see the corn in the roadside fields shoot up under its beneficent rays. To him corn meant ash cakes, pones and dodgers to assuage the pangs of a boy's perpetually empty belly.

By mid-day the sun had moved directly overhead to burn his skin with its fierce heat. Slow, slower than the wrath of God, the sun moved westward through a long sultry afternoon to drop a fire-red ball behind the sharply etched Ragged Mountains, presaging respite from heat and night's quiet repose.

John Jasper said "The Sun do Move." We, in our infinite wisdom which is the fruit of modern education, and with the

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Richmond, Virginia
Member Board of Goernors, American Title Association
President, Lawyers Title Insurance Corporation

complacent superiority characteristic of that most ingenious system of propagating misinformation and perpetuating ignorance, smile tolerantly.

Sun Blindness Has Afflicted Us

I wish that I might be one of those to bring you a message of encouragement, good cheer and serene optimism, as your president desired that I should. Regrettably, I cannot play the role of Pollyanna, because statements not backed by sincere conviction are not worthy of attention. I have been too frequently on record with statements which could scarcely be considered optimistic. On September 14, 1939, in response to a request from one of our State Managers, I attempted to forecast the effects of the war in Europe upon title business in the United States. My letter concluded with this statement: "If the United States be drawn into the war, we needn't bother about trying to forecast the future. We will just live from day to day, watching the deterioration or even the destruction of modern civilization and our little jobs and our litle business will be relatively unimportant." In November, 1941, a few short weeks before Pearl Harbor, speaking before the Florida Title Association, I concluded my remarks: "And we, preoccupied by our inconsequential affairs and trivial amusements, watch at home the attrition of those cherished liberties which our forefathers fought and died to make secure for their children's children, and we watch abroad the disintegration of civilization, smugly complacent that 'It can't happen here.' "

The Sunsets of Mighty Civilizations

Gone are the civilizations of Babylon and of Egypt and the causes thereof are too shrouded in antiquity to invite our speculative consideration. Our interest in those mighty forerunners of human progress is alive today only to the extent to which they have furnished inspiration to a Cecil B. DeMille.

Deep in some intricately convoluted cortex of our alleged cerebrum a tiny cell awakens at the name of Jenghiz Khan. Out of the long forgotten, dog-eared pages of "Peter Parley's World History" come vague memories of the onsweep of savage hordes, with fire, sword, pillage and rape, leaving a trail of desolation and destruction requiring centuries to efface. Vaguely we recollect that, when we dozed through 1101 pages of the "Outline of History" by a dope named Wells he advanced some screwy theory that Jenghiz Khan and his hordes had influenced the succeeding civilizations of Europe and Asia. Did it register? Hell, no! We didn't remeber that Europe and Asia joined until Blue Sunoco got out a map to help us understand Elmer Davis in his radio broadcast.

Thanks to a classical education, we are the proud possessors of scraps of garbled, distorted and uncorrelated information about Greek and Roman civilizations. Glibly we refer to the Acropolis, the Coliseum, and the Parthenon, secretly hopeful that we have located that damn pile of stone in the right country. With calm assurance we identify the Ionic Column, or, sitting by our radio, feel pleasantly superior to the dumb cluck on the "Take It or Leave It" program who fails to identify the gods of Greek Mythology. We know that today the sons of Plato shine the world's shoes, but the fact that in two thousand years Greece has not produced an Aristotle, Socrates, Phidias or Praxitiles has little significance to us. Perhaps we vaguely sense some sequence between ancient wars and twenty centuries barren of contribution to art, science or literature. When the Sunday Supplement mentions Attila the Hun, it awakens dim memories of the day we accidentally opened one of

the sixteen volumes of Gibbon's "Decline and Fall of the Roman Empire" awarded us as a prize for scholarship —but just what the heck did he have to do with the Fall—and what did the Fall have to do with the fact that today the sons of Caesar and Cicero make up on the peanuts what they lose on the banans! We are certain that "Omnia Gallia in tres partes divisa est." We know that from the days of Caesar, Ancient Gaul has been the battlefield of Europe. But when the Maginot Line fell, we were astounded that the beloved civilization of France proved to be only a veneered shell to hide the already rotten decadence and disintegration of the French people.

Two great civilizations, the Mayan and the Aztec, have disappeared almost out of our backyard. What significance have they had to us? Well, you know. As we yawn and lay aside our magazine, we remark to our wife: "There's a swell article in the National Geographic on the Mayan civilization. Wonder what became of those people?" Or, if by chance we think of Cortez looting the Aztecs, we soliloquize, "Gee, if that guy were alive today, he would be a big shot in Chicago." The fact that one man with four hundred trained soldiers, equipped with superior weapons, destroyed an entire civilization and vitally changed the lives of millions of people for the past five hundred years doesn't register in the light of current events.

"The Sun Do Move."

Sun-Scotched Personal Privileges

For John Jasper the movement of the sun had significance only as it affected him personally. For many of us the catastrophic, cataclysmic world happenings of the past three years have significance only as they affect us personally. The modern savage hordes of Jenghiz Khan have swept across Asia and the South Pacific with tanks, dive bombers, pillage and rape, hauling down the flags of the British Empire, of the Dutch Empire, and of the United States of America. So long as we were getting dollars for our scrap iron and our oil, which made this possible, everything was all right. But today, with threatened curtailment of the use of our personal automobile, it's getting pretty serious. "Wonder whether we can make the rubber on the old bus last? Guess we can, if the spare tires under the guest-room bed don't dry rot."

The modern hordes of Attila having swept Europe from the English Channel to the Caspian Sea, from the warm shores of the Mediterranean to the frozen gates of Leningrad, now cross the Atlantic to sink American ships in broad daylight in sight of American beach parties. Too many, too many, of us, the significance of this registers on our consciousness in terms of gas rationing. "Wonder how that dirty so-and-so got an X card? His business is no more important than mine, and how I am going to get the family down to the beach every weekend on a measly B-3 card, I don't know."

We are less disturbed about sugar. We remembered the last war and began hoarding in September '39.

We Are Not Joshua

We smile in complacent superiority at the blind faith of the black preacher who firmly believed that the sun stool still at the command of Joshua. Yet many of us seemingly have blind faith that the sun, at the command of American brag and American boast, will stand still until we have recovered from the blunders, the stupidities, the criminal neglect for which no one person can be blamed, but which rather should be attributed to our colossal and unparalleled national conceit.

"The Sun Do Move."

We titlemen are prone to consider world-stirring events, not as happenings which may shape the destinies of millions of people over hundreds of years, but as they may affect, today and tomorrow, the pursuit of our normal gainful occupation. Enemy successes resulting in shortage of rubber and gas, we interpret in terms of curtailment of real estate activity—and title business—in suburban areas dependent upon motor transportation.

Sun-Stroke Suffered By "Business as Usual"

The acceleration of the inflationary trend by the piling of countless billions for defense on an already fantastic national debt, we interpret in terms of increasing demands for real estate investment hedges with consequent title business. The increased purchasing power of millions of war workers not normally potential home buyers, we interpret in terms of increasing sales of existing residential construction—with consequent title business.

Priorities to conserve metals and other materials vital for war purpose, we interpret in terms of cessation of residential construction, except for defense housing, and the drying up of the principal normal source of title business. The freezing order on lumber to meet the necessities of cantonment construction froze also defense housing and Title VI loans, the chief source of title business in recent weeks.

Mr. Bovard, Counsel of F. H. A., has covered the field of residential construction financed by government insured mortgage as a potential source of title business in the coming months. Colonel O'Brien is on the program to present the current land acquisition program of the government. But no one can predict the extent to which such programs may be enlarged or modified in the coming months. The title industry is ready, willing and able to furnish the title requirements of the government, and, since December 7th, to give priority to such requirements. We can only regret that this business too often can be obtained and handled only under conditions grievously burdensome to the more competent and responsible members of the title industry.

With the curtailment of the title business from normal sources, the title requirements of Defense Homes, Inc., Defense Plants, Inc., F. W. A. and other governmental agencies have served to cushion the shock.

The company which I represent undertook in 1941 to furnish title service in 1187 cities, towns and county seats in 23 states, with aggregate population of 75,377,486. Its hopes for modest success were basically dependent upon its ability to keep informed as to potentially available business and the sources through which available. The information vital to us with respect to sales, loans, new construction under way, building permits for future construction, increases in industrial payroll, etc. can be obtained, over so wide an area, only as a part of a planned sustained program. It is possible that the experience of my company may afford a more comprehensive cross-section of factors currently affecting the title business than is otherwise available.

In October, 1941, I told our people we would have to prepare for a marked decline in volume of business which I anticipated would begin to be felt in January. As a matter of fact, January was a record January. February and March were likewise record months, and April set an all-time record. Gentlemen, I want to get in the weather-forecast business. Since December 7th one doesn't predict the weather until it has already happened. We anticipated that especially favorable business from certain localities would tend to offset the poor business in others. We did not anticipate that the business arising out of or incident to the war program would more than offset the slump in normal business.

The reports we receive throughout our territory, while indicative that the lush days are over, do not give rise to apprehensions for the immediate future. Many of us will fail to make any money. It doesn't matter. We will have to tighten our belts. We did it from 1930 to 1934. We can do it again. Many of us in areas with concentrated war industries will earn substantial profits. It doesn't matter. Practically all our profits will be required to finance the war.

Sun Spots Must Not Narrow Our Field of Vision

When I say that I am concerned about the future of the title business, I do not refer to the present nor to the coming months, but rather to the long years ahead in which the world must seek recovery from disasters presently almost beyond human comprehension. The concern which I feel is not merely for the title business, but for all private enterprise. I am as confident as any intelligent American that we will ultimately win the war abroad. I fear

lest, in so doing, we lose the peace at home.

It is that fear which emboldens me to bring you a message which some may deem presumptious but which others, I hope, will feel mitigates my intrusion upon your time. We live free men in a free country. A part of the price we pay for freedom is our fantastically complex economic, industrial, political and social structure. This great country of ours cannot adjust itself to an all-out war effort without mighty confusion and drastic dislocation of the established order.

Title companies whose personnel, facilities and equipment are not required in the war effort best serve our country by carrying on from day to day in as nearly normal a manner as possible. The decisions which we must make from day to day in the conduct of our business cannot be determined by the possible or even probable contingencies of the future. The title business, in common with all private enterprise not engaged in war effort, cannot permit itself to become panicky about the dark and uncertain furture and undermine the morale of our country by percipitate and premature efforts at retrenchment. The course of action which in normal times prudence, foresight and good management would dictate has become, in my opinion, the course prejudicial to national welfare until the nation shall have adjusted itself to the abrupt transition from peace to war.

Profit and the hope of profit has become an inconsequential consideration for the duration, except to the extent that the taxes which we pay help carry the national burden.

Our women send their husbands, sons, and brothers to the front knowing that casualties are to be anticipated. Surely, we, as officers and directors of our respective companies, may contemplate with equal fortitude the financial casualties which may be the incidental or inevitable consequence of national all-out effort.

While the title industry holds its sector of the home front assigned to private enterprise not engaged in war production, we, its leaders, will render our policyholders, our stockholders, and ourselves a service more important than current profit, if we have the initiative, the vision, and the courage to strengthen and make secure our companies against the vicissitudes of the dark years which may lie ahead. We are so accustomed to think in terms of dollars that some may say it is foolish to speak of strengthening our companies when, either by reason of curtailed earnings or high taxes, we cannot hope to add to our surplus. Gentlemen, I did not have in mind the strength born of dollars. If there is one lesson we learned from the tragic failures of title insurance companies in the thirties it is that the strength of a title company is not measured by dollars, but rather by integrity, conservatism, sound policies, competent management, efficient operation and safe practices.

Sun Madness May Grip Title Men

We are entering a period in which many title men will get hungry for business, and when some title men get hungry there is apparently no limit to what they will do to get business.

I do not refer to rate cutting, the obsession of certain title men too lacking in initiative, energy and enterprise to obtain by legitimate means a fair share of the potentially available business, and too stupid to realize that only a temporary advantage may be gained by rate cutting.

Rate cutting does not necessarily make title business unsafe; merely unprofitable.

Rather, I refer to the abandonment of established principles of sound underwriting and the sanctioning of vicious practices and pernicious procedures as the price of obtaining the business of some chiseling speculative builder or some unprincipled loan originator.

Some of you who were not in the title business during the late depression may say: "There are black sheep in every business. We represent a decent company. What have the sins of the black sheep to do with us?"

True, decent companies will not stultify themselves by the issuance of false evidence of title, as some have done to buy business. True, decent companies will not betray the trust of the assured by fraudulent collusion, as some have done to buy business. But there is a vast gulf between dishonesty and unsoundness, and honest companies may become unsound. When title business gets scarce, competition becomes vicious. The standards of the finest title company for sound and conservative practices are imperceptibly but inexorably lowered by vicious competition.

We build security and strength for our companies to the extent that, through vigilance, untiring effort and courage, we minimize such vicious competition. Vigilance to detect unsoundness in our own operations. Untiring efforts to obtain the cooperation of our competitors. Courage to refuse business which can be bought only at the price of soundness and self-respect.

We build security and strength for the dark years ahead by the recognition, establishment and observance of fundamental insurance principles.

Title Man's Place in the Sun Assured By Six Principles

At the San Antonio A. T. A. Convention in October, 1929, when it was apparent that dark days lay ahead for the title business, I suggested that we set for ourselves certain specific objectives. May I conclude by briefly reiterating and amplifying some of these?

First: Let us negotiate intelligently, diplomatically and persistently with our competitors to obtain mutually acceptable Codes of Practice and Procedure appropriate for the conditions which obtain in our respective localities.

Second: When we succeed in obtaining such a Code, let us set up a committee to investigate and determine alleged or suspected violations of the Code, and if possible, authorize such committee to punish such violations by prescribed fines and penalties.

Third: If we are not already doing so, let us set up adequate reserves to be invested in the highest grade liquid securities and to be segregated from the claims of all persons other than policyholders.

Fourth: If we do not have adequate, intelligent legislation with reasonable provision for state examination, supervision and regulation, let us sponsor such leglislation before we become the victims of harmful, ignorant legislation.

Fifth: Let us fix a "net line" or retention limit of the amount of liability to be insured on a single risk at a reasonable percentage of our capital resources, and coinsure or reinsure all risks in excess of that limit.

Sixth: We know that our operating costs have risen and continue to rise. We know that much of the business we handle today involves exposure to risks not contemplated when existing rates were established. We know that many of us in recent years, under pressure of volume business, have failed to maintain the highest operating efficiency.

Let us concentrate our energies and our brains on developing maximum efficiency and economy of operation. When we are assured that we are not seeking to pass on to our customers the cost of any laxness, inertia, or inefficiency on our part, then let us demand compensation adequate for operation cost and reserve provisions and commensurate with services rendered and risk assumed—and let's raise hell until we get it.

Brethren, for the benefit of the title man who does not subscribe to the above ojectives, let me paraphrase the prayer of an old negro preacher:

Oh, Lord, give Brother Jones the eye of the eagle that he may see from afar the sin of rate cutting. Glue his ear to the Gospel telephone of tolerance, and connect him with his competitors. Illuminate his brow with the brightness of sound practices that will make the fires of hell look like a tallow candle. Nail his hands to the Gospel plow of conservatism. Bow his head way down twix his knees and fix his knees way down in the dark and narrow valley of unfair competition where prayer for title men is much wanted to be said. Anoint him all over with the kerosene oil of cooperation and sot him on fire.

Can Abstracts Be Sold to the Public? How?

THEO. J. TURNER

President, Bannock Title-Abstract Co.
Pocatello, Idaho

Can abstracts be sold to the public? How? I wish I knew more about that —especially the "How". My business is selling title abstracts in Southeastern Idaho.

Among smaller title plant owners advertising is almost a fighting word. There is no issue as to its value; but to say what kinds and the proportion of each that is right for us out of what may be spent for it, if any, is the debatable question. The right answer would solve one of our serious problems.

The title business is different from most businesses. You are rendering a necessary service, essential to the life and growth of your community; yet not supplying any physical need or appeal in conection with any dress, appearance or recreational impulse. One gets an abstract, certificate, or policy of Title Insurance, whatever is locally used at pledge or conveyance of real property, because—I dislike to say it; but we might as well face the fact—he must: not from the urge to have one. Going out to have himself a time, he won't need an abstract. He may have to have one later, when the bill is to be paid. Unfortunately, this mood thus created is one with which we must begin dealing with some customers.

There is also another difference; much more important. The one required to furnish and pay for the title service is not the one most benefited at time of service. If a loan may be secured or property sold without this service, the mortgagor or grantor chucks himself under the chin and considers himself that much to the good, and having escaped something which in his mind is as pleasant to pay for as having a case of smallpox.

Education

For such reasons, advertising in our dictionary should be spelled education. Stress the need of proper service at the proper time. Create a local condition and the way that it—title service—is always demanded at that time. Much of that has been done in most places in late, last-past years; so now I emphasize the continuance of the good work and the retelling and reselling of the facts that have accomplished it. If there is customary evidence of title used at every deal in dirt in your county, and I do not mean the Walter Winchell type although at times we do get some spice out of our divorce and probate searches, your advertising score, however attained, is perfect. Your public is properly educated. Your further stint then is to "keep 'em" that way. And those words "keep 'em" are said on the cap shift in red. It would bother Walter Winchell no end to write an ad to bring in an order beyond the ceiling indicated. But he could be kept plenty busy giving facts and figures in his entertaining, yet compelling, way to maintain the score. It is always possible that there are those afield whose early education was neglected, or are newcomers to this abstracters' paradise thus created.

The creation of pleasant, friendly and helpful feelings at time of service is important. To strive for it is the thing that will pay in a big way, and sell future abstracts and service. That attained is as beneficial to those serving as those served. Make your customer know and realize the worth and the importance of the service you render. Explain the careful work and resulting expense that is required to prepare to serve him. Prove to him that the service rendered is well worth what it costs him and do not in any way indicate that you do not feel he is getting value received and even more. Make your contact with him at the time of service his college education regarding the why and how of the business. Grantors of today are grantees of tomorrow in reverse. Be sure that your customer understands that you must serve him—going or coming. And again I'm on the cap shift in red for that word "Must". It could be that I need the orders, but what business is there that does not have to have a continuous flow of incoming business. Stop the flow of the feeder streams or springs and the lake however beautiful dries up.

Because of the lowered ceiling caused by lessened deals during these trying times, and the long time amortized real estate loans, many will not have funds for advertising beyond this word of mouth contact at service time. Plants must be maintained; supplies purchased; taxes—and "O Boy" do I get into high and reach for the red—rents, and salaries paid; dues to local clubs and charitable associations, as well as those of like national organizations withheld. Good repute in regard to all such is required advertising in any community for our business. Do not think for one minute that your customers do not in the main know more about you than you do about them. After all that is taken care of, with many, there will be little left for other advertising, or the selling of abstracts.

Let's Stick Together

But of that little let us all first allot for membership so as to be in good standing in our title associations, State and National. No other appropriation will make available so much good advertising for so little. Larger companies in the more fortunately located and prosperous places have furnished "Walk a mile," "They satisfy," "Cream of the crop" ads for our business and through their interest in such associations passed them on for the common good. They have helped all down the line and done much to educate the public with regard to the necessity for reliable and dependable title service. We should show our appreciation, better say, pay our debt, by joining them in the good effort and giving every encouragement so that they may continue to keep us well informed and telling the world where we are, and why we are there; add the full strength of our number to their interest and our own. Sell yourselves on your business and its importance and it will make it easier to sell others.

I can not tell you how to sell all the abstracts we would like to, to the public; but I can tell you how to sell some. Be a member in good standing of your title associations, not passive, but active, rendering constructive service wherever and whenever possible.

Can Owners' Policies of Title Insurance Be "Sold"? How?

WILLIAM GILL, SR.

Vice-President, American First Trust Co., Oklahoma City, Oklahoma

I have been assigned the subject of "How to Sell Owners' Policies," in my particular locality. Many times I have wished I knew how to do it.

Since my company operates statewide, my brief remarks will refer to the entire State of Oklahoma. I do not contend that titles in my state present more hazards than titles in other states; although Oklahoma titles are by far more complicated than in some of the abstract states. Oklahoma is comparatively a new state—realty transfers were few and far between until the year 1900. Oklahoma has experienced a most rapid development. Many legal matters have yet to be passed upon by our Supreme Court.

Oklahoma has been, and for many years to come will be, an abstract and attorney opinion state. Therefore owners' policies or owners' guarantees of title, must necessarily, generally speaking. **be sold as additional title protection and not as a substitute for the rapidly becoming bulky abstract.** The additional cost of an owner's policy added to abstract charges, creates an appreciable "sales resistance."

For many years Oklahoma has been virgin territory for the individual interested in "title litigation." It has been more or less of a "paradise" for

the sharp trader or "grafter." Many of our titles were acquired by Government Patients, issued to men, women and children who were members of some twenty-odd Indian tribes. A number of these Indian tribes were governed by different laws of descent and distribution, depending upon the particular tribe and the degree of blood of the allotted. United States laws governing the alienation of real estate of thousands and thousands of Indians are different. The full blood Indian or his full blood heirs, if he be a Choctaw Indian, could not part with his real estate in the same manner as an Indian of a lesser degree of blood. Tribal and government treaties with the Choctaws, Creeks, Seminole, Osage, etc., were not the same.

Conflicting Federal and State Court decisions caused many of our Indian titles to be viewed with a degree of alarm. New tax questions are being raised continuously and a number of important title problems have not yet been settled by the courts of last resort.

More than 50% of the counties in Oklahoma are oil producing. The discovery of our coal fields and lead and zinc mines, plus our oil fields, created over night a fabulous value. That value was sufficient to invite title attacks and resulted in almost unbelievable and endless litigation.

Most certainly the picture presented gives sufficient reasons why the property owner should have his title insured. That same picture causes a title officer and the legal staff no small degree of anxiety. Certainly there is an overdose of "unknown risk" ready to be swallowed and we are swallowing it along with some other good title insurance companies operating in Oklahoma—the final effect is somewhat problematical.

Many sections of the state and certain cities and towns present not quite as serious title problems, although the continued extension and new oil field development will prove to be a profitable livelihood for a certain type of "Title Jumper." Any title company operating state wide and attempting to give a needed and demanded service, to say the least, must be extremely cautious.

What has been said so far and yet to be said, doesn't tell you much about "How to Sell Owners' Policies." I have found it a most simple matter to get the attention of the property buyer by mere reference to numerous matters of title litigation and losses, which are of common knowledge. Most certainly very few title companies have such a splendid "sales advantage"—or can it be called an advantage? Naturally, care must be exercised not to create the impression that most titles are bad —such is not the case. The decisions of our State and Federal Courts present sufficient evidence to cause the prudent buyer to most seriously consider the advisability of putting his "title worries" in charge of a responsible title company.

Our loan closing and escrow department is a most profitable contact for the sale of owners' policies.

The use of local attorneys, throughout the state for individuals, and the use of counsel for Building and Loan Associations, Mortgage Companies, Banks and Life Insurance Companies for title examinations, has proven good business. Many times the local attorney has proved a medium for the sale of owners' policies—he has nothing to lose when he examines the title for a fee paid by the title companies and believe it or not, quite often that fee is larger than the fee the attorney could collect himself.

A **"tactful discussion,"** before civic groups and others, of title matters in general, with a few "commercial plugs" about title insurance, has proven most beneficial.

Don't forget that high school, business college and university students and women's clubs do a great deal of thinking—they are all potential title company customers. The sale of title insurance requires the taking advantage of every opportunity to publicize your product by every conceivable means. This is especially necessary in localities where "Pa and Ma" and the "grand-parents" always thought that an abstract and attorney's opinion was sufficient title protection.

Several life insurance companies and other real estate money lenders, when acquiring title to property, either by voluntary conveyance or foreclosure, have been sold on the advisability of taking an owner's policy for protection against possible title loss. After a sale of such property, you and I know that the grantor of a warranty deed assumes a sizable unknown risk.

I believe it worthwhile to erect upon new additions billboards advertising the fact "that the title to such addition has been insured" by your company. Likewise it is good advertising to place a small, attractive sign in new homes for sale, to the effect that "the purchaser of this home will be given without cost a title insurance policy." In several instances this has resulted in customers who saw the sign obtaining a title policy when later buying a home.

Finally, I consider it of extreme importance to let the holder of your guaranty or title insurance policy know exactly what you are selling—do not take it for granted that the customer knows the conditions and provisions of such policy. If you are selling 100% protection, tell the customer so—if you are not, then let the customer know it. If he doesn't know what he is buying, he shouldn't buy and if a title company fails to let the customer know what it sells, then don't make the sale.

Yes, you will have losses to pay and when you do, pay promptly and cheerfully. One of the best sales arguments you can use is to refer to "such and such" a loss which your company paid to "so and so". Explain what caused the loss, how quickly you paid it. Not too long ago we had a rather sizeable loss—the check in payment of same was reproduced in a newspaper advertisement, together with a brief statement of the cause of the loss, with a very complimentary statement from the insured. I know of several additional owners' policies sold as a direct result of that one transaction. Don't be afraid to let the public know when a loss occurs—it's good business to do so.

I sincerely believe that the American public is fortunate in that it has access to the title facilities of a large group of title companies operating in almost every county in every state in the Union. Title companies have an enviable reputation to sustain and a good name to protect. Let's continue to maintain that reputation. In doing so, we increase the demand for our services.

Report of Judiciary Committee

McCUNE GILL, *Chairman*

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

Recently the Chairman of your Judiciary Committee made a great and unexpected discovery. He discovered a committee member who will work. This rara avis is none other than the well known James E. Rhodes, II. He has produced an erudite study of, and extended comments on, some twenty-two appellate court decisions rendered during the past five years in suits against title companies. Due to the fact that no less than fifteen thousand words were used to describe the author's reactions to these decisions, and the further fact that a convention audience usually sinks into a deep coma after the first ten minutes, it was thought best to file this document with the Secretary where it may be inspected at will, and to have your Chairman attempt to shrink this Colossus of Rhodes into short Quiz Kid paragraphs, carefully avoiding the ponderous polysyllables preferred by professors.

Perhaps this presentation will be more interesting if, as I read each question, you will formulate the answer in your own mind, and then you will be able to demonstrate that even our courts are sometimes wrong. But they do have the last guess!

1. Is a title company liable for excepting from its policy "covenants" according to a certain book and page, without referring to a reversionary clause in case of breach of the coven-

ants? The Court said no, which is comforting, but, as though it were still in doubt, the Court also held that the covenant was barred by limitation anyhow. We agree with this admission that the first decision might be wrong. 200 N. E. 666.

2. Is a title company liable for a forgery loss where the policy excepted "the rights of parties in possession not shown by the public records?" The answer is yes; properly discouraging trick policies, 57 Pac. 2nd 1392.

3. Is a title company liable for the cost of defending a claim of usury if the usual exception as to "acts of the insured" is omitted at the request of the insured? The court answered yes, title insurance is really title insurance. 287 N. Y. S. 639.

4. Is a title company liable for a forgery loss if the agent forging an assignment of a mortgage note to himself ordered the title policy for the assignee who was named as the insured in the policy? The answer was an emphatic yes; title companies should protect the insured no matter who orders the policy, 94 S. W. 2nd 763.

5. Is a title company liable for the cost incurred by the insured in defending an attack on the title if the title company did not defend promptly after being notified to do so? Of course the company is liable; what is title insurance for, anyway? 114 S. W. 2nd 530.

6. Is a title company liable for damages or costs if the insured refused to allow the title company to defend? Answer, not liable, which doesn't seem quite right unless the title company could show that the result would have been different if it had defended. This decision also very properly holds that defense of its policies by a title company is not practicing law. 193 S. E. 796.

7. Is a title company liable on an owners policy where the corporation is a holding company for the mortgagor in a mortgage through foreclosure of which the Corporation acquired title, in a case where the wife of the mortgagor brought suit for dower and the policy contained an exception as to "encumbrances suffered for the insured?" The Court said No, intimating that a wife is an incumbrance from which every husband suffers. 291 N. Y. S. 637.

8. Is a title company liable for damages for encroachment of a wall where the company relied on an erroneous survey? Yes (get a bonded survey from a good surveyor), but it is not liable for the cost of defense if it was not called on to defend. 100 S. W. 2nd 997.

9. Is a title company liable to stockholders on a policy issued to a corporation? Held not liable which seems rather obvious legally; but it might be unjust practically. The court also says that a title insurer is liable only to the extent that an examining attorney is liable; which of course isn't so, 295 N. Y. S. 161.

10. Is a title company liable for defective title on a policy for a second mortgage later cut out by foreclosure of a first mortgage? Answer No, we're not insuring the payment of mortgages (any more). 190 Atl. 149.

11. Is a title company liable for unmarketability because the lot was on a private and not a public street if the policy said merely "street" and carried an exception as to 'streets not physically opened?" Held not liable, although the phrase used in the exception is a

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

rather poor one and it looks like the decision should have been the other way, 192 Atl. 635.

12. Is a title company liable on an owner and mortgage policy for omitting reference to pending suit if suit is afterward settled and plaintiff paid? The Court answered No, even though owner lost title through foreclosure of mortgage, as loss was due to non-payment of mortgage and not to pendency of suit. 81 Pac. 2nd 578.

13. Is a title company liable for future assessments on special taxes? Answer Yes, if assessments were a lien on date of policy, but No if not then a lien, which leads us to remark that inasmuch as the exact date when the lien attaches is frequently doubtful, a wise title man will report too many, rather than too few assessment liens. 3 S. E. 2nd 127, 6 N. Y. S. 2nd 410, 263 N. Y. S. 438, 197 N. E. 296, 27 N. E. 2nd 225.

14. Is a title company liable on a mortgage policy if the mortgagee foreclosed and then sold the property for sufficient profit to more than pay omitted taxes? The Court said the title company is liable and cannot use profits as a counter claim. Which seems reasonable; we are not liable for strictly mortgage losses and hence should not get the benefit of mortgage gains. 12 S. E. 2nd 147.

15. Is a title company liable on a mortgage policy, first if the mortgage is later held to be a preference in bankruptcy, and second if the mortgagee knew that the mortgagor was insolvent? Answered by the Court yes on first, no on second, which isn't so good; if we are not careful we will create so many exceptions to our liability that we won't have any liability (to sell). 12 N. Y. S. 2nd 703.

16. Is a title company, failing to report an easement, liable for the difference between the purchase price and the value subject to the easement, or for the difference between the true present value (greater than the purchase price) and the value subject to the easement? The Court said the true present value. If we get the benefit of the property declining in value we must assume the risk of the property increasing in value. Which seems reasonable even though the rule as to a warrantor's liability is different. (You will notice how complacent I am, when the loss is to be paid by some other title company). 4 S. E. 2nd 78.

17. Is a title company liable on a mortgage policy where the mortgage was forged, if the real owner executed an agreement consenting to the extension of the mortgage before the forgery was discovered? Held not liable, a ratified forgery is no forgery. Personally, however, I haven't had much success getting them ratified. 24 N. E. 2nd 859.

18. Is a title company liable on an owner's policy where the deed to the insured (under a foreclosure proceeding) was set aside, but the insured accepted return of the purchase price from the former owner? Not liable; the trick is to be lucky enough to have an insured who will accept the money; still better, don't insure a foreclosure title until all chance of setting aside is past. 17 N. Y. S. 2nd 726.

19. Is a title company liable for taxes paid by the owner under protest and afterward returned to him and later reassessed against a new owner? The court said yes, you're liable (watch this, it's a new one). 113 Pac. 2nd 906.

20. Is a title company liable on a claim of an owner who lost his property by foreclosure of a mortgage that had been released by an assignee under a forged endorsement, where the assured did not notify the title company of the foreclosure? Held not liable, even though the policy said that lack of notice would be harmless if the company was not prejudiced. It's decisions like this that make people laugh when you try to sell them title insurance. 28 N. Y. S. 2nd 838.

21. Is a title company liable on an owner's policy if owner's agent (and

husband) suppressed knowledge that former owner was insane? Not liable, although it looks like the title company rather than the owner should take this risk. 46 Pac. 2nd 191.

22. Is a title company liable on a mortgage policy for more than the amount of the mortgage if the policy is written for an amount much larger than the amount of the mortgage? Held no, but it would be much smarter not to do such a thing, 44 Pac. 2nd 632.

Report of the Committee on Federal Legislation

JOSEPH S. KNAPP, JR., *Chairman*

Secretary, Maryland Title Guarantee Co., Baltimore, Md.

It seems futile to enumerate a lot of laws irrelevant to the title business, particularly since "Mr. Smith (Jim Sheridan, our capable and energetic Executive Secretary) Went to Washington," and has constantly and promptly informed Association members of important activities in Washington. Your Committee believes, however, that this Association will be interested in the following brief comment on the laws enacted.

Senate Bill No. 1579, signed by the President on October 16, 1941, and generally known as the "Property-Requisition Bill," is effective until June 30, 1943, and gives the President authority to requisition property for the defense of the United States upon making a find that

(1) The use of any military or naval equipment (including supplies, munitions or parts), or machinery, tools, or materials needed for the manufacture, servicing or operation of such equipment, is needed for the defense of the United States.
(2) The need is immediate and impending and will not admit of delay or resort to any other source of supply; and
(3) All other means of securing use of the property for the defense of the United States upon fair and reasonable terms have been exhausted.

House Representative Bill No. 5667, signed by the President on October 23, 1941, increased the borrowing authority of the R. F. C. by 1500 million dollars to 8 billion dollars.

House Representative Bill No. 5788, signed by the President on October 28, 1941, is the second Lease Lend and Supplemental Defense Appropriation Bill. This Bill carries appropriations of $6,161,605,969 of which $5,985,000,000 is to further implement the Lease Lend Act of March 11, 1941, for which 7 billion dollars has already been appropriated in the first Defense Aid Supplemental Appropriation Act of 1941.

House Representative Bill No. 5783, signed by the President on November 21, 1941, appropriated 300 million dollars for the construction or acquisition of a fleet of four hundred vessels for harbor defense and coast-patrol work.

Senate Bill No. 1840, signed by the President on November 19, 1941, and known as the Defense Highway Act, authorizes appropriations of 150 million dollars. The funds authorized to be appropriated for these roads could be used only for roads certified as important to the National Defense by the Secretary of War or the Secretary of the Navy, and would be available to pay the entire cost of the road, including new or additional right of way, and without any requirement for "matching" on the part of the States or for apportionment. The appropriations would be available for replacing existing roads and highway connections which have been shut off from general public use by necessary operations and military and naval reservations and by defense industries.

The cost of acquiring new or additional rights of way for federal-aid highways or grade-crossing projects on the strategic network could be included as a part of the construction cost and federal funds used to pay for the same to the extent determined by the Federal Works Administrator. Rights of way could be acquired by state highways departments, the Commissioner of Public Roads advancing to or reimbursing the state for the cost payable by the federal government. Where necessary the Federal Works Administrator could acquire rights of way prior to approval of title by the Attorney General. There are also provisions authorizing the Commissioner of Public Roads to provide for off-street parking in municipalities and metropolitan areas, to undertake planning and construction of highway work for other federal agencies.

Senate Bill No. 1884, signed by the President on December 1, 1941, transferred construction activities from the Quartermaster's Corps to the Army Engineer's. It is with this Department that title contracts are now negotiated and signed.

On December 8, 1941, the President signed the Declaration of War against Japan, being Senate Joint Resolution No. 116 and on December 11, 1941, similar declarations against Germany and Italy were signed, being respectively Senate Joint Resolutions Nos. 119 and 120.

Senate Bill No. 2093 and Senate Joint Resolution No. 117 were signed on December 13, 1941, by the President and extended the period of service for the men now in the Army and Navy for the duration of the war, and removed restrictions on over-sea service for men from the National Guard and in training under the Selective Service Act.

House Representative Bill No. 6159, being the third Supplemental Defense Appropriation Bill and carrying about 10 billion dollars, was signed by the President on December 17, 1941.

House Representative Bill No. 6233, known as the War Powers Act and being similar to the powers granted by the Overman Act of May 20, 1918, in World War No. 1, was signed by the President on December 18, 1941. Under this law the President can authorize any department or agency of the government having functions in connection with the prosecution of the war, and under regulations prescribed by him, to make contracts, or to amend or modify contracts existing or subsequently made, and to make advance, progress and other payments, on such contracts without regard to applicable provisions of law covering the making, performance under, or amendment or modification of contracts whenever such action is considered necessary to facilitate the prosecution of the war. Nothing in the powers granted would be construed as authorizing the use of the "cost-plus-a-percentage-of-cost" system of contracting, or as authorizing contracts in violation of existing law relating to limitation of profits. All Acts under this authority would be a matter of public record under regulations prescribed by the President and when held by him to be not incompatible with the public interest.

Senate Bill No. 2096, signed by the President on December 26, 1941, authorized the appropriation of 310 million dollars for buildings, facilities and accessories necessary in connection with shore activities of the Navy including authority to purchase the necessary land. The Secretary of the Navy was authorized to acquire the Floyd Bennett Field in New York and adjacent suitable areas with buildings and improvements and facilities for a cost not to exceed $18,750,000.00, consideration, however, to be given in arriving at the purchase price for expenditures previously made by the Federal Agencies in developoing this Area.

By Executive Order No. 9001, the President delegated broad powers to the War, Navy and Maritime Commissioner which in turn was authorized to delegate these powers to any officer or official, or group of officers or officials. New powers apply to authority, to make and modify contracts and to settle claims, etc. Advertising and competitive bidding is no longer required by virtue of said order.

Senate Bill No. 2149, signed by the President on January 12, 1942, increased the authorized enlisted strength of the Navy to 500,000 and of the Marine Corps to 104,000.

Senate Bill No. 2160—The "Daylight Saving Bill" was signed by the President on January 20, 1942.

House Representative Bill No. 6128 (the Defense Housing Bill) signed by the President on January 21, 1942, provided 450 million dollars of added appropriations for housing and community facilities in defense areas.

The Act of October 14, 1940, is amended in the following particulars: (1) to extend the defense-housing program to include living quarters for single persons engaged in national defense activities, and (2) to increase the average unit cost of family dwelling units from $3,000 to $3,750 for all types of construction located within the continental United States, and to $4,250 for those located elsewhere except Alaska where the limit is fixed at $7,500. The Administrator is given discretionary authority to construct temporary units in cases where he believes there is no reasonable prospect of disposing, after the emergency, of houses built for defense purposes.

The definition of persons engaged in defense activities is broadened to include Army and Marine Corps captains and lower grades, and senior grade lieutenants of the Navy and the Coast Guard (and lower grades) assigned to duty at military or naval reservations or bases or at defense industries.

House Representative Bill No. 6263 (Special War Powers Act) was signed by the President on January 26, 1942, and adds a new sub-section (e) to Section 606, the Federal Communications Act of 1934 and delegates powers to the President affecting wire communications for a period ending not later than six months after the war or such earlier date as Congress by concurrent resolution might designate.

Senate Bill No. 2204, signed by the President on January 27, 1942, continues for the navigation season of 1942, the right of Canadian Vessels to participate in American Ore-Carrying trade on the Great Lakes.

House Representative Bill No. 5990, known as the Emergency Price Control Act, was signed by the President on January 30, 1942. This act not only authorizes the Administrator to fix commodity prices, but also authorizes him to designate defense-rentals areas and to make recommendations looking to stabilization or reduction of rents for "defense-area housing accommodations" within such areas. If within sixty days after the issue of a recommendation by the Administrator rents have not been stabilized or reduced by state or local regulation the Administrator would have authority by regulation or order to establish such maximum rentals as will, in his judgment, be generally fair and equitable and effectuate the purposes of the bill. In establishing any maximum rent the Administrator is to ascertain and give due consideration to rents prevailing for the accommodations, or comparable accommodations, on or about April 1, 1941, or a subsequent or earlier date (not before April 1, 1940) when, in his judgment, defense activities have resulted or have threatened to result in an increase in rents in the area inconsistent with the purposes of the act. He is also to make adjustment for such relative factors as he may deem to be of general applicability in respect to the accommodations in question, including increases or decreases in property taxes and other costs. In designating defense-rental areas, in fixing maximum rentals to apply in connection therewith, and in administration, the Administrator would, to such extent as he considers practicable, give consideration to recommendations made by state and local authorities.

Both tenants and landlords would have only the right of protest and of appeal given to persons affected by price orders.

Regulations issued for the Youngstown-Warren Defense Area fixes the maximum rent date for that area as April 1, 1941, and will be the same regulations for the three hundred and forty-two areas so far designated as defense areas, with the exception for the maximum rent date. The regulations provide for the registration by every landlord of housing accommodations.

House Representative Bill No. 6448, signed by the President on January 30, 1942, appropriates 12,555 million dollars of which all but 30 million dollars is for defense activities and the balance for the Tennessee Valley Authority for a power dam on the French Broad River.

House Representative Bill No. 6304, signed by the President on January 29, 1942, appropriates over 800 million dollars for additional shipbuilding facilities in public and private yards. **This bill includes the right to acquire lands to erect or extend buildings**; to acquire the necessary equipment and in the case of private plants to provide for plant protection.

House Representative Bill No. 6460, signed by the President on February 7, 1942, appropriates 26.4 billion dollars in direct Navy appropriations and contract authority.

House Joint Resolution No. 276, signed by the President on February 7, 1942, authorizes the appropriation of 500 million dollars for aid to China.

House Representative Bill No. 6333, signed by the President on February 6, 1942, authorizes the appropriation of 450 million dollars for shore facilities for the Navy. Under this Bill the Secretary of Navy is authorized to establish and develop naval shore facilities **with authority to acquire land.**

House Joint Resolution No. 257, signed by the President on February 6, 1942, amends Section 124 (i) of the Internal Revenue Code and simplifies the procedure in connection with amortizations of certain facilities in National Defense Contracts.

House Representative Bill No. 6548, signed by the President on February 21, 1942, known as the "First Deficiency Bill," carries appropriation of 100 million dollars for the office of Civilian Defense and also provides for the leasing of land in connection with the development of crude rubber. Said leases are not to extend for a longer time than ten years.

Senate Joint Resolution No. 133, signed by the President on February 21, 1942, suspends for the duration of the war the provisions of the Neutrality Act which makes unlawful transactions of securities and the granting of credit to Countries which have been proclaimed by the President as at War.

House Representatives Bill No. 6611, signed by the President on March 5, 1942, is the Fifth Supplemental Defense Appropriation Bill and carries out 32 billion dollars in direct appropriations and contract authority of which 23 billion dollars are for military activities and 3.8 billion dollars for the Maritime Commission and 5.4 billion dollars for defense Aid (Lend Lease).

House Representative Bill No. 6550, signed by the President on March 6, 1942, continues for the duration of the war the authority of the Maritime Commission to write war-risk insurance.

House Representative Bill No. 6446, signed by the President on March 7, 1942, provided temporary relief through continuation of allotments for dependents of persons in the armed forces reported as missing in action, interned or captured by the enemy.

House Representative Bill No. 6531, signed by the President on March 13, 1942, suspends for the duration of the war the application of tariff duties on imports of scrap-iron, scrap-steel and non-ferrous-metal scrap.

Senate Bill No. 2249, signed by the President on March 17, 1942, authorizes the appropriation of 100 million dollars for tools, equipment and facilities for the manufacture or production for the Navy of ordnance material and munitions and armor at either private or public plants.

House Representative Bill No. 6758, signed by the President on March 21, 1942, provides penalties for persons failing to comply with the Executive Orders dealing with military or naval defense areas.

Senate Bill No. 2208, signed by the President on March 27, 1942, known as the Second War Powers Act, among other things, adds a new section to the war purposes act of 1917 and thereby extends to the Secretary of the Navy, and any other Officer or Agency designated by the President, the **right of condemnation of land for military purposes** heretofore only applicable to the Secretary of War. The power of condemnation as to real property would also include personal property located on the real property and also includes interest in real property such as easements, and any other appurtenant rights. There can also be improvements and occupation of land acquired by purchase or condemnation WITHOUT PRIOR APPROVAL OF TITLE BY THE ATTORNEY GENERAL.

Senate Bill No. 2198, signed by the

President on March 27, 1942, creates the War Damage Corporation. This act authorizes the Secretary of Commerce, on the approval of the President, to provide 1 billion dollars to the War Damage Corporation and authorizes the Corporation to **acquire by purchase, condemnation or otherwise, such real estate** as may be necessary to carry out its functions and those of its subsidiaries in connection with the National Defense Program. The condemnation granted to the Corporation would terminate on June 30, 1944, or sooner by order of the President or concurrent resolutions of Congress. Loss or damage occurring subsequent to December 6, 1941, and prior to a date to be determined by the Secretary of Commerce, but in no event later than July 1, 1942 (and which is the date set by the Secretary of Commerce) can be compensated for by the War Damage Corporation without acquiring a contract of insurance or payment of insurance premium. The Corporation is required to establish uniform rates for each type of property with respect to such insurance as may be available.

House Representative Bill No. 6691, signed by the President on March 28, 1942, increases the National debt to 125 billion dollars.

House Representative Bill No. 6483, signed by the President on April 10, 1942, provides 50 millions dollars for defense housing in the District of Columbia.

House Representative Bill No. 6554, signed by the President on April 11, 1942, gives the Maritime Commission increased authority in writing war risk insurance. The bill extends the act for the duration of the war and six months thereafter unless terminated earlier by proclamation of the President. The type of coverage is also extended by the broadening of the terms "waterborne commerce of the United States."

House Representative Bill No. 6868, signed by the President on April 28, 1942, is a supplemental defense bill and carries over 19 billion dollars in direct appropriations and contract authority. This appropriation covers the war department; defense aid, Navy and general appropriations. Regulation is made that the Secretary of War and the Secretary of Navy file with congress certain information concerning contracts if the amount involved exceeds $150,000.00. One of which information requirements is whether the contract was awarded without competitive bidding.

House Representative Bill No. 6736, signed by the President on April 28, 1942, makes appropriations for the civil functions of the War Department and carries 66 million dollars for rivers and harbors and 128 million dollars for flood control.

Senate Bill No. 2406, signed by the President on April 28, 1942, appropriates 800 million dollars for shore facilities and public works for the Navy.

Senate Bill No. 2212, signed by the President on April 28, 1942, suspends for the duration of the war provisions of Section 322 of the Act of June 30, 1932, relating to leases of premises used for national defense or war purposes and which provided that the annual rental of buildings leased to the Government could not exceed 15% of the fair market value of the premises and that the improvements, alterations and repairs could not exceed 25% of the rental for the first year.

House Representative Bill No. 6932, signed by the President on May 13, 1942, authorizes 200,000 additional tons of combatant ships, to cost about 900 million dollars. The ships to be of such types and tonnage as the President may determine to be necessary for the success of the war effort.

Senate Bill No. 2315, signed by the President on May 11, 1942, adds a new section (Sec. 5-H) to the Reconstruction Finance Corporation Act, and authorizes the Corporation to make purchases or loans to dealers of articles and stocks which are rationed by the United States in order to relieve distress among the dealers. Upon the loans or purchases the dealer would secure not less than the fair retail prices for any article or commodity that had been held by him for eighteen months or longer after the rationing began. The R. F. C. is authorized to dispose of such articles purchased at public or private sale without competitive bidding, but no sale can be made except to a dealer until the expiration of eighteen months after the beginning of the rationing of the article in question. No deficiency judgment can be obtained against borrowers whose goods are sold by the R. F. C. in settlement of loans.

House Representative Bill No. 6293, signed by the President on May 14, 1942, authorizing him to establish a Women's Army Auxiliary Corps for non-combatant duty with the Army for women between the ages of twenty-one and forty-five years. The total enrollment is limited to 150,000.

Senate Bill No. 210, signed by the President on May 16, 1942, amends the Interstate Commerce Act and regulates freight forwarders.

House Representative Bill No. 6927, signed by the President on May 26, 1942, increased by 500 million dollars to 800 million dollars the amount of mortgage insurance under Title VI available to defense housing construction by private enterprises and in other respects amended the National Housing Act. The Act is extended to July 1, 1943, or before that time should the present emergency end prior thereto. The permissible maturity of mortgages to be insured is extended from twenty to twenty-five years, and mortgage limitations on various kinds of residences are increased as follows: from $4,000 to $5,400 for single-family residences; from $6,000 to $7,500 for two-family residences; from $8,000 to $9,500 for three-family residences; and from $10,000 to $12,000 for four-family residences.

Section 603 (c) of the Act is amended to require a finding by the Administrator that the project covered by the mortgage is an acceptable risk in view of the emergency, which also provides for regulations to assure war workers occupancy priority.

A new Section 608 is added to Title VI authorizing the Administrator to insure mortgages, including advances during construction, on large-scale rental projects intended for occupancy by defense workers in amounts up to 5 million dollars and up to 90% of the amount estimated by the Administrator to be the reasonable replacement cost of the completed property including the land, and not to exceed $1,350 per room on any part used for residential purposes. The provisions for this class of project follows closely to those of Section 207 of the present law. In view of the priorities regulations as to the use of materials the making of mortgages under the above provisions has been materially restricted and are practically non-existent. It is expected, however, that appropriate action will be taken to allow the making of mortgages in much needed defense areas.

House Representative Bill No. 6979, signed by the President on June 3, 1942, increased the Cadet Corps at the United States Military Academy from its present strength of 1,960 by 536.

House Joint Resolution Bill No. 314, signed by the President on June 5, 1942, appropriated 210 million dollars for the marine and war risk insurance fund of the United States Maritime Commission.

House Representative Bill No. 7008, signed on the same day by the President, increased the borrowing authority of the R. F. C. by 5 billion dollars.

The work involved has made it impossible for this Committee to analyze or call attention specifically to regulations made by the President or Departments or Boards to whom the President specifically delegated authority, although these regulations when released, constitute law to the same extent as an Act passed by the Congress and signed by the President. For this reason, the President of this Association may believe it advisable during the present emergency to appoint and coordinate special committees to analyze and report on regulations applying a specific law in which it may be deemed that this Association is interested.

The Emergency Price Control Act of 1942, might be the subject of special and specific study because of its provision to regulate rentals in defense areas and the constitutionality of this act could be considered. The Regional Attorney of the Price Administration Region, covering New York, New Jersey, Pennsylvania, Delaware, Maryland and the District of Columbia, has published an article in which he contends for the constitutionality of the legislation on three grounds: (1) the war and national defense; (2) Fiscal

and currency powers; and (3) the power to regulate interstate and foreign commerce. Were the article not so long it would be incorporated with this report, but the same should be conveniently available and accessible to anyone having interest in this phase of the legislation.

Federal legislation has now passed the controversial stage and opposition must be expressed specifically by opponents in terms of recommendations, as an united front is necessary in these times of stress, sorrow, sacrifice and strife.

As pointed out by your committee last year, legislation even then which was prior to "Pearl Harbor" and the "Declarations of War" fell into two classifications, to wit, Appropriation Bills and Delegation of Authority by the Congress to the President. They now follow the same pattern, with appropriations which we would have thought unbelievable ten years ago and delegation of authority such as no President of these United States has heretofore received and given.

To complain at the socialistic trend which is enveloping us might now be misconstrued, but whether we agree with the action of the Congress, the President, or the persons and boards to whom apparently unlimited powers are delegated, we can but hope that these powers will be honestly exercised and used solely for the present emergency. We must trust that the emergency will not be used to accomplish a permanent change from our democratic form of government which is generally admitted to be inefficient in a crisis such as we now have.

We hope that our soldiers fighting on foreign soil thousands of miles from their loved homes, our Navy and sailors patroling the seven seas and our air force scattered in the winds, are doing this so that, in the magnificent words of Abraham Lincoln "Government of the people, by the people, for the people, shall not perish from the earth."

Soldiers' and Sailors' Civil Relief Act

GOLDING FAIRFIELD

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The Soldiers' and Sailors' Civil Relief of this World War has been in effect since October 17, 1940 and partially in effect since August 27, 1940. It is a Federal Act and its purpose, as you know, is to enable persons in the Military Service to devote their entire energy to that service without being harassed or injured, in their civil rights, during their term of service. It is not the purpose of the Act to release or discharge any person in military service from any legal liability or obligation. The effect of the act is to suspend or preserve rights and defenses until after the expiration of military service. The Act of 1940 is similar to an act of 1918 which gave like protection to persons in military service during World War No. 1.

The Act has already been presented and discussed at meetings of this Association, and you are all more or less familiar with its provisions. We continue, however, to be particularly concerned as to its affect on titles to real property. The Act will be with us for some time. It will exist while a state of war exists and your guess as to the length of the war is as good as mine.

Rules of procedure under the act have been adopted in various communities. Serious questions of interpretation have arisen and continue to arise. A new group of decisions from our appellate courts is beginning to take form, supplementing decisions of the 1918 act. We are having a continued, growing experience with the act, and opinions that we now have may be entirely different from those we entertained a year ago. Unsettled, unsolved problems still exist and it was the purpose of this meeting to re-discuss some of the questions arising under the act in the light of our experience during the past six or twelve months. However, discussion will have to be dispensed with due to lack of time.

If it were a simple act, if it were a law that was not susceptable of court interpretation, we could have found out exactly what it meant in October of 1940, and with a full understanding could have conducted our business accordingly. But it is not a simple rule of law. The Act is applicable to many situations. During every six month period between our Summer and Mid-Winter meetings some of us will have had new difficulties, new experiences, and will have become acquainted with new local decisions and interpretations of the Act.

I therefore emphasize the importance of periodic discussion and exchange of views on this subject.

I do not propose to give you a treatise on the Act. The Association has published and circulated numerous fine articles. I will, however, suggest certain phases of the Act which appear to be quite pertinent.

FORECLOSURES:

All foreclosures through Court must, of course, be governed by the provisions relating to default judgments. These contemplate procuring and filing of affidavits re military service, order for entry of judgement and the appointment of an attorney to represent defendants in the service. With respect to foreclosures pursuant to power of sale contained in the encumbrance, and which do not require Court action (such as the Colorado form of deed of trust to a Public Trustee) the Act provides that an order of sale shall be previously granted by the Court and a return thereto made and approved by the Court. Certain courts, including Colorado, have adopted rules outlining the procedure to procure such an order.

COURT ACTIONS

Questions have arisen as to whether or not certain Court proceedings are affected by the act. Of course, in the ordinary case, as we have outlined above, where a default judgment or decree is to be taken the procedure set forth in the act must be followed. There are certain special proceedings which do not contemplate the entry of a default—among these may be mentioned various estate orders, special heirship determinations, proceedings to perpetuate testimony and like matters. There is no uniformity of opinion among lawyers and courts as to what proceedings can be said to be unaffected by the act.

STATUTES OF LIMITATION:

The act provides that in computing the period of a limitation statute the period of military service shall not be included. Questions are now arising as to the application of this provision, which is Section 205 of the act. Does it for instance extend the time of filing a claim in an estate? Does it extend the lien of a transcript of judgment (such lien being limited in time in most jurisdictions)? Does it affect various real estate curative statutes which are based on the passing of a considerable period of time without disturbance of the title?

MARKETABILITY AS AFFECTED BY THE ACT:

Can an innocent purchaser for value reply upon decrees of Court adjudicating real estate titles? In addition to foreclosures above mentioned probably the most common curative proceeding is a suit to quiet title. If the Court has actually entered the decree can an innocent purchaser rely upon it to the extent of securing a marketable title? Subdivision 4 of Section 200 of the act has a proviso to the effect that vacating, setting aside or reversing any judgment because of any of the provisions of this act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment. Does this provision apply to all judgments and decrees affecting real estate? If it does not, eventually the marketing of real estate in any community might become seriously affected. My own opinion is that if this proviso of the statute cannot be applied to all decrees and judgments the Court

should nevertheless hold the title as marketable, particularly in those cases where it does not affirmatively appear that a defendant is in military service. A court, at least, could and should properly take the position that a title continues marketable and salable until it affirmatively appears that one or more of the defendants was in the military service at the time the judgment and decree was entered.

LOCAL RULES, PRACTICE AND PROCEDURE:

On this subject there seems to be a lack of uniformity throughout the country. It would be quite interesting to receive reports as to local rules, practice and procedure of various jurisdictions. With such information possible some effort could be made along the lines of uniformity.

PENDING OR PROPOSED AMENDMENTS TO THE ACT:

We will undoubtedly be confronted with new legislation. There is already pending in Congress a bill to amend certain portions of the act. Other amendments are being suggested. One in particular appears to be quite serious in that it contemplates that the redemption period after foreclosure sale be extended until a reasonable time has elapsed after the completion of the period of military service. There is also a proposal that permits the payment of an obligation upon such terms as the Court may decide within a period of time to be fixed by the Court after the termination of the period of military service. I think the American Title Association could be quite helpful in furnishing its members with information concerning pending amendments as such information becomes available to its officers or executive secretary.

Other subjects for consideration might be suggested and we will be glad to have them brought up. Since we do not have time for a general discussion from the floor I urge you to write in from time to time comments, problems or suggestions on the act that may occur to you. Communications may be sent to the Executive Secretary of the Association, to the Chairman of the legal section or to the Title Insurance Section, or to myself.

Soldiers' and Sailors' Civil Relief Act

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The Soldiers' and Sailors' Civil Relief Act of 1940, approved October 17, 1940, is in many respects similar to the Act of 1918, and Section 302, to which this discussion is for the most part confined, is the same in both Acts, so the decisions under this Section of the former Act appears to apply with equal force to like questions arising under the latter Act.

The purpose of the Act is to suspend the enforcement of certain liabilities of persons in the military service. The Act was drawn with care and particularity for the purpose intended. In Ebert vs. Poston (1925) 266 U. S. 548, 69 L. Ed. 435, 45 S. Ct. 188, Justice Brandeis said:

> "This Act is so carefully drawn as to leave little room for conjecture. It deals with a single subject and does so comprehensively, systematically and in detail. * * * Such care and particularity in treatment preclude expansion of the Act in order to include transactions supposed to be within its spirit, but which do not fall within any of its provisions."

Despite the clarity of its provisions, however, numerous cases were decided under the previous Act, and doubtless there will be many more under the present one. Quite a few cases under the 1918 Act were needlessly brought, in that the parties who complained about the judgments were never in the military service, but seemed to think that the failure of the plaintiff to comply with the Act gave them the right to open up and set aside the judgments against them. The Act does not give a defendant the right to have a judgment vacated because of some other defendant being in the military service.

Section 302 of the Act relates to mortgages, deeds of trusts and other forms of securities in the nature of a mortgage on real and personal property. The Act very clearly covers only those obligations originating prior to its approval, and not only must the person have owned the property at the commencement of his military service, but he also must have title to it at the time foreclosure or such other process begins. This section will probably be amended soon, to cover obligations originating prior to the period of military service, by a bill now pending known as H. R. 7164.

Foreclosure by Action

In Iowa and other states where foreclosure proceedings are by action only, compliance with the Act is a comparatively simple matter. If there is a default of any appearance by the defendant, the affidavit required by Clause 1 of Section 200 must be filed, and unless it appears affirmatively that the defendant is not in military service, the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment, should the judgment be thereafter set aside in whole or in part. It is further provided that under certain circumstances the court may appoint an attorney to represent such a defendant, but no attorney under the Act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

Further provisions are made for staying such proceedings when the defendant is in military service and for opening up judgments rendered against such a defendant during the period of his military service or within 30 days thereafter, if it appears that such person was prejudiced by reason of his military service in making his defense, and provided it is made to appear that such defendant has a meritorious or legal defense to the action or some part thereof. Under Section 205, the period of military service is excluded in computing the period for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators or assigns, whether such cause of action shall have accrued prior to or during the period of such service.

Foreclosure Under Power of Sale

Clause 3 of Section 302 specifically covers those cases where the deed of trust contains a power of sale or provision for confessing judgment, and proceeding by this method is invalid unless the sale is made under an order and the return is approved by the Court. This Clause reads as follows:

> "No sale under a power of sale or under a judgment entered upon warrant of attorney to confess judgment contained in any such obligation shall be valid if made during the period of military service or within three months thereafter, unless upon an order of sale previously granted by the Court and a return thereto made and approved by the Court."

The question we are confronted with at the outset is where to seek such an order, and what Court would have jurisdiction. Some of the states permitting sales under power do not have provisions designating the Court in which to proceed. In John Hancock Mutual Life Insurance Company vs. Lester (Mass.), 125 N. E. 594, the Court said, Page 595:

> ". . . if there is no jurisdiction to make such order as this statute contemplates, mortgagees are deprived of the benefit of this provision, are left without an adequate remedy under powers of sale contained in their mortgages, and must either postpone foreclosure until the act ceases to apply or proceed . . . by action at law. . . ."

In this case, however, it was held

that the existence of the Soldiers' and Sailors' Civil Relief Act gives the Equity Courts of Massachusetts jurisdiction to foreclose power of sale mortgages given by persons in the military service within the time specified in the Act.

It is probable that the legislatures of other states will enact laws prescribing the procedure for this purpose, as, for example, in Minnesota. Chapter 477 of the Session of Laws of Minnesota for 1941 amended Section 9618 of the Minnesota Statutes, 1927, relating to the perpetuating of evidence of mortgage foreclosure sale by advertisement, by making provision for procuring:

> "Section 3. An affidavit by the person foreclosing said mortgage, or his attorney, or someone knowing the facts, setting forth the facts relating to the military service status of the owner of the mortgaged premises at the time of sale.
>
> "The affidavit provided for in subdivision 3 hereof may be made and filed for record for the purpose of complying with the provisions of the Soldiers' and Sailors' Relief Act of 1940, passed by the Congress of the United States and approved on October 17, 1940, and may be made and filed for record at any time subsequent to the date of the mortgage foreclosure sale."

Whether a particular mortgage or deed of trust may be foreclosed under the power of sale therein contained without the necessity of an order of court is a fact question, depending upon whether or not the owner is in the military service. If not, there is nothing in the Act prohibiting the exercise of the power of sale. But how can one be certain that no one in the military service is the owner, or has an interest in the land? Let us look into a few of the decision.

Hoffman vs. Charlestown Five Cents Savings Bank (Mass.), 121 N. E. 15. This was a bill brought by an officer in the military service to get relief from the foreclosure of a mortgage made in violation of Clause 3 of Section 302 of the 1918 Act. It appeared that the plaintiff, who was expecting to be called for service in the army, had conveyed the premises in question to his mother (subject to the bank's mortgage), with an oral agreement that she would reconvey to him in the event he returned safely from the war.

The defendant bank contended that it had no notice or reason to suppose that the plaintiff was the owner of or had any interest in the property, but the court pointed out that there was nothing in the Act which limits its provisions to owners of record or to cases where the mortgagee in fact knew or had reason to know who the owner of the property was. The court said, page 16:

> "The Act in terms includes every case where the mortgaged property is 'owned by a person in the military service at the commencement of the period of military service and (is) still so owned by him.' If the section is construed to apply in every case where the owner is in the military service of the United States whether the mortgagee did or did not know who the owner was, it would seem on the face of it to be a drastic statute. The fact of the owner (when he is ascertained) being or not being in the military service of the United States is a fact which is at least as hard for the mortgagee to find out as it is for the mortgagee to find out who the owner of the property is. Yet without question there is no such limitation as to that fact. . . . Clause 3 of Section 302 was enacted to secure to every person in the military service of the United States who owns property subject to a mortgage within the Act the relief to which he is entitled under the Act. The defendant has urged against this construction of the Section that if that be the true construction of it the result is that until the termination of the time specified in the Act no mortgage can be foreclosed by any mortgagee except under an order of court and it cannot be that that was the intention of Congress. We are of the opinion that this is the result of the true construction of the Act, for in that way alone can a mortgagee be certain that the foreclosure of his mortgage will not be made in violation of the Act. We are of opinion that since this is the result of the true construction of the Act this must be taken to have been the intention of Congress."

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The defendant bank next contended that on the findings of the master, the father of the plaintiff, who was the plaintiff's agent in the care of the property, had full knowledge of the foreclosure sale, and acquiesced in and in fact approved of it. The Court stated, however, that the protection given by the Act is given to the person in the military service, that the right given is personal to him, and for that reason the knowledge, acquiescence and approval of the plaintiff's agent for the care of the property is of no consequences. The Court enjoined the defendant bank from conveying the property in question to the person who bought it at the attempted foreclosure sale.

John Hancock Mutual Life Insurance Company vs. Lester (Mass.), 125 N. E. 594. This was an action by the John Hancock Company for authority to foreclose certain mortgages in accordance with Clause 3 of Section 302 of the Act. These mortgages were upon valuable property in the business center of Boston, and were given to secure the payment of $3,500,000.00. No interest had been paid for several years, and taxes and assessments amounting to many thousand dollars had not been paid. The original mortgagors were the Trustees under an agreement and declaration of trust, and the defendants were their successors in trust. The defendant Trustees held the legal title to the premises, but there were outstanding equitable interests evidenced by certificates for 30 thousand shares of the face value of $3,000,000.00. The shareholders were numerous, and some of them were in the military service within the Act.

The Trustees claimed that the shareholders were the owners, and that no order authorizing foreclosure should be entered because the share-holders were not parties, that some of them had entered military service, and that their rights would be cut off by foreclosure. The Court held that the failure to join the share-holders as parties did not prevent the entry of an order of sale. Their interests were fairly and sufficiently represented by the Trustees whose duty it was to act in their interest. There was no adversary relation or action between them and the Trustees, and the Act does not provide that no order of foreclosure shall be made where owners are in the military service.

The Court said, pages 594 and 595:

> "It is well settled that during the time the Soldiers' and Sailors' Relief Act is in force, a mortgagee forecloses under a power of sale contained in a mortgage at his own peril 'unless upon an order of sale previously granted by the Court and return thereto made and approved' by it; and that while a sale is not necessarily bad, it is of no validity if made during the mili-

tary service of an owner of land, or within three months thereafter, if consummated without such order and return."

The Court held that the plaintiffs were entitled to a decree authorizing the foreclosures in accordance with Clause 3 of Section 302 of the Act.

Morse vs. Stover (Mass.), 123 N. E. 780. This was a suit in equity for specific performance of an agreement to buy real estate. The defendants had refused to carry out the contract and accept deed on the ground that the foreclosure under which the plaintiff obtained title was not made in pursuance of an order of Court as provided by Clause 3 of Section 302. The Court said that the safe course for the mortgagee is to foreclose his mortgage under the order of a Court of equity, as it is only by pursuing that course that he gets a record title not open to successful attack under the Act. In this case no evidence had been presented, so the Court ordered that the case should stand for hearing, and that if Plaintiff succeeded in showing that no person in the military service had any interest in the property, he would be entitled to a decree.

Petition of Institution for Savings in Newburyport and Its Vicinity (Mass.), 33 N. E. (2d) 526. The institution petitioned for the issuance of a certificate of title as owner of land purchased by it at a sale under a power in a mortgage. An associate judge of the land court found that the mortgagor was not then, and never had been, in the military service within the meaning of the 1940 Act, nor had he ever made any conveyance, mortgage or pledge of the mortgaged premises to any one other than the petitioner. He thereupon ordered the issuance of such a certificate, and then reported to the Supreme Court the question of his right to make the order. The order was affirmed. The Supreme Court, after reciting Clause 3 of Section 302, said, page 527:

"That provision has no application where, as is found to be the fact in this case, no person affected by the foreclosure or sale was or is in military service. It furnishes no reason for denying the certificate of title to which the petitioner is entitled on the facts found. Even though the finding may conceivably be wrong, and some person in military service, who has some interest in the foreclosed land and whose rights under the Soldiers' and Sailors' Civil Relief Act of 1940 would not be terminated by the issuance of the new certificate of title, may conceivably come to light later, that possibility should not prevent the land court from acting upon its finding made after adequate investigation. Sometimes a Court, in the efficient administration of justice, must act upon its finding of some fact, usually a jurisdictional one, that cannot be so conceivably adjudicated by the judgment that it may not be questioned in subsequent proceedings. . . . There was no error in ordering the issuance of a new certificate of title."

From the foregoing decisions it is apparent that the mortgagee, in foreclosing a mortgage under a power of sale without order of court, assumes the burden of proving that no person in the military service of the United States had any interest in the property, and that the safer course, if court authorization and approval is not provided for, is to foreclose by action, for in that way alone will he get a record title not open to successful attack under the Act.

There are several interesting decisions pertaining to waiver, prospective operation, public policy, etc., of which the following are representative.

Waiver of Rights Under the Act. A waiver may be founded upon the fact that the defendant, who was in the military service, knew of the pendency of the action and proceedings had therein and made no objection thereto, nor took any steps to avail himself of the benefits accorded to him by the Act. In these circumstances it is a necessary inference that he expressly assented to the proceedings. Church vs. Brown (Mass)., 142 N. E. 91.

Prospective Operation and Pending Proceedings. The Act is prospective in its operation. Thus, in Ebert vs. Poston, supra, it was said that without resort to the common rule that statutes were ordinarily to be construed as prospective in operation, it was clear that Congress did not intend to deal with sales or foreclosure made before the passage of the Act.

And in Taylor vs. McGregor State Bank (Minn.), 174 N. W. 893, the court said that, properly construed, the act could have a prospective operation only, which would include proceedings coming within its terms which were pending at the time of entry of the soldier into the military service, but that it could not be construed to relate back so as to affect a fully completed proceeding, such as one to foreclose a mortgage by advertisement, where the sale took place before the mortgagor was inducted into the military service, and to authorize the court either to annul or undo the same, or to suspend the operation and effect thereof, although the period of redemption had not expired on the date the soldier entered the service.

Public Policy. There is no rule of public policy violated by allowing those in the military service to be sued and served with process, and the Soldiers' and Sailors' Civil Relief Act does not legislate such rule of public policy into being. Tulley vs. Superior Court in and for Alameda County (Calif.) 113 P. (2d) 477. In this case the court said, page 480:

"That statute contains the solemn declaration of the Congress of the United States as to what it believes public policy requires. The Congress has not deemed it necessary in the public interest, to grant those in military service an absolute exemption from civil process. Certainly, if the Congress has considered the problem, and has determined that the public interest does not require that an absolute freedom from civil process be conferred on those in military service, the court should not, and cannot, determine that public policy requires such extreme protection."

Title cannot be taken for the purpose of claiming benefit of the Act, and where the evidence shows that one took title to property for the purpose of taking advantage of the benefits of the Act, in order to delay the right of another in the assertion of his legal rights, the acquisition of a record title will be ineffectual for that purpose. Lima Oil and Gas Company vs. Pritchard (Okla.), 218 P. 863.

Changes in the Act

The Sparkman Bill, H. R. 7164, favorably reported by House Military Affairs Committee on June 2, 1942, is a bill to amend the 1940 Act to extend the relief and benefits provided therein to certain other persons, to include certain additional proceedings and transactions therein, to provide further relief for persons in military service, etc. This bill, if passed, will be known as the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. Some of the more important provisions are as follows:

Section 4 of the proposed Act adds four new sections, numbered 104 to 107 inclusive.

Section 104 is for the purpose of extending the benefits of the present Act to persons who serve with the armed forces of our allies, unless such persons are dishonorably discharged from service or it appears that they do not intend to resume United States citizenship.

Section 106 extends the relief and benefits of Articles I, II and III to persons ordered to report for induction and to members of the Enlisted Reserve Corps ordered to report for active duty during those periods intervening between the date of receipt of such an order and the date of reporting. It was felt that during such periods such persons were in as great need of protection from civil proceedings as during the period of military service. The relief authorized by this section is in addition and supplemental to the relief and benefits granted all persons upon entrance upon active duty.

Section 107 clarifies the right of a person in military service to make certain arrangements with respect to his contracts and obligations, but requires that such arrangements must be in writing. This section reads as follows:

"Sec. 107. Nothing contained in this Act shall prevent:

"(a) The modification, termina-

tion, or cancelation of any contract, lease, or bailment or any obligation secured by mortgage, trust deed, lien, or other security in the nature of a mortgage, or

"(b) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property which is security for any obligation or which has been purchased or received under a contract, lease, or bailment,

pursuant to a written agreement of the parties thereto (including the person in military service concerned, or the person to whom Section 106 is applicable, whether or not such a person is a party to the obligation), or their assignees, executed during or after the period of military service of the person concerned or during the period specified in Section 106."

Section 5 of the proposed Act amends Section 205 of the present Act to toll the running of the statutory period during which real property may be redeemed after sale for that part of such period which occurs after the enactment of the proposed Act. The tolling of such period was supposedly within the spirit of the law, but it was held not to be within the letter thereof in Ebert vs. Poston, 266 U. S. 549.

Section 9 of the proposed Act amends Section 302 (1) to read as follows:

"The provisions of this section shall apply only to obligations secured by a mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of military service and still so owned by him, which obligations originated prior to such person's period of military service."

Section 10 of the proposed Act amends Clause 3 of Section 302 to read as follows:

"(3) No sale, foreclosure, or seizure of property for non-payment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 and during the period of military service or within three months thereafter, except pursuant to an agreement as provided in section 107, unless upon an order previously granted by the court and a return thereto made and approved by the court."

Section 18 of the proposed Act grants to persons in military service relief for a specified period after military service in order to enable them to liquidate their liabilities in an orderly fashion and not be subject to the accrual and payment of these liabilities all at one time. Under the present Act all taxes and assessments must be paid within six months after the period of service, and other liabilities may be deferred no longer than three months after service. Under the proposed section a person may make application for further relief, and the court may grant an order staying enforcement of obligations either for a period of time equal to the period of military service, or, in the case of certain real estate mortgages and contracts, for a period equal to the remaining life of the contract plus the period of military service.

Report of Legislative Committee

LAWRENCE R. ZERFING,
Chairman

Title Officer, Land Title Bank & Trust Co., Philadelphia, Pa.

Due to the fact that this is an "off year" for many of the Legislatures, the report will of necessity be brief, although I have incorporated herein all reports submitted by the various members. In examining the reports I find indications that not all the enactments referred to herein are brand new, but apparently some were passed a few years ago. If any person has any question concerning an Act of a particular State, I suggest that he communicate with the Committee member from that State.

Several committee members sent me memoranda of new case law in their respective states covering subjects which are of interest to the Title Insurance fraternity. These are not mentioned in this report as I understand the new case law will be reported by another Committee.

The various enactments and amendments are as follows:

ARIZONA

Amending the acts relating to sales by executors or administrators so that such sales may be made on credit for a period of three years, instead of one year as theretofore.

Eliminating necessity of bond by administrator where surviving spouse applies for letters and where estate is less than $2,000.

An Act authorizing suits to quiet title as against mortgages, taxes and other liens which have become barred by limitation.

Authorizing the State of Arizona to be made party to an action to foreclose a mortgage on real property when the State claims any real estate or interest in or lien upon such real property.

Giving right to lien for labor, etc., furnished in improving and preparing agricultural lands; the persons so furnishing labor, etc., shall have lien upon the crops produced for all such liens as are unpaid.

Providing for waiver of lien of unpaid personal property tax in the event

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Vice-President, Commercial Standard Insurance Co.

of foreclosure of a pre-existing mortgage. The act is in effect a validation of foreclosure sales clear of personal property tax under certain conditions.

ILLINOIS

Act providing that no action may be commenced on certain documents or claims over 75 years old (This Act was referred to by the Committee Chairman reporting to our Convention last Fall.)

MASSACHUSETTS

An Act providing for court procedure and publication of notice in real estate foreclosure proceedings under the Soldiers' and Sailors' Civil Relief Act of 1940.

An Amendment providing that tax titles shall not be held invalid by reason of any error or irregularity "which is neither substantial nor misleading" in the assessment or collection proceedings.

Amendment providing that in case of a lease for more than seven years the recording of a "notice of lease" signed by the parties thereto shall give the same constructive notice as the recording of the original or an office copy.

An amendment providing for the recording of notice in the registry of deeds of lis pendens in equity proceedings in the Probate Court affecting title to real estate.

An Act providing for the recording of certified copies of petitions in bankruptcy (omitting schedules) or of decrees of adjudications or of orders approving the trustees' bond.

An Amendment as to the form of redemption instrument issued by

municipal treasurers on the payment of tax title accounts and provides that "if a person other than the owner of the fee rightfully redeems, requesting that he be named in the instrument, the instrument shall include his name and, when duly recorded in the registry of deeds . . . shall be notice to all persons of such payment" and that the instrument of redemption need not be under seal.

An Amendment providing that the municipal treasurer's tax title account shall be prima facie evidence in redemption proceedings, and apparently in foreclosure proceedings.

An Act providing that tax liens are liens only on the land affected by the tax and are not liens on all the land owned by the particular taxpayer; this act apparently was made necessary due to instructions issued by State authorities to the effect that taxes on one parcel should be liens on all land owned by that taxpayer.

NEW JERSEY

A number of Acts were passed affecting titles to real estate, of which the following are considered the most important:

Validating all acknowledgments or proofs upon instruments which have been recorded for a period of at least five years.

Providing that any conveyance of lands which has been recorded for one year or more shall be good, valid and effectual notwithstanding any defect in the acknowledgment.

Providing that where the lien of a second mortgage has been extinguished by foreclosure of a first mortgage, any action on the second mortgage bond to recover deficiency must be commenced within one year from the date of the confirmation of sale upon the foreclosure of the first mortgage.

Appropriating $100,000.00 for the purpose of acquiring title for a canal across Cape May County from Cape May Harbor to Delaware Bay.

Providing that the tax exemption heretofore allowed to members of the National Guard shall be continued while such National Guard is in Federal Service and extends the exemption to all bona fide residents of New Jersey who are drafted into or enlist in the army, navy or marine corps.

Providing for condemnation of lands required by the United States, State of New Jersey, or any county or municipality for furthering National or State Defense.

Providing for crop mortgages and defining the nature and extent of the lien of same.

Five special acts were passed divesting the State of its title in certain lands which title had been acquired by escheat.

Providing for uniform judicial notice of the commonor statutory law of any state, territory or other jurisdiction in the United States by the courts of New Jersey.

Providing for the appointment of a substituted fiduciary to serve where the fiduciary named in a will or trust is "engaged in war service."

Validating final decrees in foreclosure of tax sale certificates in cases where married women whose names were unknown were improperly made defendants.

Validating foreclosure proceedings wherein a trustee in bankruptcy was not properly joined as a defendant.

Providing that if buildings are erected or improved by a tenant or a person other than the owner, the provisions of the mechanic's lien laws shall apply to the building only and not to the land.

Providing a method whereby a remainder-man may prevent waste by a life tenant.

NEW YORK

The Legislature of this State passed or amended a goodly number of Acts, and as I understand that a complete

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analysis is being sent out by the New York State Title Association I will merely comment on a few which might be of general interest:

An amendment providing that recitals in real property instruments more than 20 years old and duly recorded that a party thereto is a survivor of a tenancy by the entirety or joint tenancy shall be presumptive evidence of such survivorship.

An Act authorizing infancy or incompetency proceedings to be brought for the release of claims of an infant or incompetent arising from appropriation or condemnation proceedings.

An Act providing for the suspension, replacement and reinstatement of committees and trustees in war service.

An amendment providing that no subscribing witness to a will can derive any benefit therefrom unless there are two other subscribing witnesses who are not beneficiaries thereunder.

An amendment providing that no nuncupative or unwritten or holographic will, bequeathing or devising personal or real estate, shall be valid, unless made by a soldier or sailor while in actual military or naval service, or by a mariner while at sea and when made in the manner therein prescribed.

An amendment providing that mortgages creating liens upon real and personal property, executed by a corporation as security for payment of bonds need not be filed or refiled as chattel mortgages.

An Act providing that an action may be maintained by the owner of any legal estate in land for an injunction directing the removal of a structure encroaching on such land and does not limit the power of the court to award damages.

An amendment providing that an acknowledgment or proof may be made before a village police justice anywhere within the county containing the village in which he is authorized to perform official duties.

An amendment extending a mortgage's time to redeem from a tax sale to 36 months in cases where the notice to redeem is not filed and providing that in case of failure to redeem in time, the sale and conveyance shall become absolute and the mortgagee forever barred.

Validating and confirming the official acts of notaries public, commissioners of deeds and attorneys and counsellors at law exercising the powers of notaries public.

PENNSYLVANIA

The only legislation of any interest to us, passed at the Special Session was that providing for substitution of fiduciaries in the military service and authorizing the co-fiduciaries to act for all during such period of military service; such substitution or authorization is discretionary with the court having jurisdiction of the account.

TENNESSEE

An Act affecting titles to real property acquired from Corporations, making the State Franchise Tax of $1.50 per $1,000 of corporate assets a lien upon the corporation's real property.

VIRGINIA

An Act providing that a will by a married woman, valid if disposing of her own property, shall be a valid execution of a power of appointment by will, notwithstanding the instrument creating the power expressly requires that a will made in execution of such power shall be executed with some additional or other form of execution or solemnity.

An Act providing for release of all liens for taxes or levies assessed by the Commonwealth of Virginia or its political subdivisions prior to 1937 upon real estate owned by any benevolent or charitable association and acquired solely for lodge purposes or meeting rooms, for any years in which such

association received no rents or income therefrom.

An Act known as the "Uniform Simultaneous Death Act" which provides that where title to property or the devolution thereof depends upon priority of death and death apparently occurred simultaneously, the property of each person shall be disposed of as if he had survived, except that where two or more beneficiaries are to take successively by survivorship, the property, in case of simultaneous death, shall be divided into as many equal portions as there are successive beneficiaries, and distributed respectively to those who would have taken in the event that each designated beneficiary had survived. It is also provided that in the case of joint tenants or tenants by the entireties, the property shall be distributed one-half as if one had survived and one-half as if the other had survived.

An Act requiring the trustee in a deed of trust given to secure debts, etc., to pay over to the personal representative of the grantor any surplus arising from a trustee's sale of the property conveyed in trust, when the sale occurs after the death of the grantor, and provides for the distribution thereof by the personal representative, after satisfying claims, etc., against the estate, to the heirs or devisees of the grantor.

An Act releasing all liens upon real estate for taxes and levies due and payable to the Commonwealth of Va. or any political subdivision thereof, prior to January 1, 1923.

Amendment to Sec. 122 of the Tax Code of Virginia, so as to exempt from the recordation tax, deeds of trust conprison or other institution, the remaining trustees shall execute the trust.

An Act which protects the title of a veying land used as the site of a church.

An Act providing that where one or more of several trustees, but less than all, have become incapable of executing the trust because of physical or mental disability or confinement in bona fide purchaser of real estate for value from a devisee, or from a personal representative with certain powers, under the will of a decedent, against the claim of a devisee under another will of such decedent offered for probate after one year from the death of the testator.

An Act authorizing the ecclesiastical officers of religious sects to acquire, hold and dispose of property in their

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Colorado Title Association
Vice-President, The Title Guaranty Company

own names, for the benefit of their sects or denominations, when authorized so to do by the laws, rules and ecclesiastical policy of such sects and denominations.

An Act validating sales of land made in Chancery suits brought under the provision of Chapter 217 of the Code of Virginia, where the purpose of such suits was to pay off and discharge liens on such real estate superior to the rights of the person for whose benefit the suit was brought.

An act relating to the transfer of contingent dower by an infant wife, which provides that an infant wife is competent to dispose of her contingent dower by uniting in a deed, contract, or other instrument executed by a commissioner pursuant to an order of court entered in a suit brought under the provisions of Chapter 217 of the Code or other statute relating to infants' lands.

An Act validating recordations of deeds, etc., and the probate of wills which have been spread on record, where the clerk died before signing the certificate of recordation or probate.

An Act providing for the taking of acknowledgments of persons in the armed forces of the United States by commissioned officers of the United States armed forces; the Act expires July 1, 1944.

An Act providing that unless a deed, executed pursuant to the foreclosure of any deed of trust or mortgage, be recorded within one year after the time the right to enforce said deed of trust shall have expired, such deed shall be void as to all purchasers for value without notice, and lien creditors who shall make any purchase of or acquire any lien on the real estate prior to the time such deed is so recorded.

An amendment to the Virginia Code providing that where a testator devises real estate charged with a legacy or payment of money to another, no suit shall be brought to subject such real estate to such payment after 20 years from the time such payment is due and payable.

An Act validating deeds by corporations where the corporate seal was omitted, or were not attested, on conveyances of land heretofore made.

The Chairman wishes to express his sincere appreciation to the various Committee members, most of whom responded promptly and fully concerning their various States, and without whose cooperation this report could not have been submitted within the short time at our disposal.

(With reference to the excellent articles in this issue treating upon "Trading with the Enemy Act" and "Soldier's and Sailors Civil Relief Act," attention is directed to amendments there to now on the statute books, or in regulations. and proposed further amendments.—Editor.)

Registration, Colorado Springs Convention, 1942

ALABAMA

Goodloe, J. W.	Title Insurance Co.	Mobile

ARKANSAS

Young, O. M.	Little Rock Abstract Co.	Little Rock

CALIFORNIA

Boitano, John L.	Sacramento Abst. & Title Co.	Sacramento
Brand, J. C.	National Title Ins. Co.	Los Angeles
Bruck, Porter	Title Ins. & Trust Co.	Los Angeles
Cairns, Gordon B.	Napa County Title Co.	Napa
Edwards, Mr., Mrs. L. P.	San Jose Abst. & Title Ins. Co.	San Jose
Forward, Mr., Mrs. J. D.	Union Title Ins. & Trust Co.	San Diego
Henley, Mr., Mrs. B. J.	California-Pacific Title & Trust Co.	San Francisco
L'Hommedieu, Mr., Mrs. J.	Alameda Cty.-East Bay Title Insurance Co.	Oakland
McGregor, Mr., Mrs. J.	Union Title Ins. & Trust Co.	San Diego
Morton, Thomas G.	Title Insurance & Gty. Co.	San Francisco
Mullen, L. E.	Contra Costa Cty. Title Co.	Martinez
Murphy, Martin M.	City Title Insurance Co.	San Francisco
Smith, Mortimer	Oakland Title Ins. & Gty. Co.	Oakland
Stoney, Donzel	Title Ins. & Gty. Co.	San Francisco
Wilson, R. R.	City Title Ins. Co.	San Francisco

COLORADO

Baker, E. C.	Baker Abstract Co.	Burlington
Bates, Mr., Mrs. R. L.	Security Abst. & Title Co.	Colorado Springs
Bennett, Gordon S.	San Acacio Abst. & Inv. Co.	San Acacio
Blue, Mr., Mrs. J. E.	The Title Guaranty Co.	Denver
Boehmer, Anna J.	Record Abst. & Title Ins. Co.	Denver
Callaghan, Ralph	Fremont Cty. Abst. Co.	Canon City
Dyatt, Mr., Mrs. A.	The Landon Abstract Co.	Denver
Elder, Mr., Mrs. S. S.	Record Abst. & Title Ins. Co.	Denver
Fairfield, Mr., Mrs. G.	The Title Gty. Co.	Denver
Frost, Hildruth	Colorado Map, Abst. & Title Co.	Colorado Springs
Goodman, Vivien R.	The Title Guaranty Co.	Denver
Graham, Mr., Mrs. D. B.	The Title Guaranty Co.	Denver
Hickman, H. C.	Boulder Cty. Abst. of Title Co.	Boulder
Houston, Mr., Mrs. M. E.	The Title Guaranty Co.	Denver
Hubbard, Mr., Mrs. C. L.	Garfield Cty. Abstract Co.	Glenwood Springs
Hughes, Mrs. H. R.	Record Abst. & Title Ins. Co.	Denver
Isbill, Mr., Mrs. A. S.	Record Abst. & Title Ins. Co.	Denver
Jenkins, Edgar	Arapahoe Cty. Abst. & Title Co.	Littleton
Kruse, J. J.	Elbert Cty. Abst. & Title Co.	Kiowa
Legere, Mrs. Irene	Security Abstract & Title Co.	Colorado Springs
Lloyd, Mr., Mrs. T. J.	Pueblo Title Guaranty Co.	Pueblo
Myer, Mr., Mrs. E. R.	Record Abst. & Title Ins. Co.	Denver
Myer, Mrs. L. A.	Record Abst. & Title Ins. Co.	Denver
Myer, Mr., Mrs. M. C.	Record Abst. & Title Ins. Co.	Denver
Nelson, C. J.	Cheyenne Cty. Abstract Co.	Cheyenne Wells
Nielson, Mr., Mrs. A.	The Title Guaranty Co.	Denver
Oakes, M. H.	The Landon Abstract Co.	Denver
Roberts, Dyson	Platte Valley Title & Mtge. Co.	Sterling
Ruark, L. A.	Rio Grande Abstract Co.	Del Norte
Sheriff, Mr., Mrs. B.	Grand Cty. Abstract Co.	Hot Sulphur Springs
Slane, W. M.	Saguache Cty. Abst. Co.	Saguache
Steinmetz, Elizabeth	The Title Guaranty Co.	Denver
Thompson, Helen S.	Adams Cty. Abstract Co.	Brighton
Trovinger, Mary C.	Security Abst. & Title Co.	Colorado Springs
Waggener, Mr., Mrs. M.	Record Abst. & Title Ins. Co.	Denver
White, Mr., Mrs. C. B.	Jefferson Cty. Abst. Real Estate & Investment Co.	Golden
Williams, Mr., Mrs. R.	Independent Abst. Co.	Grand Junction
Wolf, Grace	Alamosa Abstract Co., Inc.	Alamosa

DISTRICT OF COLUMBIA

Bovard, Hon. B. C.	Federal Housing Administration	Washington
Brown, Hon., Mrs. A. B.	Defense Plant Corporation	Washington
O'Connor, Mr., Mrs. G.	Washington Title Ins. Co.	Washington
Stine, Mr., Mrs. H. S.	Washington Title Ins. Co.	Washington

GEORGIA

Johnson, T. E.	Atlanta Title & Trust Co.	Atlanta

IDAHO

Turner, Mr., Mrs. T. J.	Bannock Title-Abst. Co.	Pocatello

ILLINOIS

Goldman, Sam	Bonded Surveyors of America	Chicago
Hiltabrand, Mr., Mrs. B.	McLean County Abst. Co.	Bloomington
Hunter, Mr., Mrs. R. A.	Stephenson Cty. Abst. Co.	Freeport
Marriott, Arthur C.	Chicago Title & Trust Co.	Chicago
McPhail, Mr., Mrs. W.	Holland Ferguson Co.	Rockford

INDIANA

Allman, Amos D.	Lake County Title Co.	Crown Point
Furr, Russell A.	L. M. Brown Abst. Co.	Indianapolis
Jones, Mr., Mrs. P. S. & Son, Albert	Columbus Abstract Co., Inc.	Columbus
Suelzer, A. W.	Kuhne & Company, Inc.	Ft. Wayne
Wheeler, Lois C.	LaPorte Cty. Abst. Corp.	Michigan City

IOWA

Hillis, Cyrus B.	Des Moines Title Co.	Des Moines
Johnson, Mr., Mrs. R.	Bankers Life Company	Des Moines

KANSAS

Campbell, Mr., Mrs. W.	Campbell Abstract Co.	Garden City
Dozier, John W.	Columbian Title & Trust Co.	Topeka
Gray, Phil A.	Columbian Title & Trust Co.	Topeka
Hawkinson, Mr., Mrs.	McPherson Cty. Abstract Co.	McPherson
Jeffery, Mrs. P. K.		Columbus
Rohrer, Miss Laura	Geary County Abst. Co.	Junction City
Wallace, Marvin W.	Cragun Abstract Co.	Kingman
Wann, Max	Wann & Field	Hays

KENTUCKY

Graves, J. C.	Louisville Title Ins. Co.	Louisville
McIlvaine, L. W.	Louisville Title Ins. Co.	Louisville

MARYLAND

Buck, Mr., Mrs. C. H.	Maryland Title Guar. Co.	Baltimore
Knapp, Jos. S., Jr.	Maryland Title Guar. Co.	Baltimore
Schmidt, Geo. H.	Title Guarantee & Trust Co.	Baltimore

MICHIGAN

McShane, Mr., Mrs. T. G.	Guarantee Bond & Mtge. Co.	Grand Rapids
Munro, Edward N.	Burton Abstract & Title Co.	Detroit
Sheridan, James E.	American Title Association	Detroit
Sherrard, Joseph B.		Detroit
Straehle, Mr., Mrs. E.	Abstract & Title Gty. Co.	Detroit

MINNESOTA

Southworth, E. B.	Title Ins. Co. of Minnesota	Minneapolis

MISSISSIPPI

Taylor, O. B.	Mississippi Title Ins. Co.	Jackson

MISSOURI

Barnes, Mr., Mrs. J. S.	General Title Service	Clayton
Beams, Mr., Mrs. J. B.	Carroll County Title Co.	Carrollton
Becker, Mr., Mrs. R. C.	Lawyers Title Co. of Missouri	St. Louis
Devine, Mr., Mrs. G.	Land Title Ins. Co. of St. Louis	St. Louis
Gill, Mr., Mrs. McCune	Title Ins. Corp. of St. Louis	St. Louis
Hubbard, Mrs. T. H.	Chariton Cty. Abst. & Title Co.	Keytesville
Lincoln, W. A.	Lincoln Abstract Co.	Springfield
McAdams, W. M.	Missouri Abst. & Title Ins. Co.	Kansas City
McDaniel, Mr., Mrs. L.	Kansas City Title Ins. Co.	Kansas City
McNeal, Wm. H.	Kansas City Title Ins. Co.	Kansas City
Miller, R. B.	Murdock and Newby Abst. Co.	Platte City
Murray, Mrs. B. N.	Murdock and Newby Abst. Co.	Platte City
Reppert, A. L.	Clay County Abst. Co.	Liberty

MONTANA

Dykins, C. W.	Realty Abstract Co.	Lewistown
Shields, John M.	Western Abst. & Title Co.	Butte
Welliver, Mr., Mrs. R. L.	Abstract Guaranty Co.	Billings

NEBRASKA

Hanson, Willard B.	J. F. Hanson & Co.	Fremont
Scott, Mr., Mrs. B. E.	Scott Abstract Co.	North Platte
Stewart, B. W.		Beatrice

NEW MEXICO

Webb, Mr., Mrs. C. J.	Fidelity Abstract Co.	Santa Rosa

NEW YORK

Clark, S. A.	Title Guarantee & Trust Co.	New York City
Clayton, Mr., Mrs. B.	Metropolitan Life Ins. Co.	New York City
MacEllven, David E.	Abstract Title & Mtge. Corp.	Buffalo
Sullivan, Mr., Mrs. L. J.	Monroe Abst. & Title Corp.	Buffalo

OHIO

Hall, F. A.	The Land Title Guar. & Trust Co.	Cleveland
Place, Fred R.	The Guar. Title & Trust Co.	Columbus

OKLAHOMA

Gill, Mr., Mrs. Wm.	American-First Trust Co.	Oklahoma City
Johnson, Mr., Mrs. R. C.	Albright Title & Trust Co.	Newkirk
Vaughn, F. A.	Jelsma Abst. Co.	Guthrie

OREGON

Daly, Walter M.	Title & Trust Co.	Portland
Johns, Mr., Mrs. J. S.	Hartman Abstract Co.	Pendleton

PENNSYLVANIA

Schwab, Walter C.	Commonwealth Title Co. of Phil.	Philadelphia
Zerfing, L. R.	Land Title Bank & Trust Co.	Philadelphia

SOUTH DAKOTA

Milne, Mr., Mrs. Lyon	Security Land & Abst. Co.	Sturgis

TEXAS

Crozier, W. E.	Houston Title Gty. Co.	Houston
Gross, L. H.	Guaranty Title & Trust Co.	Corpus Christi
McNamee, V. C.	Stewart Title Guaranty Co.	Fort Worth
Mizell, Mr., Mrs. D.	Elliott & Waldron Abst. Co.	Fort Worth
Moody, Mr., Mrs. A. S.	Texas Abstract Co.	Houston
Morris, Mr., Mrs. W., Jr.	Stewart Title Gty. Co.	Houston
Rattikin, Mr., Mrs. J.	Home Guaranty Abst. Co.	Fort Worth
Ross, Zeno C.	Commercial Stand. Ins. Co.	Fort Worth
Slagle, A. V.	Henrietta Abstract Co.	Henrietta

UTAH

Kemp, Mr., Mrs. R. G.	Intermountain Title Guar. Co.	Salt Lake City

VIRGINIA

Smith, Mr., Mrs. H. L. & daughter L. Lewis	Lawyers Title Ins. Corp.	Richmond

WASHINGTON

Burnham, Mr., Mrs. H.	Clark Cty. Abstract & Title Co.	Vancouver
Demeree, Mr., Mrs. P.	Bellingham Abstract Co.	Bellingham
Hall, Mr., Mrs. C. L.	Washington Title Ins. Co.	Seattle
Klepser, Kenneth C.	Puget Sound Title Ins. Co.	Seattle
Taylor, Dinsmore	Puget Sound Title Ins. Co.	Seattle

WISCONSIN

Hardy, E. W.	Hardy-Ryan Abstract Co.	Waukesha
Hoyt, Mr., Mrs. R.	Title Gty. Co. of Wisconsin	Milwaukee
Jacques, James T.	Title Gty. Co. of Wisconsin	Milwaukee
Lenicheck, Mr., Mrs. W.	Citizens Abst. & Title Co.	Milwaukee
Miller, Miss Grace E.	Belle City Abstract Co.	Racine
Nethercut, W. R.	Northwestern Mutual Life Ins. Co.	Milwaukee
Westring, C. A.	Northwestern Mutual Life Ins. Co.	Milwaukee

WYOMING

Miller, M. Eliz.	Wyoming Abst. & Title Co.	Cheyenne
Spacht, Mr., Mrs. C. W.	Niobrara Abst. & Title Co.	Lusk