TITLE NEWS

Official Publication

THE AMERICAN TITLE ASSOCIATION

Proceedings of the 1945 Convention

CHICAGO, ILLINOIS

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Official Publication of

THE AMERICAN TITLE ASSOCIATION

VOLUME XXV FEBRUARY 1946 NUMBER 1

Proceedings of the 1945 Convention

Chicago, Illinois — December 5th - 7th, 1945

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CODE OF ETHICS

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

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

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

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

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

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

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ROLL OF HONOR

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Past Presidents of the American Title Association

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1.	1907-08	W. W. Skinner	Santa Ana, Calif.
2.	1908-09	A. T. Hastings	Spokane, Wash.
3.	1909-10	W. R. Taylor	Kalamazoo, Mich.
4.	1910-11	Lee C. Gates	Los Angeles, Calif.
5.	1911-12	George Vaughan	Fayetteville, Ark.
6.	1912-13	John T. Kennedy	Elkhorn, Wis.
7.	1913-14	M. P. Bouslog	Jerseyville, Ill.
8.	1913-15	H. L. Burgoyne	Cincinnati, Ohio
9.	1915-16	L. S. Booth	Seattle, Wash.
10.	1916-17	R. W. Boddinghouse	Chicago, Ill.
11.	1917-18	T. M. Scott	Paris, Texas
12.	1918-19	James W. Mason	Atlanta, Ga.
13.	1919-20	E. J. Carroll	Davenport, Ia.
14.	1920-21	Worrall Wilson	Seattle, Wash.
15.	1921-22	Will H. Pryor	Duluth, Minn.
16.	1922-23	Mark B. Brewer	Oklahoma City, Okla.
17.	1923-24	George E. Wedthoff	Bay City, Mich.
18.	1924-25	Frederick P. Condit	New York, N. Y.
19.	1925-26	Henry J. Fehrman	New York, N. Y.
20.	1926-27	J. W. Woodford	Seattle, Wash.
21.	1927-28	Walter M. Daly	Portland, Ore.
22.	1928-29	Edward C. Wyckoff	Newark, N. J.
23.	1929-30	Donzel Stoney	San Francisco, Calif.
24.	1930-31	Edwin H. Lindow	Detroit, Mich.
25.	1931-32	James S. Johns	Pendleton, Ore.
26.	1932-33	Stuart O'Melveny	Los Angeles, Calif.
27.	1933-34	Arthur C. Marriott	Chicago, Ill.
28.	1934-35	Benjamin J. Henley	San Francisco, Calif.
29.	1935-36	Henry R. Robins	Philadelphia, Pa.
30.	1936-37	McCune Gill	St. Louis, Mo.
31.	1937-38	William Gill	Oklahoma City, Okla.
32.	1938-39	Porter Bruck	Los Angeles, Calif.
33.	1939-40	Jack Rattikin	Fort Worth, Texas
34.	1940-41	Charlton L. Hall	Seattle, Wash.
35.	1941-42	Charles H. Buck	Baltimore, Maryland
36.	1942-43	E. B. Southworth	Crown Point, Ind.
37.	1943-44	Thos. G. Morton	San Francisco, Calif.
38.	1944-45	H. Laurie Smith	Richmond, Va.

A. WILLIAM SUELZER

Fort Wayne, Indiana

National President, The American Title Association;
President, Kuhne & Company, Inc.

Proceedings of the Thirty-Ninth Annual Convention

— of the —

AMERICAN TITLE ASSOCIATION

Chicago, Illinois — December 5th-7th, 1945

Address of Welcome

HOLMAN D. PETTIBONE

President

Chicago Title & Trust Co.

Chicago, Illinois

WEDNESDAY MORNING SESSION
December 5, 1945

MR. HOLMAN D. PETTIBONE (Chicago):

We are glad to see you again after the strenuous times of the war. The fact that you are here indicates that you have some standing at home with your transportation agent and, as usual, that is a little indication that you are persons of consequence in your own communities.

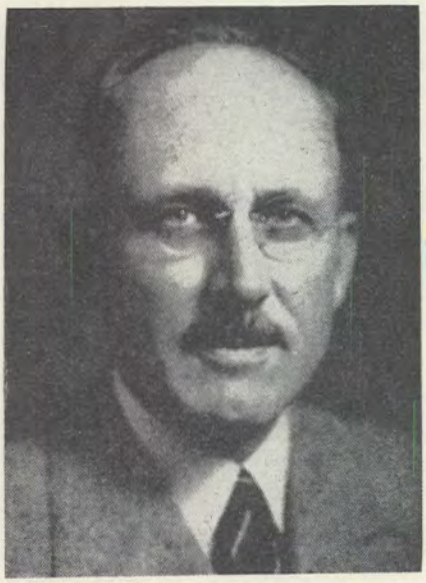
If you got a little too conceited about that maybe when you arrived at this hotel you had some of it taken out of you because you have to be awfully good to get any accommodations in Chicago today. The conditions right now in the hotel business, here as in many other places, are the worst they have been at any time, and it is hard to tell just when they will be any better.

In welcoming you here again, it occurred to me that I might say a few words about an enterprise which we have embarked upon, that is, a series of radio broadcasts. It seemed particularly appropriate in view of the fact that this evening those of you who care to attend will be supplied with tickets and have an opportunity to hear and see not only what usually goes on at a broadcast, but you will have a very special treat in that the president of your Association will use his melodious and mellifluous voice over the radio to greet the Chicago listeners in the Chicago area.

In case you have any suggestions to make to him during the day as to what he ought to say or ought not to say, we will tell you that the script has been carefully prepared, exactly timed, and he will do a good job of delivering it. I hope that you will find it convenient to go around this evening and see for yourselves what we are doing.

A word as to why we have undertaken it. Not at all that it is original, because we checked with our friends in Los Angeles about their program before we embarked upon it here.

We are sponsoring a series of broadcasts by the Chicago Symphony Orchestra. The station selected is a local station, not a national hookup and not a powerful station, but it covers Northern Illinois, Southern Wisconsin and Western Indiana and Michigan. That



HOLMAN D. PETTIBONE

is the area which, it seems to us, has some commercial value for us.

It is a little peculiar, as a matter of fact, that I should have anything to do with this kind of a program. I must confess that I am the world's worst radio fan and worst radio listener. I practically never listen, so that you might take that as an indication of high pressure salesmanship by somebody that we have embarked upon such a program. I do happen to enjoy music, but I know little about the radio.

It seems to me that, not in a sense of apology—I don't know that I ought to apologize about it but at least to explain an objective—it might be of some interest because of what convinced us. I just picked up the presentation that was made to us by the agency who convinced us that we ought to try this. I find that this was the core of the arguments as to why radio rather than something else.

"Radio used with the right kind of program and plan will do a stronger job because it will enable us to reach more people and reach them more often for a given amount of money.

"Second, radio will get more people to give their actual attention to our story. It is well known that people notice and read the newspaper advertisements which tell about products that interest them, but are virtually oblivious to ads no matter how well done about things they are not interested in. The radio listener who is tuned in to our program already has given us his attention so he will hear our story even though he does not know what the title guarantee policy is, let alone why it concerns him.

"Three, radio delivers an entirely different kind of message than is possible in a visual advertisement. The spoken word is more personal and persuasive. The use of stories and dialogs can make our message more interesting.

"Four, telling our story as we propose to do, largely in dramatized form, will often permit us to convey ideas by inference, tone of voice, or casual remarks which would be quite impossible in any other way; and, too, human colloquial conversations can be made to do a clearer job of explaining things and getting around the legal expressions which the layman finds so incomprehensible."

This was a part of the submission to us to persuade us to undertake it,

written by professionals, not people in the title business. Oddly enough, it was rather convincing because we have felt for a long time that the bulk of the customers we have in this area, that is the owners themselves as distinguished from their representatives, brokers, lawyers, bankers, that those customers, the general public, have practically no understanding of what a title guarantee policy is; and since they don't understand what it is or what it is designed to accomplish, anything they pay for it is too much.

We have resorted for years to extensive newspaper campaigns, booklets, letters. We have tried to make the form of policy more attractive, attached to it some little explanations, and still we have been forced to recognize, and recognize it as still the fact, that in our area the great bulk of the people do not understand what a title guarantee policy is, what it is designed to accomplish, or why they should have it.

I am not prepared to say at this time what has happened so far as the radio program is concerned. It has not gone long enough. It does seem to us that the commercials as they are being used lend themselves to the kind of presentation that was outlined. I picked, somewhat at random, one of those commercials, and will just read an excerpt from it.

In general, the setup of the program is a brief commercial at the outset; during the intermission, in the middle approximately of an hour broadcast, about a three and a half minute commercial; and a brief commercial a minute or minute and a half at the end, so that the three commercials run maybe five minutes or six out of a total program of an hour.

The dramatization is what we have been particularly interested in. Some of us had been testing it out on the lady listeners who listened to the symphony to see if they could understand at all what this commercial was about. Here is one.

"NARRATOR: When you buy a home or piece of real estate, it always takes a little time for the papers on the deal to go through. What is it that causes that delay? Is it necessary or just a lot of formalities?

"Well, here is an incident that may help to make this clear. It is the case of John Wilson, who bought a home, and naturally enough is impatient to get possession of it. At the end of several days we hear him as he stops in at the lawyer's office."

You realize I am taking all the parts. Several different persons take these parts in the broadcast.

"JOHN: Well, George, how soon can I move in? Are all the papers ready?

"GEORGE: Now, wait a minute, this is one job that it doesn't pay to hurry. As a matter of fact, I just got the report back from Chicago Title and Trust Company. They have made the title search and they won't guarantee the title to this property unless one point is cleared up. I thought you told me this Frank Sawyer you are buying the house from was a single man.

"JOHN: He is single. I asked him.

"GEORGE: That is funny. This report says that there was a Frank Sawyer living at this same address who was divorced from his wife in 1940.

"JOHN: Divorced? But what difference does that make?

"GEORGE: Well, unless his former wife signs the deed to the house, you can't get clear title.

"JOHN: I can't?

(Sound of a telephone.)

"GEORGE: No, I think I'd better call him right now and find out about this.

"JOHN: I wonder why he didn't tell me he was married.

"GEORGE: Hello, hello Mr. Sawyer. My name is Murdock, John Wilson's lawyer on the deal we are putting through on your house. Yes. I thought you said in the papers you were a single man.

"MR. SAWYER: Sure I am, why?

"GEORGE: I just got a report back from the title company that a Frank Sawyer living on Alden Avenue was divorced in 1940. What about that?

"MR. SAWYER: Oh, sure, I got a divorce in 1940, but I am not married now.

"GEORGE: I see. Well, the point is you will have to get your former wife to sign the deed to the house, too, Mr. Sawyer.

"MR. SAWYER. My wife? What has she got to do with it? She never owned the house. It was in my name.

"GEORGE: That doesn't make any difference. I am going to send you a quit claim deed. You will have to get her to sign, otherwise the title to the house wouldn't be clear.

"MR. SAWYER: It wouldn't, eh? Well, all right, you send along whatever it is she has to sign and I will get in touch with her right away.

"GEORGE: Fine, you will get it in the mail tomorrow morning. Thank you, Mr. Sawyer. Goodbye.

"JOHN: Well, I am glad that is cleared up.

"GEORGE: Now you can see, John, what all this business about searching the title is for. Finding out about this man's divorced wife may have saved you a lot of grief.

"JOHN: You are sure right about that.

"GEORGE: Of course, the reason the title company did find out about it is because the divorce appeared in the Cook County records. If Sawyer and his wife had been divorced in Reno or some other states, this search would never have caught him."

So George goes on and explains a little about that.

Now I have found that the lady listeners to that particular commercial were greatly interested to know that they still had that potential hold on the old man.

Now as you think about that it may strike you as it did us: that you try to put that in a book or newspaper ad that any considerable number of people would read, and I think you will observe that you can do things in this conversational way that you can't do in any other way. Just what the ultimate effect will be we can tell more about after we have had more experience.

The same creative gentlemen who haven't spent as long as some of us in the title business learning all the reasons why you can't do things, I think, are preparing without my knowing anything about it something for us to look at in the movies. It seems they think that some people get their impressions and their understanding better by the spoken word, some by seeing something, and some by a combination.

I don't think they will be putting it forward right away because the budget is more than used up. Some of them are here in the room, and I am announcing that for their benefit particularly at this moment.

One of our men, Mr. Cullin, who is here, has some more of these commercials. If any of you would care to look at any of them, we would enjoy very much having you do it, and making any suggestions. For those who live in the area within reach of this program, we would very much appreciate any comments or criticisms that you would care to make.

The whole thing is very simple in its objective. We are trying to use this medium, which is a new one for us, to see whether we can have a wider understanding and a wider acceptance of what people do in the title business, with an abstract or with a title guarantee policy.

The particular selection of the symphony orchestra is especially fortunate. We contemplate a two-year program and that will lead us into the centennial of the founding of our business in Chicago. We were looking for something to do to recognize that event, and we are perfectly willing to spend some extra money for something of benefit to the people in the area.

So that also was a factor in embarking upon a program that up to this time we would have regarded as far too expensive to justify the cost in our particular business.

When you go over tonight to the program, you are invited to say afterwards whatever you think about it. It may be a profligate waste. It may be that it will misfire, not do the thing that we are aiming at. I am not devoting this time to it with any thought that you gentlemen will follow suit and embark upon the broadcasting business, but rather to draw attention to what, I believe, is a fact that is true outside of the Chicago area: that there are

still a great many people who don't understand at all what the title business is for, what it does; and as to those things that have to do with delay, technical objections, costs, that it is probably a nation-wide problem that all of us ought to be considering in our own areas as to just what is the best way in a particular area to try gradually to make an improvement.

Tht leads me to my final comment. As we look forward in the title business to the next few years, it seems to me that all of us face two major problems. One is the mounting cost related directly to increasing wages; and the other the pressure that is going to be put upon us for speed.

With the housing shortage nation-wide, the commercial building that will accompany any housing building boom, all of us are going to be subjected to terrific pressures in the way of demands for speed. How are we going to meet them? We have been forced to the conclusion in our area that our customers, assuming always accuracy, put speed first in prosperous times and cost second.

When times are less prosperous, that doesn't hold quite so uniformly, but in these next few years when most of our customers are in a hurry because they are making money, it seems to me that we have got to put our ears to the ground and find what things we can do to deliver to our customers more promptly what they want from us; and that while doing that, we can't lose sight entirely of our stockholders or owners of the business who would like to have the business wind up in the black.

I hope you have a nice time here in Chicago. We are glad to see you again.

Address of the President

H. LAURIE SMITH
Immediate Past-President,
American Title Association
President, Lawyers Title
Insurance Corporation
Richmond, Virginia

It is unfortunately true that that script which the president of The American Title Association will broadcast tonight was very carefully prepared and edited.

For once in his life the president will be operating under wraps, which will keep him from his customary indiscretions of speech. But I wish it were not so because I would like to put into that broadcast a plug for the Chicago Title so that I might tell the people of Chicago what wonderful and gracious hosts our friends of the Chicago Title and Trust Company are; how they have been so since memory of man runeth not to the contrary.

I can't remember when the Chicago Title and Trust Company first began to entertain the American Title Association, but it has been going on ever since I have been a member of The American Title Association, and each year it gets better. I thank you on behalf of The American Title Association.

Brethren, I face you for the first time without a biblical text because we have come to the time for the president's annual report, and somehow biblical texts lead me into indiscretions of speech and this year I am on my good behavior.

One of my daughters, some years ago when she was a little girl, used to come down to my office in the afternoon to ride home with me. She had to wait usually until I finished. One afternoon she heard my wife sympathizing because I was so tired. She said, "Mother, I don't see why you worry about father being tired. I watch his office and he just sits there and talks, and other people do the work."

That is something of the report of your president. Seriously, I am very much chagrined and disappointed that some of the things which I had hoped I might have a part in accomplishing for The American Title Association could not be accomplished this year.

I offer no alibis and no apologies. The situation is known to you all. You have all been up against the same thing: the days just weren't long enough to do the things that absolutely had to be done. Nevertheless, your Association has, through the efforts of your executive secretary and the chairmen of some of your sections and other members of the Association, functioned as best it could in this year, and I feel has accomplished much for the members.

One of the things which I hope we are about to accomplish has to do with putting the finances of the Association on a sound and equitable basis. The first convention of The American Title Association which I ever attended was in Atlantic City in 1926. The subject which took up the greater part of the convention was the financing of the association. I assumed that that was just some unusual situation due to that particular year. I didn't know then that that was the perennial topic of major interest in The American Title Association.

We have gone on certainly for 20 years subsisting on inadequate dues and making up deficiencies through passing the hat. I sincerely hope that before this convention adjourns that the finances of the Association will have been put on a sound and equitable basis, according to the ability of the members to pay.

Kenneth Rice, who is chairman of the Finance Committee, has done a prodigious amount of work. You will get all the details of that when he makes his report, but I want to take this opportunity of saying that if nothing else has been accomplished in the year 1945, and we do succeed in geeting our finances on a sound basis, personally I will regard the year as a success because it will have laid the foundation which we have been lacking, the ability for enlarged service to the members: service in meeting the problems of rise in costs and diminishing profits, which Mr. Pettibone has just mentioned; service in defending and protecting the interests of the members of the Title Association; service in improved public relations.

Perhaps some day, who knows, we may even have service to the members in publicizing their products. Chicago Title is broadcasting in the Chicago area. I don't believe that was done just to get a little advantage over their competitors, who I admit are pretty tough, but I think it was a very wise recognition of the necessity for better undersanding on the part of the public. The time may come when The American Title Association will be rendering that service on behalf of all of the members on a national broadcast. Maybe that is a dream.

The subject of legislation has been one of continuing concern to The American Title Association during the past year. The Southern Fire Underwriters' case, as you gentlemen know, has had its moritorium through Public Law 15, but we know also that it must be followed by much legislation regulating the title insurance industry. Judge Oshe and Ed Dwyer have done a lot of work on that and they will give you a report which I think you will find of great value.

Some of our abstracters say, "Well, that is just legislation about regulating title insurance, that doesn't concern us." I have been somewhat amazed at

the attitude of some of our abstracter members that legislation seems to them not to touch them, to be of little concern. They seem to fail to understand why The American Title Association should be spending the time of the secretary, time of members of committees, and so forth, in regard to legislation, as though it didn't touch them. Well, it is going to be different. I think they are going to find out that there is a lot of legislation that affects the abstracters.

Just touching very briefly on some of the current bills which may be of interest, you have a three billion dollar federal state highway construction program. When that gets under way, those highways will be run through cities other than Chicago and New York. They will be going across the hills of Montana and the plains of the Middle West and there is going to be an awful lot of title work involved.

You have your river valley authorities. I can only touch on what that means. A lot of you know already what it has meant in the way of title work. Some of you know that co-operation among title people in such projects is essential to assure that proper evidence of title is furnished, sufficient for the purposes of the project; and co-operation is necessary to avoid the quotation of rates which are wholly inadequate and which very frequently are made under a mistaken idea of the competitive situation or under a lack of understanding of just what was involved. You can all remember what I am talking about if you will think back to the days of HOLC.

There is other legislation pending—Clare Luce's proposed housing bureau and the amendments to the Veterans Administration G.I. Bill; Patman's straight-jacket bill which would set up a director of housing stabilization, and the effect of which, according to the National Association of Real Estate Boards, would be to kill building and stop housing transactions by intimidation of the gestapo type.

But the prize one is the Wagner-Ellender-Taft housing bill. W.E.T. I think I will read you that bill. It is only 110 pages long. There is a lot of stuff in there. (Laughter.) If you think it doesn't touch you, you'd better read it some time.

Before I conclude my report, I want to touch on a little pet project of mine. All of us have been concerned by the problem of the returning disabled veteran. We know that the government and the American people will do all that is possible to provide in a financial way for those men, but many of them need more than that.

It isn't dollars they need; it is restoration to normal life and normal activity. I have been in conference and correspondence with the Veterans Administration to determine to what extent the title industry may be able to absorb some portion of those disabled veterans under what the Veterans Administration calls, I believe, an agreement to train on jobs disabled veterans.

In making up, I can't think of the word, but we will call it classification, of the types of jobs in the title business, it is very interesting to find how many of those jobs can be held by a partially disabled veteran. Those men, of course, will know nothing about the title business, nothing about the abstract business. Generally speaking, a period of time ranging from six months to a year may be necessary before they are able to hold down a job in a way that they can earn a living salary.

Under this agreement to train on the job the disabled veteran, the government assists the veteran through that period of apprenticeship, assists industry in helping him qualify himself, helping the employer to qualify this

H. LAURIE SMITH

Immediate Past-President, American Title Association

President, Lawyers Title Insurance Corporation

Richmond, Virginia

man. I believe that the thing has considerable possibilities. No doubt many of you are already using the idea in your own business.

I am thinking of something on a little broader scale than that: preliminary courses conducted in groups by the government for these disabled veterans, perhaps in regions. I think that is the only practical way.

To illustrate, the New Jersey Title Association has a course for abstracters which it has been conducting. This wasn't for veterans; it was just to train abstracters. Those classes are being attended by people in the Newark, New Jersey, area for the purpose of qualifying themselves for jobs. If the New Jersey Title Association can do that job in one area, the government can do it on a broader scale and accelerate the program of qualifying these men for jobs in the title business.

That will be, if it works, not only a help to the veteran, it is going to be a help to the title industry. Mr. Pettibone has emphasized the fact that during the coming years your problem will not be the old problem of the title man to get some title business to keep his competitor from getting it; the problem is going to be to give a service to the public which will keep the public reasonably satisfied.

If you give extra good service, you just don't have to worry about competition for the next five years. But we have all had our organizations shot by the war. Our men are coming back from the service. But a lot of our trained women employees may not come back. The people in the title industry are going to have to handle a volume of business which they haven't even contemplated since 1926.

If the service doesn't improve over what it is in some areas, then the title industry is in for some awfully bad public relations, and you are going to find that it isn't just a question of holding your customers under that inadequate service. It may turn out to be a question of whether you will even have a title business, if it gets any worse than it is in some areas.

Gentlemen, it has been a great honor and privilege to serve you during the past year. I sincerely appreciate it, but I wish that circumstances had permitted me to do a better job. Thank you.

From the Mortgage Bankers of America

By
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Thank you for the gracious invitation extended on behalf of your association by my valued friend, Judge Oshe, to speak before this convention. I take the invitation, as I know it was intended, as a compliment to the Mortgage Bankers Association of America, of which I happen to be the President for the ensuing year. I am speaking today only as an individual and not purporting to convey the thought of our Association except in such instances as I quote the heretofore expressed action of our Association as a whole.

The American Title Association is a progressive, forward looking organization, one which has always performed a fine service for its members and for the public at large. You have a most capable executive secretary in Mr. James Sheridan with whom we have had many very pleasant and very helpful contacts. I know you will have a steady growth, and continued success in representing one of the most important fields of business in this country, a field which is of ever growing importance to us in the mortgage lending field.

I was told I could select my own subject. Obviously I am not going to select as a subject your business of which you are masters and of which I know little technically. Your program is filled with masters of the science of your very important field in American business life. It is the fashion today, it appears to me, for many who have access to the press or platform to tell the other fellow how to run his business. That would be the easy way out for me this morning. I toyed with the temptation for awhile but I am going to resist it. So I'll try to say a few things about the business of our Association because I believe no two national associations have more in common than your own and ours. Our mutual interests run parallel at so many points and merge in from so many diverse directions that many times it would seem we were working for a common objective. If our business is good yours is and if ours isn't yours isn't either.

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It may interest you to know that of the more than 1,000 M.B.A. members over 50 are Title Companies. This may not appear such a large number when compared with your own total membership of over 2,000, but these companies have become members because they have looked into our program and our objectives and have become satisfied that there is a close relationship between the title company and the mortgage lender, and further because they believe we have something for them, and they in turn have a worthwhile contribution to make for the betterment of mortgage banking.

Our title companies are highly valued members of the M.B.A. They have been at the forefront in many of our most important activities and to many of them we are under a great debt of gratitude for services rendered in our Association. My colleague in the 1945-46 administration is Mr. Guy T. O. Hollyday, President of the Title Guarantee and Trust Co. of Baltimore, and Vice President of our association. Mr. John C. Thompson of Newark, New Jersey, who is chairman of our very important clinic committee which will hold mortgage clinics in various parts of the country this year, is President of a New Jersey Title Company. Mr. Aksel Neilsen is a member of our executive committee for the coming year. He is executive Vice President of the Title Guaranty Co. of Denver. Several executives of the Chicago Title and Trust Co. have served on important committees.

These are but a few of the many title men who are actively working within our organization on matters that benefit all mortgage lenders and indirectly all title men.

I only mention these things to emphasize my conviction that we have many interests in common and that at times our problems parallel each other. You look to us for business. We look to you for a most important service. Many of your member companies have trust departments which invest in mort-

gages. In the past our two associations have cooperated in respect and mutual understanding. This valued relationship will continue.

It was about a year and a half ago, as I recall now, that your field, and this association, were greatly disturbed, and rightly so, by the effort to secure an amendment of the federal rules of civil procedure which, had it been successful, would have meant giving the government the power to seize the property of thousands of property owners without due and sufficient notice. This was known as Amendment 71-A. Had this amendment been put into operation it would have been a very severe blow to absentee, and even present landlords, and especially to institutional owners of real property. Many of you here this morning were active in that fight to prevent this action and the full force of M.B.A. was with you in that effort. We participated in the joint committee, and the chairman of our Legislative Committee, Mr. W. L. King of Washington, was particularly helpful.

I have a final observation to make regarding the importance of the M.B.A. to you gentlemen. Our organization has a thousand and sixty-eight members, including 53 title companies, 190 banks, 500 mortgage firms acting as life insurance company correspondents; 120 life insurance companies, 36 local associations and 137 others. Every life insurance company in the country with more than $50,000,000 assets each, except one, is a member of M.B.A. These are all good customers of yours.

We are conducting an aggressive yet restrained program in behalf of mortgage lending and mortgage investments, and in all modesty, doing rather well at it, I believe. We are engaging in no flamboyant, high pressure activities which will reflect adversely upon our members to whom public confidence and respect is their most prized asset. We are proceeding in a careful, dignified, yet determined manner to represent properly those who have entrusted their problems to us. I may tell you that plans are now being perfected whereby the M.B.A. will be even a more potent force in shaping the policies and rules of mortgage lending. I believe this is important news for title men because what helps the mortgage lending industry helps you.

As title men you are all familiar with the mortgage lenders problems as of today. I think it may be interesting to reflect to you some of the thinking represented at our 32nd Annual Convention held last month in New York. Nearly 900 mortgage and real estate men, title and trust company executives, commercial and mutual savings bankers, and life insurance company officials from all over the country attended. The program was built around practical mortgage problems. The meeting proved an excellent sounding board to determine what the mortgage men of the country are thinking, what opinions they hold, and what their ambitions and plans are for the future. This, it appears to me, is of interest and importance to you gentlemen in the title field.

Throughout the whole convention ran the note of preservation of America's traditional system of private enterprise. We believe this country attained its pre-eminent position by the private enterprise system and we want to see it retained. Preservation of the private enterprise system is the job of all of us. It is not an academic subject—it is a very live subject. There are so many things, maybe seemingly unimportant taken singly, that threaten it,

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that it behooves us, one and all, to be on our guard constantly and act accordingly, and it is only by organizations such as yours can the work be done most effectively.

I suppose the subject most often discussed and thought about was inflation. And to this hour there appears no adequate or satisfactory answer. The end likely is not yet in sight to the ever increasing "up" in prices of material and labor and the finished product—the factory or commercial building or house. Higher prices appear to be inevitable. Prices in many instances appear to have outrun the rise even in building material costs and this is inflation in a very marked degree.

Doubtless there is no answer except resumption of building on a very large scale. Whether this should be flung wide open at once without restraints of any kind in the hope that big production will put an early end to the inflation dangers and abuses that exist is the debatable question of the moment. If it is to be regulated, and how it should be regulated, with all the conflicting situations regarding shortage of material, shortage of trained workmen, inefficiency of workmen, strikes like the present one in the lumber producing field, complicated with proper protection of our returning veterans of the war, and protection of our house hungry civilian population, no one knows at the moment. How far prices will go, how long they will stay up, at what figure they will become stabilized your guess is just as good as the conflicting theories of economists, of government officials, of the countless writers pouring forth thousands of brochures on the subject. By what rule of thumb you should gauge your trust investments in mortgages you are as good a judge as anyone else.

It would be a very simple matter for me to evolve some theories and give some advice this morning on this subject—it's a popular pastime, but tomorrow's happenings might scrap it all.

Maybe it's a good time to pause and take a good look at the history of the past, with a reasonably cautious view of the present hectic situation, and a considered judgment of how long these high sales values will last, and act accordingly, erring, if erring there be, on the side of caution; even if later events may prove over the next decade that the caution is unfounded. Once in, you're in and it's difficult to get out, and it's always easy anyway to get in at any time if the spirit moves.

Idle money at 4 or 4½% is irritating and counts up, but depreciation of values through overbuilding or other economic causes which at the moment cannot be foreseen with certainty, is equally irritating and counts up ever so much faster.

Barring imponderable possible, but probably not likely situations, it would seem real estate values would stay up at least for a few years—maybe they are here for quite a few years, maybe we have moved into a higher plane of reasonably permanent prices—it's anybody's guess—and you will get little help from the wealth of disagreements of experts on this subject.

The F.H.A. has been and is a steadying force in these highly contradictory and confusing situations. It has always, all things considered, been admirably and fairly administered. It has had the defects of any new large and fast-growing institution. Under the new commissioner, Mr. Raymond M. Foley, it is being streamlined and modernized, intending to become a still greater force in the whole building and financing economy. It was well conceived and has been well administered and enjoys the confidence of the lending and investing public.

There is little point in presenting statistics about the housing shortage or the shortages that exist almost everywhere in almost everything.

You have read reams of writing about it and listened to countless talks on the subject. The housing shortage in my opinion, is our No. 1 domestic

problem. Serious as the deprivation and actual suffering is, the social implications are even more serious. I would strongly urge you to read carefully the Wagner-Ellender Bill now with bi-partisan support from Senator Taft, known as Senate Bill 1592. M.B.A.'s representative is appearing this morning before the Senate Banking and Currency Committee citing our reasons for opposing many of the features of the Bill as now written. The bill, while commendable in motive, does, as now written, carry a threat to the whole system of private enterprise. I am hopeful that many important and needed changes and amendments will be made in this bill before it is presented for a vote.

I wish I could have been more liberal of advice and more sure of direction in my remarks this morning, but there is no chart, or compass, or star to go by, and the most that I can modestly hope is to have attempted to stimulate individual and solitary thought on a few of these problems, and these are only a very few of the many. I have often thought we might all be better off if we took an hour off once in a while and sat down alone and, guided only by our own experience, think through, alone, these important and vexatious problems. You gentlemen of the American Title Association, and all men in the title field, are as much interested, and as much affected directly or indirectly as we—they affect your business and ours, vitally perhaps. Hopefully, out of continued thought and reflection, may there come an approximate sound conclusion of it all. Ten years from now, maybe five, we will have the answers.

I hope these answers will make us all reasonably happy—that is my heartfelt Christmas wish and I wish it to you—one and all.

The 40-Year Marketability of Title Statute of Michigan

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The Bench and Bar of every state have long been scornful of the "flyspecker." We recognize in him all of the unsavory and unethical traits of a shyster. Yet when each of us is put to the test in title examinations we frequently join his class. Mind you, we do not admit even to ourselves that we are in the class. Instead, we point to our duty to our client and the possibility of the supposed objection being raised upon a future examination. Of course, the genuine flyspecker defends his position upon the possibility of an adverse court judgment, but it is difficult to see wherein there is much distinction between hiding behind the possibility of an adverse judgment, and hiding behind the possibility of an attorney's adverse opinion. Both have a disastrous effect on many real estate transactions. In certain instances we may say that the land is of great present or possible great future value and requires a special diligence in construction against the validity of title.

These excuses may satisfy our conscience but they are of little value to an incensed public which considers our function as something to be endured rather than cherished.

The Bench has not been too helpful in alleviating the difficulty. Every lawyer has encountered the experience of finding cases in the advance sheets which have caused him to revise his preconceived rules on which he has been approving titles, with the self admonition that "it just goes to show that you can't be too careful in this business." The result has been that examiners by and large are men who construe against the validity of title rather than in favor of it. This characteristic may add to their local reputation as safe and sane lawyers but it detracts from the value of real estate as an asset.

It is of little value to be aware of a fault unless steps are taken to correct it. So far there have been evolved two methods of attacking the problem.

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The first is the adoption of standards of title examination by various Bar associations. Under such standards it is sought to promulgate rules of law in brief form, for uniform application to facts frequently encountered in examining titles. Where adopted the work has been productive of much good for the reason that an examiner has the benefit of mass opinion to substantiate his decision to waive an objection to title. Where ordinarily he would hesitate to approve title on his own initiative he will now do so upon the basis of the impersonal initiative furnished by his Bar association. Such standards will undoubtedly have considerable weight with the courts of last resort in determining questions of marketability of record title. However, lawyers realize that they have no binding effect upon the courts since they are not legislative enactments.

Most of such standards of title that have come to my attention have one standard in common. That is one which in effect states a period of time behind which no examiner shall be required to go in his investigation of title. The Connecticut period is sixty years, the Allen County, Indiana standard is fifty years and so on. The selections of these various periods of time are purely arbitrary. They bear no relation to the periods of time provided by the statutes of limitation. Though they are shorter than the chains of title ordinarily required prior to adoption of the standards, yet few lawyers argue that they are not sufficiently long to provide reasonable safety to their clients.

The second method of curing the fault lies in legislative enactments which seek to cure defects in record title by laws which provide that defects which arose before a given period of time shall have no effect upon title. The common merit of this method lies in the fact that if constitutionally enacted the courts in a proper case must give effect to such acts. The common defect in most of such acts lies in the fact that they attempt to specifically

enumerate the types of defects which are to be considered as voided. While an act which specifically voids a certain defect permits an examiner to disregard that defect it does not relieve him of the tedious and often wasted effort of examining the entire chain of title for the discovery of defects not covered by the act.

The Bar of Michigan like those of most other states has long been troubled by the flyspecker problem. In recent years it has been bombarded by requests from the trade associations of the real estate and building and loan men to take some action to solve the difficulties. Certain of our legislators, responding to the popular demand, introduced bills in the 1945 session with the intent of eradicating the evil. One of these bills declared that no action could be brought to try title to land where the action involved a defect more than 25 years old. This bill if enacted into law would have perpetuated old defects but would not have cured them. Another bill would have made a lawyer guilty of barratry for calling attention to defects if it was later disclosed that they had been cured by the statute of limitations. It would have had the effect of decreasing the number of lawyers who are willing to examine titles and of increasing the burden of our public prosecutors but it likewise would not have cured any titles.

These bills though they may appear ridiculous are nevertheless indications of the public temper. The State Bar Commissioners therefore delegated to the Committee on Real Property Law the task of drafting a proposed bill to be given to the legislature as a guide for their consideration. The bill as formulated was adopted by both houses and is known as Public Act No. 200 of the 1945 session.

The essence of the act is contained within the first three sections. They provide as follows:

"Section 1. Any person, having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 40 years, shall at the end of such period be deemed to have a marketable record title to such interest, subject only to such claims thereto and defects of title as are not extinguished or barred by application of the provisions of succeeding sections of this act and subject also to such interests and defects as are inherent in the provisions and limitations contained in the ruminents of which such chain of record title is formed and which have been recorded during said 40 year period: Provided, however, that no one shall be deemed to have such a marketable record title by reason of the terms of this act, if the land in which such interest exists is in the hostile possession of another.

"Sec. 2. A person shall be deemed to have the unbroken chain of title to an interest in land as such terms are used in the preceding section when the official public records disclose:

"(a) A conveyance or other title transaction no less than 40 years in the past, which said conveyance or other title transaction purports to create such interest in such person, with nothing appear-

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ing of record purporting to divest such person of such purported interest; or,

"(b) A conveyance or other title transaction not less than 40 years in the past, which said conveyance or other title transaction purports to create such interest in some other person and other conveyances or title transactions of record by which such purported interest has become vested in the person first referred to in this section, with nothing appearing of record purporting to divest the person first referred to in this section of such purported interest.

"Sec. 3. Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all interests, claims, and charges whatsoever the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred prior to such 40 year period, and all such interest, claims, and charges are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such interest, claim, or charge may be preserved and kept effective by filing for record during such 40 year period, a notice in writing, duly verified by oath, setting forth the nature of the claims. No disability or lack of knowledge of any kind on the part of anyone shall suspend the running of said 40 year period. For the purpose of recording notices of claim for homestead interests the date from which the 40 year period shall run shall be the date of recording of the instrument, non-joinder in which is the basis for such claim. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

"(a) Under a disability,

"(b) Unable to assert a claim on his own behalf,

"(c) One of a class but whose whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

"Sec. 4 This act shall not be applied to bar any lessor or his successor as reversioner of his right to possession on the expiration of any lease, by reason of failure to file the notice herein required. Nor shall this act be deemed to affect any right, title or interest in land owned by the United States.

"Sec. 5. To be effective and to be entitled to record the notice above referred to shall contain an accurate and full description of all the land affected by such notice which description shall be set forth in particular terms and not by general inclusions. Such notice shall be filed for record in the register of deeds office of the county or counties where the land described therein is situated. The register of deeds of each county shall accept all such notices presented to him which describe land located in the county in which he serves and shall enter and record full copies thereof in the same way that deeds and other instruments are recorded and each register shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing such notices in his office each register shall enter such notices under the grantee indexes of deeds under the names of the claimants appearing in such notices.

"Sec. 6. This act shall be construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons dealing with the record title owner, as defined herein, to rely on the record title covering a period of not more than

40 years prior to the date of such dealing and to that end to extinguish all claims that affect or may affect the interest thus dealt with, the existence of which claims arises out of or depends upon any act, transaction, event or omission antedating such 40 year period, unless within such 40 year period a notice of claim as provided in section 3 hereof shall have been duly filed for record. The claims hereby extinguished shall mean any and all interests of any nature whatever, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental.

"Sec. 7. Nothing contained in this act shall be construed to extend the periods for the bringing of an action or for the doing of any other required act under any existing statutes of limitation nor to affect the operation of any existing acts governing the effect of the recording or of the failure to record any instruments affecting land nor to affect the operation of Act No. 216 of the Public Acts of 1929 nor of Act No. 58 of the Public Acts of 1917 as amended by Act No. 105 of the Public Acts of 1939.

"Sec. 8. No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land, and in any action brought for the purpose of quieting title to land, if the court shall find that any person has filed a claim for that reason only, he shall award the plaintiff all the costs of such action, including such attorney fees as the court may allow to the plaintiff, and in addition, shall decree that the defendant asserting such claim shall pay to plaintiff all damages that plaintiff may have sustained as the result of such notice of claim having been so filed for record.

"Sec. 9. No interest, claim or charge shall be barred by the provisions of section 3 of this act until the lapse of 1 year from its effective date, and any interest, claim or charge that would otherwise be barred by said section 3 may be preserved and kept effective by the filing of a notice of claim as required by this act during the said 1 year period."

The first query that occurs to most lawyers is as to whether the act will be held to be constitutional. It will be noticed that in a proper case vested interests are destroyed if no notice of claim is filed. It should be remembered though, that our recording acts likewise destroy vested interests on behalf of innocent purchasers for value. If A being the owner deeds to B his interest becomes vested in B. If however B fails to record his deed and A later deeds to C, an innocent purchaser, who records his deed, the interest of B is effectively divested. Yet none of us consider the recording acts as being unconstitutional. The reason for this is the fact that our jurisprudence has long considered the right of free alienation of land as an important element of its value. This fact is illustrated by the ancient rule against perpetuities adopted by the common law jurists and the more modern statutes against restraints upon alienation. In fact, our own recording acts were adopted for the purpose of making it easy to prove ownership upon a sale and to therefore foster the free-

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dom of alienation of land. There has been one case from a court of last resort which confirms the Committee's opinion that the act will receive favorable consideration from the courts. It is the case of Lane *vs.* Travelers Life Insurance Company, 230 Iowa, page 973. The case involved a future interest which was cut off by Section 11024 of the Iowa Code which in its divestiture provisions is similar to the Michigan Act. It provided for termination of rights originating prior to January 1, 1920 unless a claim is filed in accordance with the Act. One brief paragraph of the Court's decision will illustrate its views:

> "(5) We see no escape from the conclusion that the claim of the minor plaintiffs arose or existed prior to January 1, 1920, and that it is barred by the plain provisions of Code section 11024. It may be that the legislature did not intend this provision to apply to such a case as the present. However, as we view it, the language of the statute is plain and unambiguous. Nor are we concerned with the policy of the lawmakers in enacting this measure. We may observe, however, that there can be little doubt of the desirability of statutes giving greater effect and stability to record titles. We believe it our duty to enforce this statute as written. The trial court should have dismissed the plaintiff's petition."

Examination of the provisions of Act number 200 discloses that its operation is expressly limited by two factors. In order to claim advantage from its provisions an owner must show:

1st: That he has an unbroken chain of record title for 40 years and

2nd: That there is no one else in the hostile possession of the land.

Another factor of limitation that will undoubtedly be recognized in later interpretation is the fact that the act deals with record title only and not possessory title. It does not pretend to cure the existing situation that good record title may exist in one person while actual ownership may be vested in another. Common instances of this situation are chains of title based on forged deeds, deeds obtained by fraud or given in fraud of creditors. Even more common is the title based on adverse possession without even color of title in the owner.

The Committee were of the opinion that these limitations upon its operation would prevent to a large extent the disruption to accepted business practices that an act of this radical character would ordinarily entail. If a person is in possession of his home another could not be in hostile possession and could not force him into litigation on title on the strength of the act. Likewise a false record claimant would have to show an unbroken chain covering forty years before having any standing in court even if the land was vacant. Then too if the land was in no one's possession at the time the claim was asserted but it had been in possession of the real owner for a sufficient time to earn a possessory title claim, there is nothing in the act to preclude a claim under such possessory title to the exclusion of a false claimant under record title. Likewise it is believed that the constructive possession given by statute to a true owner of vacant land would be sufficient to defeat the claim of a holder under an "ancient wild deed" who had only recently taken posession.

Similarly while the act may be used effectively in the termination of rights under express easements which have been abandoned, it is possible that such easements which have continued in use may be preserved by the courts by reason of their user even though the grant itself may be extinguished by reason

of its creation previous to the forty year period.

It is not anticipated that the act will have the immediate effects of eliminating the need for an abstract back to government. However, after it has received court construction, it will probably tend toward elimination of a full abstract as a prerequisite in all examinations. It is probable that while attorneys will continue to make their examinations of title in chronological sequence from the earlier chain down through the later conveyances in the chain of title, the modern tendency of emphasizing recent conveyances and title transactions and of paying less attention to the older ones will be greatly accelerated. The beginning of the chain in point of emphasis, will be with the present holder's title and the examiner will retrace its precedents with lessening concern instead of requiring a perfect link for each transaction from the government patent on down to date.

In order that the act could have the effect of closing the door on ancient defects it was necessary to require that meritorious interests must be extinguished unless protected by the filing of claims of interest. It is surprising to note that few such notices have as yet been filed. This is particularly surprising when it is considered that mortgages having long terms yet to run before the due date and future interests in which vesting has been delayed more than forty years both run the risk of extinction. Thus a trust mortgage encumbering land in Michigan executed in 1900, securing payment of bonds maturing in 1950 will be extinguished by the terms of the Act if no notice is filed to preserve the lien. Likewise a contingent remainderman must file notice to preserve his status as claimant where the particular estate has exceeded or is nearing forty years in duration.

It is hoped that the Act's provisions will be widely publicized so that attorneys may have ample opportunity to protect meritorious interests by the filing of the required notices during the one year waiting period.

The Act has had little application in practice and no court tests at this time. It is therefore premature to make predictions as to its full effect in operation or to draw conclusions with respect to the advisability or need for suggested amendments. It would however be in the nature of the supernatural if an act as far reaching as this one did not show flaws and defects in the light of experience in the courts. The committee that drafted the act will listen attentively for signs of weakness in its operation, and will welcome the many helpful suggestions that the title companies of the country can give.

The Abstract Business — Interstate or Intrastate

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The purpose of this paper is to determine, if possible, the position of the abstract business with respect to federal laws and regulations under the power granted to the Federal Government under the Commerce Clause. The word "interstate" then, is here usually used in a broader significance than in its usually accepted meaning, which is, "commerce across state lines," but rather in the sense of denoting "commerce subject to federal laws and regulations."

In what many of us now recall as "the good old days" of free and private enterprise, we would have been profoundly shocked and highly indignant if we had been informed that our business of making abstracts of title was in interstate commerce and subject to Federal regulation of any kind. But in the light of the events of the past fifteen years, and especially in the light of the decisions of the United States Supreme Court in the cases of the Southeastern Underwriters (322 US 533, 64 SCR 1162) and the Polish National Alliance (322 US 643, 64 SCR 1162), it behooves us to pause for a moment to examine our position with respect to interstate commerce. If we find that our business is strictly intrastate commerce, we might feel free to go on our merry way under only such regulation or restriction as our respective state laws impose, but if we find ourselves to be engaged in interstate commerce, or if we seriously doubt that we could be ruled not to be subject to federal law and regulation, we should take care to strictly observe and live within all federal statutes and regulations governing interstate commerce, in addition to our continued strict observance of such state laws and regulations as may be in force. There is, so far as I can determine, no advantage to us in interstate commerce, but if we should ignore federal laws and regulations governing interstate commerce and later are held to be subject to any such federal law and regulation, our position will be, to put it lightly, uncomfortable. Therefore at this moment we find ourselves in a predicament illustrated by one of my favorite stories about the lad who was industriously weeding the garden on a beautiful summer day. Some of his pals came along on their way to the swimming hole, and called to him to come along. He refused, saying with much gusto that he wanted to weed the garden, and stuck to his story in the face of much urging. Finally his friends, unable to understand his devotion to just plain work, asked what he was getting for the job. He replied: "Nothin' if I do and Hell if I don't."

To observe the proverb "discretion is the better part of valor" in our present position is unquestionably good business sense. The cost of a judicial determination to settle the question for any one of us individually would be a considerable sum, perhaps much more than the cost of many years of observance of all these federal laws and regulations. And unfortunately the problem is one of individual application. In Washington Water Power Co. vs. Coeur D'Alene, a case in Federal District Court in Idaho, (9F Supp 263) it was held that "whether commerce is interstate *** or intrastate *** is a substantive question to be determined from what is done." Thus an adjudication in a case by or against one of us, while serving, it is true, as precedent and as a guide post for the rest, might not be controlling in cases by or against others, since "what is done" must vary considerably with each one of us, and those facts which might predicate a decision in one case might not be applied with the same force in other cases due to different circumstances or different combinations of circumstances and facts.

The answer to any legal question must be found in the statutes on the subject, if any there be, as construed by the courts, or in the pronouncements of the courts only. With respect to our question there is, of course much statute law, largely applicable as we shall see, by implication only, but there is a dearth of judicial authority in point. I have been unable to find a single case

involving the business of abstracting titles, issuing title certificates or insuring titles as it relates to interstate commerce. No doubt there are a number of administrative rulings affecting some of our businesses, for instance under the Fair Labor Standards Act, but these are not holdings by a court of last resort, and are not conclusive, since they are open to attack on appeal, even though they have been held to have great weight in judicial considerations. (Jewel Ridge Coal Corp. vs. Local No. 6167 (DC Va) 53 F Supp 935). But this lack of judicial authority in point is not, I feel, a serious handicap in our consideration of the question. Even if I had found cases in point, I would have proceeded to examine the matter in the same way I have done it for this occasion, for the rule of stare decisis (adherence to precedents) has been relegated to secondary importance by our modern courts who have overruled cases of long standing and great importance, with little hesitancy. Nowadays one can depend less on precedents than on trends and conditions and when precedents are considered to be outmoded and unsuited to the social and political trends of the present, they are promptly discarded. It is therefore advisable, even necessary, to examine the matter of interstate commerce historically and psychologically if we are to find the answer to our question.

What is interstate commerce? As you know, Article I, Sec. 8, C1.3 of the Constitution provides that the Congress shall have power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." This is the foundation of congressional power over commerce, and in view of the breadth of the language used, it is to be expected that there are numerous cases defining the scope of that power. Chief Justice Marshall gave us the first, and perhaps the best of all of them when in Gibbons vs Ogden (9 Wheat 1 at 229) he said: "Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care and various mediums of exchange, become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation." He also warned, in discussing the embracing and penetrating effects of the federal commerce power, that effective restraints on its exercise must come from political rather than judicial processes. (Gibbons vs. Ogden supra, loc cit 197). In other words, as he foresaw the development of the American economy and the course of judicial determination, the Courts would not be inclined to restrict the scope of the commerce power, but that any restriction imposed must come from the Congress. The accuracy of these statements, made more than a century and a quarter ago, is a tribute to this great jurist.

But in spite of the all-inclusiveness of this definition, which for some time was not regarded with approval, it was almost one hundred years before "Commerce" meant much more than "trade" or "traffic," more for the reason that it was apparently not the congressional desire to make it more than for any other cause. In its cases during that period having to do with the Commerce Clause, the Court rarely said anything about what the Congress might do in the exercise of its power over commerce, but rather confined itself to saying what the States could not do as being discriminatory against or burdensome on interstate commerce. In view of the congressional apathy, this was all that was necessary to say in deciding those cases, but it resulted in a negative rather than a positive

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development of the law on the subject. This century period was the time of great industrial expansion in the United States, and the thoughts and expressions of the early part of the period were colored and influenced by a desire to aid and foster business in general, on the theory that "what is good for business is good for all the people." Small wonder then, that we find such activities as "production," "Manufacturing," and "mining" held by the Courts to be intrastate commerce only, and beyond the power of the Congress under the Commerce Clause. (See Veazie vs Moore 14 How 568, 14 L Ed 545; Kidd vs Pearson 128 US 1, 9 SCR 6). But this was also the period of social awakening in the United States. Labor was stirring and rumbling in its century long battle for the right to organize, bargain collectively and strike; complaints were freely made about the huge concentration of wealth and power in a few hands; the evils of big business and monopolies were attracting sullen attention; the realization that perhaps we were our brothers' keepers and had a responsibility for their welfare was dawning. All this dissatisfaction with things as they were was coming to the attention of Congress and the Courts, sensitive as they always are to public opinion. Shortly after the middle of the eighteenth century the stress and strain of the panic of 1857, the Civil War and the Reconstruction Period intensified the public demand for corrective measures in all these fields, and we find more and more attention being given to remedial legislation, although the progress was painfully slow for a long time.

In 1887 the Congress enacted the Interstate Commerce Act, (24 Stat L 379 Ch 104, Title 49 USCA Sec 1) and for the first time its commerce power began to exert a positive influence in American law and life. In its original form it applied only to carriers by railroad and water; in 1906 it was amended by the Hepburn Act (34 Stat L 584 Sec 1) to apply to the transportation of oil or other commodity by pipe line; and in 1910 by the Mann-Elkins Act (36 Stat L 544 Sec 7) to apply to telegraph, telephone and cable companies, both wire and wireless, engaged in transmitting messages over state lines. Observe, if you please, how this legislative development indicates the influence of the industrial advancement of the nation, and how it indicates the new determination of the Congress to assume control over widening phases of interstate commerce. Then in 1890 came the second important assumption by Congress of its power over commerce by the passage of the Sherman Anti-Trust Act (26 Stat L 209 Ch. 647; Title 15 USCA Sec 1 et seq.), followed, mainly after 1903, by many others such as the Clayton Act (Trusts) in 1914, the Wagner Act (Labor) in 1935, the Fair Labor Standards Act (Labor) in 1938 and the Labor Disputes Act in 1943. With the passage of the Sherman Act, and in spite of some setbacks at the hands of the then conservative Court, and in spite of an economic emergency in the panic of 1893, the Congress became truly federal-minded, and a little more than a decade later, aided by President Theodore Roosevelt and his big-stick policy, became truly aggressive in its views of interstate commerce.

Naturally the Interstate Commerce Act and the Sherman Anti-Trust Act came into the Courts many times. It was soon apparent that they had ushered in new phases of adjudication, requiring the Court to approach the interpretation of the Commerce Clause in the light of an actual exercise by Congress of its power thereunder. In the earlier decisions, and in spite of the broad definition of commerce by Chief Justice Marshall in the Ogden case (supra), the Court allowed comparatively little scope to the power of Congress, as is witnessed by the decisions

in U. S. vs Knight Co. (156 US 1, 15 SCR 249), Hopkins vs U.S. (171 US 578, 19 SCR 40) and Anderson vs U. S. (171 US 604, 19 SCR 50). These decisions had a far reaching effect, continuing until very recently, as they were used with approval by the Court when it ruled that Congress had exceeded its power in the child labor cases, the railroad retirement cases, the NRA cases and the first Guffey Coal Act cases. But even as restrictive decisions were being written, the judiciary was acquiring a broader view of the commerce power, and was slowly but surely returning to the principles which underlay the views expressed and the definition of commerce given by Marshall in the Ogden case (supra). Justice Holmes in Swift & Co. vs U. S. (196 US 375, 25 SCR 276), shortly after the Knight Co. case, sustained the exercise of the federal power over intrastate activity, stating that "commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business." Here, by recognizing that the course of business presents a practical side worthy of notice and carrying some weight, was a chink in the hitherto almost impregnable armor of abstract legal reasoning in commerce law. The broadening effect of this policy was soon and repeatedly felt. It was demonstrated by subsequent decisions of great consequence such as Loewe vs Lawler (208 US 274, 28 SCR 301) B. & O. Ry. vs Interstate Commerce Com. (221 US 612, 31 SCR 621) Southern Ry. Co. vs U. S. (222 US 20, 32 SCR 2) Mondou vs N.Y. N.H. & H. R. Co. (223 US 1, 32 SCR 169) and U. S. vs. Patten (226 US 525, 33 SCR 141), that many kinds of admittedly intrastate business or activity have such effect upon interstate commerce as to make them proper subjects of federal regulation. The kind or manner of the effect does not seem to have been of much moment, since in some of the cases the term "direct" was used, as in United Leather Workers vs. H. & M. Trunk Co. (265 US 457, 44 SCR 623), Di Santos vs. Pennsylvania (273 US 34, 47 SCR 267), and Standard Oil Co. vs. U. S. (221 US 1, 31 SCR 502), in some of them "substantial" or "material" was substituted as synonymous, as in Santa Cruz F. P. Co. vs. Nat. Labor Rel. Bd. (303 US 453, 58 SCR 656) and in still others it was not mentioned, as in B. & O. R. Co. vs. Interstate Commerce Com. (supra), Mondou vs. N.Y. N.H. & H. R. Co., (supra) and Interstate Commerce Com. vs. Goodrich Transit Co. (224 US 194, 32 SCR 436). The degree of the effect upon interstate commerce was considered as having some, though perhaps not controling weight, for instance in the Shreveport Rate Cases, in which it was held that intrastate railroad rates might be revised by the federal government because of their economic effect upon interstate commerce, Justice Hughes said: "matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance" are such that federal intervention is constitutionally authorized. (Houston E. & W. T. R. Co. vs. U. S. 234 US 342, 34 SCR 833). Chief Justice Stone recently summarized the present state of the commerce law in U. S. vs. Wrightwood Dairy (315 US 110, 62 SCR 523), where he said: "The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them an appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. *** The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations than are prescribed in the Constitution. *** It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress, hence the reach of that power extends to those intrastate activities which in a substantial way interfere with or obstruct the granted power."

Thus following the Swift case, from which I quoted Justice Holmes a moment ago, the scope of the federal power under the commerce clause has been swiftly enlarged. Almost every case reported goes a little farther in its findings and broadens the aspect of the power. Lately we find that the necessity for a "Substantial" degree of effect upon interstate commerce has been greatly reduced, and ever so slight an effect is deemed sufficient under some circumstances to sustain the exercise of the federal regulatory power under the Commerce Clause. For an example, let us consider the case of Wickard vs. Filburn (317 US 111, 87 L Ed 122), decided in 1942. In this case Filburn, appellee, was fined $117.11 by Wickard, Secretary of Agriculture, appellant, as a marketing penalty under the Agricultural Adjustment Act of 1938. Filburn operated a small Ohio farm, and usually raised about 11 acres of wheat, most of which he fed to his chickens and used for seed, and the balance, if any, he sold locally. His 1941 wheat acreage was established at 11.1 acres, but for some reason he sowed and later harvested, 23 acres. He was penalized for the excess acreage, refused to pay, and obtained an injunction in Federal District Court restraining Wickard from enforcing the penalty assessed. On appeal the decision of the lower court was reversed and the injunction dissolved. Filburn contended that his wheat growing was strictly local, was not in interstate commerce and therefore was not subject to federal regulation. Justice Jackson in the opinion says: "even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce and this irrespective of whether such effect is what might at some earlier time have been defined as "direct" or "indirect," and "that the appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial," and "Congress may properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating and obstructing its purpose to stimulate trade." The purport of this decision is plain to see: Even a strictly local business which affects interstate commerce in a trivial and most indirect manner, is subject to federal regulation if Congress so desires.

How shall we know whether or not Congress "so desires"? Let us look at the Southeastern Underwriters case, which brought all this to our attention. Here the defendants were indicted under the Sherman Anti-Trust Act for conspiracy to control premium rates. They demurred to the indictment, the demurrer was sustained and the indictment dismissed. The Government appealed and won a reversal of the decision of the lower Court. The business of fire insurance and allied lines specified (not including title insurance) was held to be in interstate commerce and subject to Federal law and regulation. This decision overruled the Paul case (1869), the Hooper case (1895), the New York Life case (1913) and others, all of which had held that the business of insurance was not in interstate commerce. The underwriters urged that Congress did not intend in the Sherman Act. to exercise its power over the interstate insurance trade. The Court, in discarding this contention, quoted parts of the Act reading "every contract," "every person," "any part of the trade," and said, speaking through Justice Black, that the language used is comprehensive and indicates "a carefully studied attempt to bring within the Act every person engaged in business whose activities might restrain or monopolize commercial intercourse among the states," and that "a general application of the Act to all business *** is in harmony with the spirit and impulses of the times which gave it birth." Thus the widest interpretation is given to the general terms in which most laws are couched, and another avenue of escape from federal regulation is closed.

Now let us look at the abstract of title business generally in order to see where we fall into this definite pat-

tern of commerce control. We own and maintain tract indices or plants which have to do exclusively with property in a single state, even in a single county usually. We employ help to search the titles to these local properties and in so doing we actually move within very narrow physical limits, well within state boundaries. We bank our money, if any we have, in local institutions and we usually purchase substantially all our supplies locally. We have comparatively few customers outside our own state boundaries, and the amount of business we do for them is comparatively small. In the case of my own company, the out of state billings range from .163 to .204 of one per cent of our total billings annually. Surely we are intrastate in our operations if such there be in these days. But is that the answer? I am afraid not. Bear in mind that it has now been settled that the congressional commerce power extends not only to interstate business, but also to intrastate business which exerts a substantial influence on or substantially affects interstate commerce, even though that influence or effect be trivial when measured in terms of the individual, but substantial when taken together with the activities of others similarly situated. A large percentage of our business is done for banks, savings and loan associations, trust companies, insurance companies and investment companies whose business does cross state lines, or who otherwise are undoubtedly in interstate commerce. Through our services to them, we enable them to invest their funds and carry on their interstate operations, and in this and other ways I believe we substantially affect interstate business. Whether or not we are interstate in our own operations makes not a whit of difference, since strictly intrastate business affecting interstate business is subject to federal regulation to the same extent as interstate business. The trend is definitely toward broader interpretation of the commerce power all the time. As an illustration, a processor or manufacturer whose business was local in scope was held to be subject to the Fair Labor Standards Act where his employees prepared goods which he knew, or had reason to know another manufacturer would place in interstate commerce as a part of his finished product. (Bracey vs. Luray (CCA 4) 138 Fed. 2nd 79).

It is often said that there is a limit to all things, and perhaps there is a limit to this trend. But I can see small reason for the pendulum of liberal influence to begin a reverse swing. The case for State rights has been so weakened and that for centralization of government so strengthened in the past fifteen years that the assumption by the Congress of powers which of old were considered as being exclusively those of the states, has ceased to cause much concern. True, there are still a few of us "rugged individualists" tottering around, but even we agree that the world is now different. New problems, new policies and new trends require new and revised thinking.

Standing in the foreground of the new conception of government and its functions is the Supreme Court of the United States. Composed of comparatively young and vigorous men, most of them socially minded, it is a leader in advanced thought rather than the follower it was some years ago. In point of service its oldest member counts twenty years, its youngest a few days. Even its more conservative members can hardly be termed "reactionary." One of them, in his first published opinion expressed the thought that the constitution is not what it says, but what the Court says it says. There is, I am sure, small reason to expect a reversal or even a crystalization of trend in interstate commerce law in the interpretations of the commerce clause by this group. On the contrary, it is probable that further extensions of the commerce power will be recognized and applied.

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Will the Congress adopt any restrictive legislation to change this aspect in any material way? The record, I am sure you will agree, gives us the answer to that. So much general good has been had from the application of the Interstate Commerce Act and the Sherman Anti-Trust Act, to say nothing of various other corrective laws operating under the Commerce Clause, all of which is a matter of common knowledge and approval, that it appears virtually impossible for any such thing to happen. So far as I remember, there has not even been anything introduced for congressional consideration in many years which might be termed restrictive of the commerce power.

Ladies and Gentlemen, we could prolong this discussion many minutes by considering and analyzing more of the multitude of commerce cases than we have here cited. There are some, it is true, which will give the reader the idea that interstate commerce is actually just what its name implies, but I am sure that sober analysis of these cases in the light of the attitude of the Congress and the Court at this moment will not lead to any different conclusions on our question. There is only one item which needs further consideration on this occasion: What is the extent of the effect of the business of abstracting titles on interstate commerce? I spoke before of the comparatively small amount of actual interstate business we do, taking my own business as an example. I also called attention to the fact that our operations for banks, trust companies and so forth no doubt aid the transaction of interstate commerce to the extent that they exert a substantial influence on such commerce when measured by our efforts as a class. But even more important than that, I believe that the subject of our service, the title to land itself, is so vitally important an item in our national economy that our connection therewith gives us a further "substantial" effect on interstate commerce. Land is the very foundation of our national existence, its produce houses, feeds, and clothes us, its products move continually in interstate commerce, its value is a large percentage of our national wealth. We, by our services, make possible the comparatively free and easy purchase and sale of this important land, we thereby help keep it productive by successive owners, we make possible the adequate and efficient financing which is so important in its ownership and operation. There is no doubt in my mind that the courts would hold in any important case that this constitutes a substantial effect on interstate commerce.

Therefore, ladies and gentlemen, in my humble opinion, the business of abstracting titles, although perhaps intrastate, is so interwoven in the mesh of interstate commerce that the substantial effect it exerts on that commerce, makes it subject to federal laws and regulations governing such commerce. What those federal laws are, and their requirements on us, will be explained to you by the speakers who follow.

The Law, Defined

(Information taken from the U. S. Code Annotated, Title 29, beginning with Section 151.)

By
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The Reasons for the Passing of the Law Were:

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the effect of burdening or obstructing commerce by

(a) Impairing the efficiency, safety, or operation of the instrumentalities of commerce; or

(b) affecting, restraining, or controlling the flow of raw materials or manufactured goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or

(c) causing diminution of employment and wages in such volume as to substantially impair or disrupt the market for goods flowing from or into the channels of commerce.

It is declared to be the policy of the United States to eliminate the causes of certain obstructions to the free flow of commerce and to eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Constitutionality:

That this law is claimed to be one-sided in its application, to subject the employer to supervision and restraint, and to leave untouched abuses for which employees may be responsible, does not affect the power of Congress to enact it, as the legislative authority exerted within its proper field need not embrace all evils within its reach.

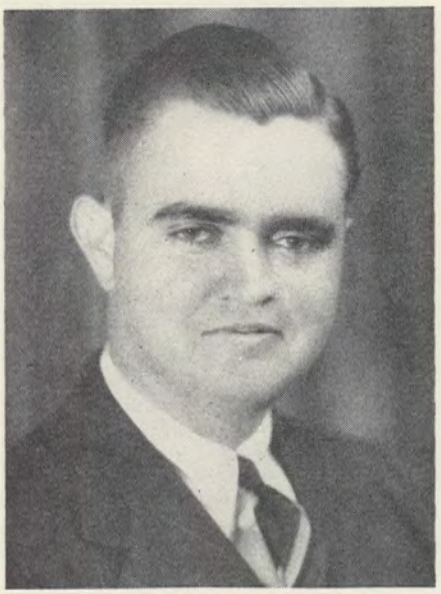
Purpose:

The purpose of the law is to recognize, and to furnish means of enforcement of, right of labor to deal on equal footing with its employers.

The sanctions of this law are imposed not in punishment of the employer, but for the protection of the employee:

To compel employers to bargain collectively with their employees to the end that employment contracts binding upon both parties should be made.

To protect interstate commerce by securing to employees the right to organize, to bargain collectively through representatives of their own choosing,



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and to engage in concerted activities for that and other purposes.

To promote peaceful settlement of disputes between employers and employees by providing legal remedies for the invasion of employees' rights of self-organization and collective bargaining.

The law does not interfere with normal exercise of employer's right to select or discharge employees, but is directed solely against abuse of that right by interfering with the right of self-organization.

Therefore, the dominant purpose and intent is to permit employees to form their own organizations without interference of any kind by employers.

This law meant to give to employees whatever advantage they would get from collective pressure upon their employer.

Federal Power Is Iimited to Interstate Commerce:

An employer may be subject to the law, however, although not himself engaged in commerce.

Whether employer's activities are local or intrastate in character is immaterial on question whether they affect commerce, if they are so closely and substantially related to interstate commerce that their control is essential or appropriate to protect such commerce from burdens and obstructions.

In determining whether printing department of corporate employer was engaged in interstate commerce, the court, in addition to considering products of department shipped in interstate commerce, could also take into account raw materials purchased outside of the state.

Right of Employees as to Organization, Collective Bargaining, Etc.:

Employees shall not only have the right, but shall be encouraged, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Striking employees have the right to convince other workers and the public of the righteousness of their cause.

The law guarantees the right of self-organization and collective bargaining to employees in interstate commerce, and the National Labor Relations Board has authority and jurisdiction to enforce those rights.

Employees have the right to organize for self-defense and protection.

The law does not compel employees

to affiliate themselves with existing national or other unions or associations and it does not prevent them from forming truly independent local associations of their own.

Right to Strike—Employees have a right to strike, for good cause or for no cause, but the strike must be conducted in a lawful manner, and when so conducted the striker retains his status as an "employee" and is protected by the law.

Picketing—Peaceful picketing is a method of campaign which a union may employ to win converts to its cause in a forthcoming election to determine employees' bargaining unit.

Unfair Labor Practices by Employer Defined:

It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under this section.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 159 (a) of this title.

Collective bargaining between employees and employers, guarantees employees absolute freedom of choice as to their representatives, and such freedom should not be controlled or influenced by employer or by any expression or form of order by National Labor Relations Board.

Definitions—An "unfair labor practice", exists, when employer interferes with, restrains or coerces employees in their right of collective action.

The terms "interfere," "restrain," and "coerce," within this law making it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in exercise of their right to self-organization and to bargain collectively, include a great number of acts which, normally, could be validly done, but when they interfere with, restrain or coerce employees in exercise of their rights, they are prohibited by the law.

Rights of Employer—It is the function of the Circuit Court of Appeals to see that the rights of self-organization and collective bargaining guaranteed by this law are amply secured to the employee, but, in its effort to prevent the prescribed unfair labor practices, the court must be mindful of the welfare of the honest employer.

Espionage by Employer—Action of employer in employing detective agency to ascertain activities of labor union and the doings of employees who were members of the union was improper.

Lockouts—Evidence supported findings of National Labor Relations Board that employer interfered with, restrained, and coerced its employees in violation of the law by threatening discharge of employees and closure of employer's plant if employees did not refrain from union activities and that employer wrongfully locked out employees and refused to reinstate them.

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Statements by Employer — Utterances of corporate employer's president that it was not to employees' interest to join a union and pay dues and that he had no place in his organization for anyone receiving wages as a union organizer showing that employer had a fixed hostility towards employees' activities in organizing a union and in selecting a particular union as employees' representatives and showed that employer violated rights guaranteed to employees under this law and was guilty of interference which is prohibited.

Threat to Close Plant—Evidence of speeches by employer's officer containing thinly veiled threats that, if employees chose union for bargaining agent, the plant would close down and they would all lose their jobs, warranted conclusion by National Labor Relations Board that employer did not permit employees to enjoy the freedom of choice contemplated under the law.

Concessions of Time or Pay—Employer's failure to dock employees' wages for employer's time used by employees in holding meeting and appointing committees concerning the organization of a union is an "unfair labor practice" on part of employer.

Discrimination Against Union Members—To discourage membership in union by discrimination in regard to hire and tenure of employment is an unfair labor practice.

To prohibit the discouragement of union membership by means of anti-union discrimination is unlawful and the law directly protects union membership, and indirectly protects employees engaged in lawful union activities from discharges that would effect a discouragement of union membership.

Discharge of Employees—When real grounds for discharge of an employee exist, the employer may not be prevented, because of employee's membership in a union, from discharging employee for such grounds, so long as it is not for union activities.

Refusal to Bargain Collectively—The law imposes upon employer, the obligation, to meet and bargain with his employees' representatives, respecting proposed changes of an existing contract, and also to discuss with them its true interpretation, if there is any doubt regarding its meaning.

A very important part of the Wagner Act relates to the appointment of a board, their term of office, salaries, duties, etc. However, due to the time allocated for this discussion, I shall not discuss this phase of it.

Offenses and Penalties:

Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this law shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

* * *

FAIR LABOR STANDARDS

Title May Be Cited as "Fair Labor Standards Act of 1938"

It is unlawful for an employer to violate wage and hour requirements with respect to employees engaged in interstate commerce or production of goods for interstate commerce.

Minimum Wages

(a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates:

(1) During the first year from the effective date of this section, not less than 25 cents an hour.

(2) During the next six years from such date, not less than 30 cents an hour.

(3) After the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the administrator issued under section 208 of this title, whichever is lower.

Computation of Wages

Where bus driver was paid his wages on a weekly basis and made weekly settlements with employer, the rate per hour should be determined by treating each work week as a separate unit of time, the excess payment in one work week, if any, not being credited against any deficit existing in another in determining employee's minimum compensation under this chapter.

Maximum Hours

(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce:

(1) For a work week longer than 44 hours during the first year from the effective date of this section.

(2) For a work week longer than 42 hours during the second year from such date, or

(3) for a work week longer than 40 hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Purpose

This section was designed to spread employment opportunities and to eliminate long hours of labor, and therefore this chapter applies to employers paying in excess of the minimum wages prescribed in this chapter.

This chapter was designed to improve labor conditions with reference to wages and hours, and to add to welfare generally of those who work in industry engaged in interstate commerce, as well as to lighten burdens of such commerce by a more efficient and expeditious flow of goods.

The provision of this section requiring payment to employee of not less than one and one-half times the regular rate at which he is employed for overtime work is akin to a "penalty," intended to discourage overtime employment and to encourage a greater spread of employment.

The purpose of this section was not to limit the number of hours which an employer engaged in interstate commerce might require his employees to work during each week, but to require that they be paid additional compensation in the event that they were compelled to work for a longer number of hours than the maximum prescribed.

Hours Worked

Where employees during a given work week, interchangeably engaged in work in a department of employer's lumber business involving only intrastate business, and in another department involving production of lumber for shipment in interstate commerce, the employer was required to pay to the employees the wages prescribed by this section and section 206 of this title for the entire time worked, including time spent in the department involving intrastate business alone.

Regular Rate

Employees' overtime compensation under this chapter should not be based on their statutory minimum wage, but

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on their agreed rate of pay, which is "regular rate" meant by provision of subdivision (a) of this section for payment of overtime compensation at rate of not less than one and one-half times regular rate.

Overtime

Where employer was engaged in manufacture and sale of cigar boxes, all its manufacturing was done within Florida and all of its sales were mde to cigar manufacturers within Florida, but cigar manufacturers distributed major portion of their cigars in interstate commerce, the employer was engaged in the "production of goods for commerce," rendering it subject to this chapter, notwithstanding the boxes could not be re-used as container for cigars.

An employee who was subject to provisions of this chapter was entitled to overtime at the rate of time and one-half based on regular rate at which he was employed, notwithstanding fact that his employment contract entitled him to a regular rate substantially in excess of the minimum wage set by section 206 of this title.

In action under this chapter by employee who stayed at employer's place of business at night, and in ordinary course of events had normal night's sleep and ample time for meals and time for relaxation and entirely private pursuits, such time was excluded in computing employee's hours of overtime.

Bonuses For

Under this chapter, it was not intended that an employer should compensate employees for overtime by granting them bonuses.

Exemptions

Provisions of sections 206 and 207 (wage and hours) shall not apply with respect to (1) an employee in a bona fide executive, administrative, professional or local retailing capacity, etc.

Penalties

Civil and criminal liability.

(a) Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

Nature of Action

In action under this chapter to recover unpaid minimum wages or their unpaid overtime compensation, and an additional equal amount as liquidated damages, the recovery sought was not a "penalty".

Recovery of "liquidated damages" from employer under this chapter for nonpayment of overtime compensation to employees is not by way of "penalty", but additional compensation to employees for illegal deprivation of such compensation.

Summation

By
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After listening to Mr. Glasson's very fine paper and from what study I could make of the subject I believe we should consider ourselves subject to federal regulation. I have been asked to speak briefly on two of the laws which might affect us, namely, the Sherman Anti-Trust Act and the Clayton Act. These acts deal with monopolies and restraint of trade and the fixing of prices. Many people believe that monopolies and trusts are products only of modern enterprise. They associate the Sherman Act and the Clayton Act only with the Standard Oil Company and United States Steel, and although it is true that only recently have they attained their present proportion, yet the idea under which such combinations came into being is nearly as old as civilization itself. There were combinations for maintaining and increasing prices even in the days of Solomon. Emperor Zeno in Rome issued an edict that anyone who practiced a monopoly should have his property forfeited, and in medieval times steps were taken to combat the evils of monopolies. Even in the 17th century the English common law stated that monopolies and combinations were void and offenses at common law. In our country in the late 19th century, with the growth of industrial order and the growth of great combinations the pressure on Congress became so great that they passed the Sherman Act in 1890. This act is different from most statutes. It was likened by Chief Justice Hughes to the Constitution itself, and its issue lies in the general character of its provisions. In other words, it is flexible and its construction changes with the times.

What do these two laws provide? In short the Sherman Act broadly says that "Every contract, combination in the form of trust or otherwise or conspiracy in the restraint of trade or commerce in the several states is hereby declared to be illegal," and every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person or persons, to monopolize any part of the trade and commerce among the several states shall be deemed guilty of a misdemeanor.

The Clayton Act as amended provides that it is unlawful to discriminate in prices between different purchasers of the same commodities. Nor can this prohibition be avoided by the payment of commissions or fees unless the actual services in connection with the sale are given. We can refuse to sell to a man, but once we do sell to him we must not discriminate against him by giving any of his competitors a better deal.

The question submitted to me for comment is "What application has the Sherman Anti-Trust Act and the Clayton Act to the abstract business?" There can be no question as pointed out by Mr. Glasson that the trend of the Supreme Court at the present time is to consider activities which were

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not so many years ago deemed intrastate as within the control of Congress under the commerce clause of the Constitution. We may, therefore, assume that the business of abstracting might well be deemed to be within the control power of Congress. It does not necessarily follow, however, that we need be fearful of the Sherman Anti-Trust Act and the Clayton Act. We need only be fearful of these acts if in the operation of our business we create a situation which would constitute a violation of them within the law. The necessary elements of a violation of the Sherman Anti-Trust Act are first: a conspiracy, and second: an agreement among the conspirators which agreement if carried out would constitute an unreasonable restraint upon interstate commerce. One of the latest pronouncements to this effect is that found in the case of "The Southeastern Underwriters." In this case there was a conspiracy between almost 90 per cent of the underwriting companies in the area affected and the court, after holding that the business of insurance was interstate trade under the commerce act, necessarily came to the conclusion that there being the conspiracy and the agreement, the act was violated in as much as the carrying out of the agreement would constitute an unreasonable interference with the natural flow of interstate trade. The business of abstracting as I know it and as it is carried on in the communities with which I am familiar, is hardly susceptible of such control as would constitute a violation of the Sherman Anti-Trust Act. The sources of our information are public records and it is inconceivable that any combination of firms or individuals could bring about an arrangement which would in any way control or divide this source so as to make it available only to a chosen few.

It is conceivable, however, that two or more abstracters would enter into an agreement whereby they agree among themselves to fix a schedule of prices for the products sold. Such an arrangement could be determined by the Supreme Court to be a violation of the Sherman Anti-Trust Act and it should be borne in mind that all that is necessary to constitute a violation is an agreement which would have the effect stated and it is not necessary that the agreement should be carried into operation as it has been held that the mere existence of an agreement without any overt acts is sufficient to constitute a violation.

In conclusion it is inevitable that even though the abstracting business may well be determined to be interstate commerce under the Constitution, that we need have no fear that the department of justice will invoke either the Sherman Act or the Clayton Act against us, so long as we do not enter into any arrangement or agreement to fix or control our schedule of prices and do not attempt to control the source of supply or the ability of others to compete to the detriment of the country at large. I do not believe, therefore, that we need to worry about the application of these two acts. We have enough other acts and regulations to bother us, anyway, without taking on the Sherman Act and the Clayton Act.

Requisite Steps to Be Considered in Insuring Title to Real Property Transferred Under the Surplus Property Act

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The use of the words "to be considered" in the title to this paper is most appropriate. Few answers will be given to the questions and problems that arise in connection with the insurability of title to real property transferred under the Surplus Property Act of 1944. I hope to point out most of the hurdles, but you are going to have to consider how best these hurdles can be cleared, if at all.

It would take too much time to attempt to cover the Act and regulations issued thereunder in any detail or to elaborate to any extent upon the historical development of legislation which finally culminated in the enactment of the Surplus Property Act of 1944. My paper is therefore confined, for the most part, to those sections of the Act and current regulations issued thereunder up to and including November 16, 1945, which have a bearing on surplus real property and which are considered to be pertinent to my subject.

The basic authority for the disposition of government owned property is set forth in Article IV, Section 3, Clause 2 of the Federal Constitution, which provides: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, . . ."

In Royal Indemnity Company *v.* United States[1] the Supreme Court stated:

> "Power to release or otherwise dispose of the rights of property of the United States is lodged in the Congress by the Constitution. Article IV, section 3, clause 2. Subordinate officers of the United States are without that power, save only as it has been conferred upon them by act of Congress or is to be implied from other powers so granted."

The Surplus Property Act of 1944, which was enacted as Public Law 457, 78th Congress[2] is a clear example of a specific statutory grant of power for the disposal of public property.

The Act was amended by Public Law 181, 79th Congress[3] on September 18, 1945 to abolish the three man Surplus Property Board which had been originally created pursuant to Section 5(a) and to replace this Board with a Surplus Property Administrator. All of the regulations, policies, requirements and other actions made or taken by the Board were expressly continued in effect except to the extent that they might be modified or altered by the Administrator. The Surplus Property Administrator, since he took office, has revised or modified all regulations pertaining to or affecting real property. These are: S.P.A. Regulation 1,[4] effective November 10, 1945, and relating to the designation of disposal agencies and procedures for reporting surplus property located in the United States; Regulation 5,[5] effective October 9, 1945, relating to surplus non-industrial real property; Regulation 10,[6] effective November 16, 1945, relating to government-owned industrial real property; Regulation 16,[7] effective November 16, 1945, relating to surplus airport property; and Regulation 18,[8] effective November 16, 1945, relating to the disposal of improvements and leasehold interests in industrial and marine real property.

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To a considerable extent, the Act sets forth legislative objectives as standards or guides, leaving the implementation or the amplification of such objectives to the Administrator to be accomplished pursuant to regulations to be prescribed by him under the authority of Section 9 of the Act. It is expressly provided therein that regulations issued by him "may, except as otherwise provided in the Act, contain provisions prescribing the extent to which, the times at which, the areas in which, the agencies by which, the prices at which, and the terms and conditions under which, surplus property may be disposed of, and the extent to which and the conditions under which surplus property shall be subject to care and handling." Thus the nature of the regulations which the Administrator is empowered to make is more clearly substantive or legislative than it is interpretive, and, as such, regulations will have the same force and effect as the Act itself.

It is not felt that Congress, in the Act, has made any unconstitutional delegation of legislative power.[9] The Act sets forth definite objectives and standards to guide the Administrator in the promulgation of regulations to carry out the legislative intent.

There are twenty objectives that are declared by Congress and set forth in Section 2 of the Act. Among these objectives which Congress desires to achieve in the disposal of surplus property are: to develop a maximum of independent operators in trades, industry, and agriculture, and to stimulate full employment; to discourage monopolistic practices and to sanction and preserve the competitive position of small business concerns in an economy of free enterprise; to foster and to render more secure family type farming as a traditional and desirable pattern of American agriculture; to afford returning veterans an opportunity to establish themselves as proprietors of agricultural, business and professional enterprises; to achieve the prompt and full utilization of surplus property at fair prices to the consumer through disposal with due regard for the protection of free markets and competi-

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(1) 313 U.S. 289, 294 (1941); See Olverson, "Legal Aspects of Surplus War Property Disposal," (1945) 31 Va. L. R. 550, 551.
(2) Ch. 479, 58 St. 765 (Title 50, App. U.S.C.A., Secs. 1611 to 1646 inc.)
(3) Ch. 368, 59 St.—(Title 50, App. U.S.C.A., Secs. 1614a, 1614b.)
(4) 10 Fed. Reg. 14064
(5) 10 Fed. Reg. 12812; Amdt. 1, 10 Fed. Reg. 14028
(6) 10 Fed. Reg. 14400
(7) 10 Fed. Reg. 14204
(8) 10 Fed. Reg. 14404
(9) See Olverson, "Legal Aspects of Surplus War Property Disposal," (1945) 31 Va. L.R. 550, 609.

tive prices from dislocation resulting from uncontrolled dumping; and, except as otherwise may be provided, to obtain for the government, as nearly as possible, the fair value of surplus property upon its disposition.

In the light of these and other objectives it is not surprising that the Act and regulations issued thereunder impose rather elaborate restrictions and conditions precedent to the disposal of surplus property.

Prior to presenting a brief picture of the procedure for the disposal of surplus real property as contemplated by the Act and regulations, some definitions of terms are in order.

"Surplus property" means any property which has been determined to be surplus to the needs and responsibilities of any owning agency in accordance with Section 11 of the Act.[10] Section 11(a) provides that each owning agency shall have the duty and responsibility continuously to survey the property in its control and to determine which of such property is surplus to its needs and responsibilities. Section 11(b) requires each owning agency to promptly report to the Administrator and the appropriate disposal agency all surplus property in its control. In other words this report is a declaration of surplus. It is important for our purposes to know what particular action brings to property the quality of being surplus. Is property surplus prior to any declaration thereof to the Administrator if it has been determined to be surplus to the needs and responsibilities of the owning agency or does it only attain the quality of being surplus when a declaration thereof has been made and filed? Until the property has become surplus within the definition of the Act, it probably does not come within the supervision of the Surplus Property Administrator, or under the controls, restrictions and safeguards of the Act.

The term "owning agency," in the case of any property, means the executive department, the independent agency in the executive branch of the Federal Government, or the corporation (if a government agency), having control of such property, otherwise than solely as a disposal agency.[11]

The term "disposal agency" means any government agency designated under Section 10 of the Act to dispose of one or more classes of surplus property.[12]

The term "government agency" means any executive department, board, bureau, commission, or other agency in the executive branch of the Federal Government, or any corporation wholly owned (either directly or through one or more corporations) by the United States.[13]

Under authority of Section 10 the Administrator is empowered to designate one or more government agencies to act as disposal agencies. The following Government agencies have been designated to act as sales agents for surplus federal real estate, subject to the proviso that the Administrator may assign any real property to any of the disposal agencies regardless of its classification whenever the Administrator shall determine such assignment appropriate to facilitate disposal.[14]

1. *National Housing Agency* (Real Estate and Disposition Branch, Federal Housing Authority): Housing property which includes real property used for housing or housing projects, and land which the Administrator determines is essential to the use of housing.
2. *Federal Works Agency* (Surplus Property Office, Public Building Administration): Commercial real property and land which the Administrator shall determine is essential to the use of such property.
3. *Reconstruction Finance Corporation:* Industrial real estate and land which the Administrator shall determine is essential to the use of industrial plants; airport property; and railway, pipeline, and power facilities real estate.
4. *Department of Agriculture* (Farm Credit Administration): Farm lands and forest lands.
5. *Department of the Interior* (Surplus Property Division, General Land Office): Grazing and mineral real property.
6. *Maritime Commission:* Marine industrial real property, such as shipyards, ship repair yards, and marine terminals.

"Real Property" is defined in Part 8305.2(n) of S.P.A. Regulation 5 as meaning any interest, owned by the United States or any Government agency, in land, together with any fixtures or improvements thereon, of any kind, wherever located, but does not include the public domain, or such lands withdrawn or reserved from the public domain as the Administrator determines are suitable for return to the public domain for disposition under the general land laws.

This definition is not limited to the definition of "real property" set forth in Section 23 of the Act which is applicable for the purposes of that section only to afford certain priorities in the purchase or acquisition of what is termed, "Section 23 real property" and which means property consisting of land together with any fixtures and improvements thereon, located outside of the District of Columbia, but does not include war housing, industrial plants, factories, or similar structures and facilities, or the sites thereof, or land which the Administrator determines is essential to the use of any of the foregoing.

All declarations of real property (whether or not Section 23 real property) are required to be made by the owning agency on prescribed forms to and filed with the Administrator who is then to transmit the declaration to the appropriate disposal agency and notify the owning agency thereof.[15] The effect of this would seem to constitute at least a partial classification by the Administrator of surplus real property as to class and type by virtue of his assignment of such property to a particular disposal agency.

Upon receipt by a disposal agency of a declaration it is to undertake immediately to dispose of the property covered by the declaration and to arrange with the owning agency for the disposal agency's assumption of the care and handling of the property.[16] Upon request of the disposal agency the owning agency is to supply the disposal agency with the originals or copies of all documents in its possession pertaining to the property, such as deeds, abstracts, title insurance policies, copies of judgments in condemnation actions, appraisal reports, etc.[17]

In disposing of surplus real property disposal agencies are required to recognize certain priorities.[18] The order of priority as to non-industrial real property is substantially as follows: (1) Government agencies with the Smaller War Plants Corporation having an A1 priority to acquire any such surplus property for its use and resale to small business concerns;[19] (2) State and local governments; (3) A former owner as to any section 23 real property acquired from him by any Government agency after December 31, 1939; (4) A tenant of a former owner, who was in possession of section 23 real property at the time the same was acquired by any Government agency after December 31, 1939; (5) A veteran, and the spouse and children of a deceased veteran; (6) Owner-operators;[20] and (7) Nonprofit institutions.

The priorities of Government agencies, state or local governments and nonprofit institutions are continuing priorities which are not exhausted because of their effective exercise with respect to a given piece of property. This is not, however, true as to other priority holders. Priority rights are not assignable.

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(10) Section 3(e)
(11) Section 3(b)
(12) Section 3(c)
(13) Section 3(a)
(14) S.P.A. Reg. 1, Part 8301.2
(15) S.P.A. Reg. 1, Parts 8301.6 and 8301.12; S.P.A. Reg. 5, Part 8305.4
(16) S.P.A. Reg. 5, Part 8305.10; S.P.A. Reg. 10, Part 8310.4
(17) S.P.A. Reg. 5, Part 8305.10; S.P.A. Reg. 10, Part 8310.4; S.P.A. Reg. 16, Part 8316.14
(18) Sections 12, 13, 16, 18 and 23; S.P.A. Reg. 5, Part 8305.11; S.P.A. Reg. 10, Part 8310.11; S.P.A. Reg .16, Part 8316.15
(19) Section 18(e)
(20) An "owner-operator" means a person who will personally operate and cultivate agricultural lands to earn a livelihood rather than lease it to a tenant. (S.P.A. Reg. 5, Part 8305.2(j)

In the case of government-owned industrial real property, surplus airport and all other classes of real property, as well as other property, Government agencies are accorded first priority and State or local governments are accorded second priority.[21] Parenthetically it is interesting to note that no special priority appears to have been given to federal corporations such as the Federal Land Bank and others that are not wholly owned by the United States.

The regulations provide for the publicizing of the sale of surplus real property and the making available of information concerning the property. Notice of sale must be published at least four times over a ninety day period at approximate intervals of twenty-one days in the case of non-industrial real property.[22] Industrial real property must be publicly advertised for sale for a period of at least fourteen days.[23] Notices must also be sent to specified Government agencies, to the state and the political subdivisions in which the property is located, and to the former owner when he is entitled to priority.[24] The time within which and the method by which priorities may be exercised are provided in the regulations.[25]

Where surplus non-industrial real property is sold the disposal agency must give a certificate, at the time of transfer, to the purchaser certifying that it has complied with the notice requirements and, if such is the case, that no person has attempted during the priority period to exercise the priority of a former owner, a tenant or a veteran.[25a]

For disposal to others than government agencies, state or local governments, former owners or tenants, surplus section 23 real property classified as suitable for agricultural use is required to be subdivided by the disposal agency into economic family-size units wherever practicable; and surplus section 23 real property not classified as suitable for agricultural use must be subdivided into such units as seem suitable in view of the character of the property, the use or uses to which it may be put and the possibilities of giving veterans and those who will use the property personally a fair opportunity to acquire and advantageously utilize the property.[26]

The requirements as to subdividing of property gives rise to the question of whether the disposal agencies shall convey this property by metes and bounds description or whether in some cases they will attempt to file subdivision maps and convey by reference thereto. If the latter course is followed as to any particular subdivision will the Government comply with the Map Acts of the various States? Also the question arises in this connection as to the power and authority of the disposal agency or the Administrator to dedicate streets, parks, etc., which may be necessary or advisable in any subdivision. Perhaps this authority is to be implied from the mandate and power to subdivide but, at any rate, here again arises the question of whether there will be compliance by the Government with State and local laws to which the Federal Government is probably not bound.

Section 15 of the Act authorizes disposition of property under the Act by sale, exchange, lease, or transfers for cash, credit, or other property, with or without warranty, and upon such other terms and conditions, as the disposal agency deems proper. Disposals may be made without regard to any provision in existing law for competitive bidding.[27]

The regulations place some limitations on the sale prices that can be charged or accepted for surplus real property. No sale or disposal of surplus non-industrial real property can be made at a price which is more than twenty-five per cent below the current market value until such sale or disposal has been reviewed, and approved by the Administrator, unless the price is the maximum price which may be charged the purchaser;[28] persons purchasing surplus real property pursuant to the priority of a former owner or tenant of a former owner shall be entitled to purchase at the lower of (1) the current market value, or (2) the price for which the property was acquired by the Government adjusted to reflect any increase or decrease in the value of such property resulting from action by the United States;[29] Government agencies, state or local governments, non-profit institutions, and owner-operators shall be entitled to acquire surplus non-industrial real property at a price not to exceed the current market value;[30] Veterans and the spouse and children of deceased servicemen shall be entitled to purchase such property at a price not to exceed a unit price fixed by the disposal agency after a consideration of several specified factors;[31] And state or local governments or non-profit institutions seeking to acquire surplus real property for educational use or to promote or protect the public health shall be entitled to obtain such property at the current market value less any discount allowed by the Administrator because of the benefit which has accrued or may accrue to the United States by such use.[32] All transfers of industrial real property to government agencies are to be at the fair value as determined and recorded pursuant to the provisions of Special Order 19[33] which is a formula for determining "fair value;" and disposals to state or local governments or educational or public health institutions of surplus industrial real property for educational use or to promote or protect the public health may be made at "fair value" less any discount which the Administrator may allow because of the benefit which has accrued or may accrue to the United States by such use.[34] Any class of surplus real property may be transferred to a government agency without charge where a transfer without reimbursement or transfer of funds is otherwise authorized by law.[35]

Surplus non-industrial real property may be donated to Government agencies, state or local governments or non-profit institutions organized and operated for educational or charitable purposes only when the disposal agency, with the approval of the Administrator, finds that the property either (1) has no commercial value, or (2) that the cost of its care and handling and disposition would exceed the estimated proceeds.[36]

All deeds or instruments of transfer of real property are required to be in the form approved by the Attorney General.[37] Transfers are to be by quitclaim deed unless the disposal agency finds that a warranty deed is necessary to obtain a reasonable price for the property or to render the title marketable and the use of such a deed is recommended and approved by the Attorney General.[38]

No transfer of industrial real property[39] is to be made to any person except subject to a representation on the part of the purchaser that he is acquiring it for his own use and that in no case will he resell or lease it within three years without written notice to the disposal agency of the purchaser or lessee and the conditions of such resale or lease within thirty days of such event. If the disposal agency extends credit the purchaser must agree that until full payment is made, he will not resell or lease the property *without the prior written consent of the disposal agency to such resale or lease.*[40] Such required representations and agreements are to be recited in the instrument of transfer. Under our state law in California, and I have no doubt that, except as to the United States, under the laws of other states,

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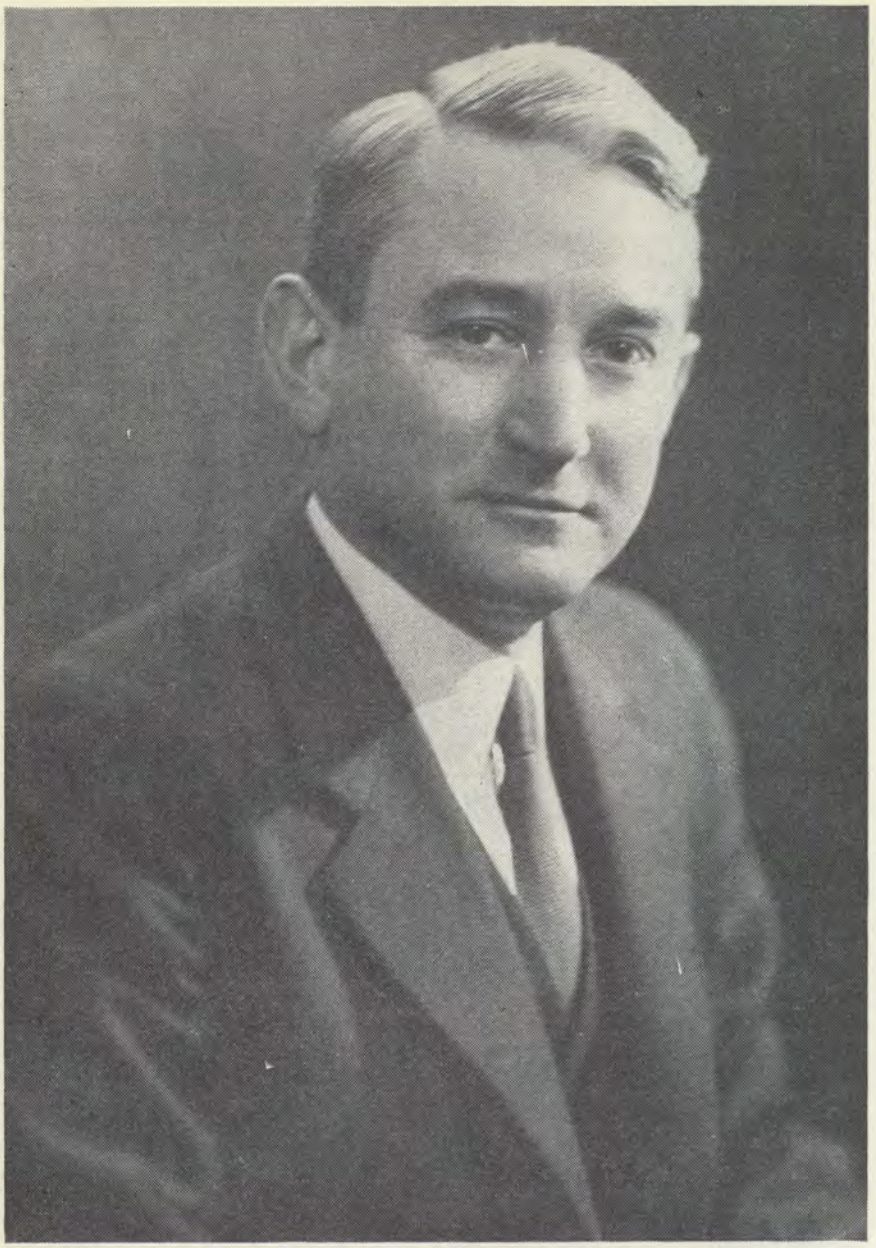
(21) Sections 12 and 13
(22) S.P.A. Reg. 5, Part 8305.12
(23) S.P.A. Reg. 10, Part 8310.9
(24) S.P.A. Reg. 5, Part 8305.12; S.P.A. Reg. 10, Part 8310.11
(25) SP.A. Reg. 5, Part 8305.11(d); S.P.A. Reg. 10, Part 8310.11 (c)
(25a) S.P.A. Reg. 5, Part 8305.11(e)
(26) Section 23 (4) (e); S.P.A. Reg. 5, Part 8305.12
(27) Section 29
(28) S.P.A. Reg. 5, Part 8305.12 (h) (1)
(29) S.P.A. Reg. 5, Part 8305.12 (h) (2); Section 23(d)
(30) S.P.A. Reg. 5, Part 8305.12 (h) (3) As to Government agencies this cannot exceed fair value. See Section 12(c)
(31) S.P.A. Reg. 5, Part 8305.12 (h) (4)
(32) S.P.A. Reg. 5, Part 8305.12 (h) (5)
(33) 10 Fed. Reg. 11582
(34) S.P.A. Reg. 10, Part 8310.6
(35) Section 12(c)
(36) S.P.A. Reg. 5, Part 8305.12 (g) (6); Section 13(b)
(37) Section 23(j)
(38) Section 23(j); S.P.A. Reg. 5, Part 8305.12(g); S.P.A. Reg. 10, Part 8310.18; S.P.A. Reg. 16, Part 8316.20
(39) "Industrial real property" means real property primarily or predominantly suitable for purposes of manufacturing, fabricating or processing of products, and real property which is suitable and equipped for mining operations. It includes unimproved land. In any case, the Administrator may determine whether real property is or is not industrial real property. (S.P.A. Reg. 10, Part 8310.1 (b) (2).
(40) S.P.A. Reg. 10, Part 8310.16



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any such attempt to restrict the resale of property conveyed in fee would be void, because in restraint of alienation and containing a restriction which is repugnant to the grant itself.[40a] Certainly if title insurance is written on industrial real property transferred under the Act some appropriate reference should be made in the policy to the restrictions against resale or lease. In those jurisdictions where deeds of trust are used in lieu of mortgages consideration should be given as to whether or not the conveyance to the trustee for security purposes would violate the restriction.

In the case of disposition of both industrial real property and non-industrial real property[41] to state or local governments or non-profit institutions for educational use, or to promote or protect the public health, the Administrator may require as a condition of the disposal provisions for the reversion of such property to the United States if the buyer ceases to use it for educational or health purposes.

In the disposal of airports[42] the Administrator may and undoubtedly will, at the request of the Civil Aeronautics Administration, or the Surplus Airport Disposal Committee,[43] require that any deed, lease or other instrument transferring airport property contain reservations, restrictions or conditions as to the future use of the property. If such is done there will be provisions for reversion and that any such airport property may be successively transferred only with the approval of the Civil Aeronautics Administration.[44] This is another instance where there will be imposed a restriction against alienation which would be void, except as to the United States, under the laws of a number of the States. In any event it is required that there shall be imposed on the disposal of airport property a condition that there shall be no exclusive right for the use of any landing area or air navigation facilities upon which federal funds have been expended.[45] Consideration should be given to including in any title insurance policy covering such airport property an appropriate reference to this restriction against exclusive use of the property.

Under Section 20 of the Act any proposed plan for disposition to private interests "of a plant or other property which cost the Government $1,000,000.00 or more" is required to be reviewed by the Attorney General to determine whether such disposition would violate the antitrust laws. As to any surplus aluminum, magnesium, synthetic rubber, chemical, aviation gasoline, iron and steel, or aircraft plant or facility or shipyard or oil pipeline or transportation facility which cost more than $5,000,000.00, Section 19 of the Act requires that a report thereof must be made to Congress by the Administrator, and that except as to aircraft plants and facilities, shipyards, and transportation facilities, no disposition can be authorized or made of any such plants or facilities until thirty days after such report has been made while Congress is in session except that the Administrator may authorize the lease of any such property for a term of not more than five years. In S.P.A. Regulation 10 it is provided that any plant or facility of the classes just named that are within the definition of industrial real property and which cost more

(40a) Burnett v. Piercy, 149 Cal. 178, 190, 86 Pac. 603 (1906); Section 711, Civil Code; Wayt v. Patee, 205 Cal. 46, 269 Pac., 660, (1928).

(41) "Non-industrial real property" is surplus real property of all kinds and classes located within the continental United States, its territories and possessions, except industrial real property, airports, harbors, shipyards, port terminals, and power transmission lines. (S.P.A. Reg. 5, Part 8305.3)

(42) "Airport" means any area of land or water and the improvements thereon primarily used, intended to be used, or determined by the Administrator to be suitable for use for or in connection with the landing and take-off or navigation of aircraft. The term includes "landing areas," "building areas," "airport facilities," and "non-aviation facilities." (S.P.A. Reg. 16, Part 8316.1 (2)

(43) The Surplus Airport Disposal Committee was established pursuant to S.P.A. Reg. 16, Part 8316.14 to function as an advisory committee to the Administrator.

(44) S.P.A. Reg. 16, Parts 8316.13 and 8316.21

(45) S.P.A. Reg. 16, Part 8316.13(a)

than $500,000.00 can be disposed of by sale or lease only with the prior written approval of the Administrator.

It should be apparent from the foregoing, which is not represented as being complete as to all phases of the procedural requirements and restrictions involved in the disposition of surplus real property, that no title company is equipped or could undertake to ascertain that the provisions of the Act and regulations issued thereunder had been complied with in all respects in the disposal of any parcel of surplus real property. Some consideration of this must have been in the minds of the framers of the Act. They must have known that a government agent may, as a general rule, bind the United States only to the extent of his actual authority which authority may be limited due to mandatory or prohibitive statutes restricting the scope of his action. At any rate, Section 25 is the piece de resistance of the Act which clears away many of the obstacles that otherwise exist. Section 25 reads as follows:

> "A deed, bill of sale, lease or other instrument executed by or on behalf of any Government agency purporting to transfer title or any other interest in property under this Act shall be conclusive evidence of compliance with the provisions of this Act insofar as title or other interest of any bona fide purchasers for value, or lessees, as the case may be, is concerned."

It has been said that: "Under this provision as between the Government and any bona fide purchaser for value, it would appear that the Government is estopped to deny the validity of any instrument executed by a Government agent regardless of the agent's authority to act. The effect would seem to remove the Government's defense that its representatives are special agents and persons dealing with them are placed on notice to ascertain the extent of their actual authority, insofar as making any instrument, purporting to pass title or other property interests to a bona fide purchaser for value, conclusive evidence of compliance with the provisions of the Act."[46]

But are the provisions of Section 25 all inclusive? Does the Section afford protection to a bona fide purchaser for value taking under an instrument purporting to transfer title to him under the guise of the Act when the property which is the subject of the purported transfer is not in fact surplus property within the definition of the Act and therefore not subject to its jurisdiction? It is true that Section 25 does not read "purporting to transfer title to *property* under this Act" but it does not seem illogical to assume or imply that this safeguard as to compliance with the provisions of the Act is applicable with respect only to the disposal of surplus property.

The proper determination of this problem is important. Suppose that an alleged owning agency does not in fact have control of property which it declares as surplus. It is not then an owning agency within the definition of the Act and the property it declares as surplus is not in fact surplus within the definition of the Act. The recent case of Gibbs *v.* United States[47], which was the subject of an A.T.A. letter of August 10, 1945, is scheduled for discussion at this convention. The undisputed facts of the case were that property acquired by the United States under the authority of the Lanham Act and which subsequently came under the jurisdiction of the National Housing Administrator was transferred by him to the Secretary of the Navy pursuant to authority conferred by the Lanham Act. This transfer was

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(46) Olverson, "Legal Aspects of Surplus War Property Disposal," (1945) 31 Va. L.R. 550, 604

(47) 150 F. (2d) 504 (1945 C.C.A. 4th certiorari denied, Nov. 19, 1945).

by an unpublished letter. Nearly ten months after the effective date of transfer of jurisdiction to the Navy, a deed was executed on behalf of the United States of America Federal Public Housing Authority, by the Federal Housing Commissioner which purported to convey to H. S. Gibbs and wife the property in question.

In holding the deed to Gibbs invalid by reason of it being obtained from officials whose authority over it had terminated the court reasoned that the effect of the transfer to the Navy Department was to take property out of the control of one set of officials of the government and to lodge it in the control of another set of government officials, and further, that there was no occasion for recordation of the transfer from the National Housing Administrator to the Navy in accordance with the statutes of the State, or even to publish such transfer in the Federal Register as title continued to remain in the United States.

In the light of this decision, and assuming that the protection afforded by Section 25 is limited in its scope to the disposal of surplus property only, consideration should be given to ascertaining that the agency declaring property as surplus actually was in control of such property at the time of declaration.

It is to be noted that the protection afforded by Section 25 extends solely to "bona fide purchaser for value" and "lessees." Suppose that a purchaser of surplus real property was subsequently shown to be not a bona fide purchaser by reason of his having been on notice of some non-compliance with the provisions of the Act or regulations at the time he purchased. Obviously he could not claim the protection of Section 25. Could his mortgagee claim such protection or could the holder of his deed of trust or any other lien holder claim such protection? They are not mentioned in Section 25. It specifically mentions only bona fide purchasers and lessees. Then does the term "bona fide purchaser" embrace mortgagees and other encumbrancers? It is at least doubtful.

In MacKenzie *v.* U. S.,[48] a Ninth Circuit Court case, the issue was whether the lien of an attachment creditor, who had attached property some seven months before an income tax lien was filed with the County Recorder, was prior to the Government's tax lien. Section 3186 of the Revised Statutes, as it then read, provided that any such tax lien was not valid as against any mortgagee, purchaser, or judgment creditor until notice had been filed by the Collector in accordance with the law of the state in which the property subject to the lien was situated. The Court held that the attachment creditor did not have the prior lien because he was not a judgment creditor and therefore not entitled to the protection of the statute.

If the view is adopted that encumbrancers of one who is not a bona fide purchaser for value are not within the safeguards of Section 25 then careful consideration should be given before insuring the interest of any lender or other encumbrancer. A title insurer might be protected if it insured a purchaser who was not bona fide under the provision of its policy excluding it from liability for loss occasioned by defects or other matters known to the insured at the date of the policy, but it would not be protected as to the lender.

The essential elements which constitute a "bona fide purchaser" are a valuable consideration, the absence of notice (actual or constructive), and the presence of good faith. When there is a disposal of surplus industrial real property the purchaser must, as has been previously stated, certify or execute an agreement that he will not resell or lease the property for a certain period of time and the deed is to set forth such restrictions. In all disposals of surplus non-industrial real property the disposal agency must deliver to the purchaser a certificate, at the time of transfer certifying its compliance with certain provisions of the Act and regulations. The purchaser has at least constructive notice of the law and if he does not obtain this certificate or, if in the case of industrial real property, his deed does not recite the restrictions as to resale or lease and he does not make the required representation or agreement as to resale or lease, it is doubtful that he could be considered a bona fide purchaser and within the protection of Section 25.

Section 34 of the Act provides that the authority conferred thereunder is in addition to any authority granted by any other law and shall not be subject to the provisions of any law inconsistent therewith. It further provides that the Act "shall not impair or affect any authority for the disposition of property under any other law, except that the (Administrator) may prescribe regulations to govern any disposition of surplus property under any such authority to the same extent as if the disposition were made under this Act, whenever it deems such action necessary to effectuate the objectives and policies of this Act." Subsection (b) of Section 34 then provides that nothing in the Act shall impair or affect the provisions of stated Acts and Acts supplemental thereto. Among those specified which authorizes the disposal of real property are: The Tennessee Valley Authority Act of 1933, as amended:[49] Public Law 849, 76th Congress[50] which relates to the acquisition and disposal, by the Navy and War Departments and the United States Housing Authority and the Federal Works Administrator, of defense housing and defense public works; the Trading with the Enemy Act, as amended;[51] Section 43 of the Bankhead-Jones Farm Tenant Act, as amended;[52] the internal revenue laws; and the statutes relating to the public lands.

Apparently under the authority of Section 34, S.P.A. Regulation 10, Part 8310.19 has been issued to provide that except as to transfers of industrial real property to government agencies for war production purposes, disposals of surplus industrial real property shall not be made under laws other than the Act but shall be made only by the disposal agency in strict accordance with the provisions of Regulation 10 unless the Administrator shall consent in writing to a different procedure. Surplus industrial real property is defined in S.P.A. Regulation 10, Part 8310.1(b)(2) as being "real property primarily or predominantly suitable for purposes of manufacturing, fabricating or processing of products, and real property which is suitable and equipped for mining operations. It includes unimproved land, as well as land together with buildings, fixtures, facilities and equipment located on such land or adapted to use in connection with such purposes. In any case, the Administrator may determine whether real property is or is not industrial real property as defined herein."

In view of the prohibition against the disposition of surplus industrial real property under any laws other than the Surplus Property Act of 1944, it would probably be unsafe for title companies to issue any policies covering any disposition of property by a Government agency where there is any suspicion that it is industrial real property unless the disposition is made under the Surplus Property Act. This would be true as to disposals by the Reconstruction Finance Corporation, the Defense Plant Corporation, and any other wholly owned Government corporation whether such property has been acquired by foreclosure or otherwise. The act of disposal or attempted disposal of property by a Government agency would seem to imply that such agency has determined that such property is surplus to its needs and responsibilities and therefore is surplus property.

if you had the deed that is called for —we will assume for the sake of argument that it is a warranty or grant deed, which implies under the law that you have read that the instant purchaser is protected.

MR. CERINI: The deed will undoubtedly be a quit claim deed unless there is a finding that a warranty

(48) 109 F. (2d) 540 (1940, C.C.A. 9th)
(49) Sections 831—831dd, Title 16 U.S.C.A.
(50) Sections 1501-1564, Title 42 U.S.C.A.
(51) Sections 1 to 30 of 50 App U.S.C.A.
(52) Section 1017, Title 7 U.S.C.A.

DISCUSSION

CHAIRMAN O'DOWD: Mr. Cerini, what will be the position of the ordinary title insurance company if it has laid in its lap an order for title insurance calling for the vesting of title in an individual who is taking property, we will say, like Willow Run. Would you, as an insurer, feel that you were entitled to insure the title

deed is necessary to obtain a reasonable price for the property or to render the title marketable. Also the use of a warranty deed must be approved and recommended by the attorney general.

Assuming that it is a quit claim deed, and the surplus property is industrial real property, which Willow Run undoubtedly would be, there would have to be restrictions as to resale or lease of the property. You would also have to be satisfied, in view of the Gibbs case, that the agency which declared the property surplus actually had control of the property.

Then perhaps you might be safe in relying on Section 25 of the Act in insuring title to the property transferred to the purchaser. If the purchaser turned out to be not a bona fide purchaser, you could probably rely upon the provisions of your policy excepting from the coverage thereof loss arising out of defects or other matters existing at the date of the policy and known to the purchaser who is your insured.

However, I think the problem from there on out is—does Section 25 protect a lender of the purchaser of surplus property? Supposing you are called upon to issue a lender's policy. I doubt that Section 25 affords protection to an encumbrancer and you would probably be liable under your policy if the sale was set aside for non-compliance with the Act and regulations and by reason of the purchaser not being bona fide for value.

To me, besides the Gibbs case, the biggest failure of the Act is that no protection would be afforded to a mortgagee or beneficiary under a trust deed unless a purchaser was actually known to be a bona fide purchaser for value; and I doubt if you would have any way of knowing that.

MR. MURRAY L. JONES (Cincinnati, Ohio): In any place in the designations and regulations is there specified who are or what are the owning agencies; that is, would the War Department or Navy Department fall in that category?

MR. CERINI: Yes. An owning agency could be any executive department of the government, or the independent agency in the executive branch of the Federal government or any corporation wholly owned by the United States.

MR. JONES: If the R.F.C. gives a quit claim deed, will those restrictions against alienation and so on be set forth in the deed or will we have to depend upon the regulations?

MR. CERINI: They are required to be recited in the instrument of transfer, which would be the deed.

MR. JONES: Thank you.

Report of Legislative Committee

By
EDWARD T. DWYER, *Chairman*

Executive Vice-President, Title and Trust Company
Portland, Oregon

Members of the American Title Association, guests and friends:

Many times while I was preparing this report, I asked myself if the time required to assemble this data wasn't an economic waste. True, I personally benefitted by its preparation, but what I asked myself was: What does the membership accomplish by hearing it or by seeing it in print?

I reached this conclusion: There is a definite need for this committee and the work it is supposed to do, and while all your chairmen won't be endowed with the ability to render reports filled with humor, legal learning and the pretty phrasing of a Stevenson, yet there may well be something in each report which you can use to good advantage in your own state.

No state has a monopoly on brains or ability. We see legislation being enacted in the high powered states in 1945 copied from or patterned after the statutes which have long been on the statutes of the so-called backwoods areas.

Human nature being what it is, I feel free in saying that all of us have a sneaking hunch that we could draft legislation in our own states that would benefit our citizens. Certainly we could; few of us do, but if one is really sincere in this belief and has a desire to be of service, one may find plenty of new legislation he may propose to some novice in the legislature of his state, most of whom I have noticed are only too anxious to have bills to introduce and no ideas to embody in such bills.

I realize that all of us can't accomplish in any one session of our state legislature what the title men of California through the California Land Title Association have accomplished, yet there must be a beginning and there is no better time to start than now.

To me, it is apparent that we of the title fraternity are capable of doing this work insofar as laws pertaining to real property are concerned and since the lawyers apparently won't, we should.

EDWARD T. DWYER

This is neither a plea to listen to the spoken word nor a hint that you should read the report when published. It is, however, an observation based upon two years experience doing a job utterly lacking in glamour and compensation, other than a wish that someone, somewhere might gleam a bit of information which might be of benefit at some future time.

Alabama

The last report your Legislative Committee had from our member, Mr. Goodloe, informed us that the legislature while in session was in a state of inactivity. We are forced to the conclusion that if it came to life, its energies were spent in a more profitable pastime than harassing the poor title companies. We say this because we have had no report subsequent to adjournment.

Arkansas

Mr. O. M. Young of that state reports no bills introduced affecting the title industry.

California

The life of a Legislative Committee would not be half bad if it were not for this state. The sheaf of enactments sent us by Floyd Cerini would take half a lifetime of a working man if he were to peruse all of the acts.

Again we wish to pay our respects to the California Land Title Association, which organization renders such a splendid service to its members and to the Title fraternity as a whole. A new statute was passed known as the abandoned property act, which in effect provides that deposits and credits held by banks and trust companies, building and loan associations, saving unions, credit unions and similar organizations appearing on their books and records

as of January 1, 1945, and January 1 of each year thereafter, showing sums due and payable to owners whose whereabouts are unknown, shall be considered abandoned if unclaimed for twenty years and the funds shall be turned over to the state comptroller.

If we can believe some of our friends, this will work a hardship on many retired farmers from the corn belt, who, we are told, moved to California to retire. Our information was that these people lodged their money in the bank or similar institution then took a job for a lower salary than a native and existed on their daily wage. Maybe these funds are not abandoned after all—just resting.

The law relating to acknowledgments by commissioned officers was amended to provide that the act remain effective until the ninety-first day following the adjournment of the 1947 legislature or cessation of hostilities in all wars in which the United States is now engaged, whichever date the first occurs. The only thing the lawmakers forgot, it seems, is properly to define cessation of hostilities. As the farmhand said, "It happens every time."

By an amendment, it is now provided that if a summons be lost after service, but before a return made, an affidavit of the person or official making service showing the facts of service may be made in lieu thereof. We wonder just what people did before the advent of affidavits.

Administrative decisions may be reviewed by an honest to god court in California. New Section 1094-5. We bet the dockets will be crowded until the next spell of unusual weather.

If one thinks one has an interest in California real estate which might go to the commonwealth in an escheat proceeding, one may bring an action to determine whether he or the state has to take the real estate. The only matter that can be adjudicated is whether or not an escheat occurred. The attorney general or a district attorney of the county in which the land is situated has one hundred and eighty days to make up their respective minds whether they want to make the effort to try and get the stuff or let it go. If the officials are quick-witted individuals and want to make a real smart decision, they may file a disclaimer before that time.

Here is an enactment I wish we had in our state. A statute of limitations on street liens and assessment bonds. The limitation is fixed at four years from the date of recording the assessment; or if the bonds be issued four years after the due date of the last installment. We in Oregon are still acting as collection agent for our city treasurer on street improvement liens entered back in 1860.

Hereafter when a maiden is divorced in that state she may, if she requests it, get back her maiden name. Too bad the act did not confer greater authority on the court and restore to the poor thing some of the other things she may have lost.

A new act provides that a written finding of a presumed death made by an authorized officer or an employee of the United States under the Federal Missing Persons Act, and any written official report or record or duly certified copy thereof, that a person is missing, missing in action, dead, captured by the enemy, or beleagured, made by such officer or employee, shall be received in any court, office, or place in the state as evidence of such persons status.

It would seem to us that this is good legislation, particularly so in those states where through marriage one spouse acquires property rights in the lands of the other.

The statutes relating to guardian and ward were amended and enlarged in several important particulars, notably in the case of veterans.

By Section 1664, the Probate Code, it is provided that when an incompetent veteran has been committed or transferred to a facility and is thereafter discharged by the chief officer of the facility as cured, a certificate showing such discharge may be filed with the clerk of the county from which the person was committed.

If no guardian has been appointed for such person, the certificate showing such discharge as recovered or cured shall be prima facie evidence that the person has recovered his competency and the record thereof by the clerk shall have the same legal force and effect as a judgment of restoration to capacity. Then, too, a veteran's home may accept the appointment as guardian and one of its designated officers may act as such.

New legislation authorizes public guardians to be appointed in counties having a population of a million or more. We believe it safe to assume that Los Angeles county is the only county that can avail itself to this new law.

The homestead law was amended to clarify the definition of a homestead to include out-buildings, to increase the value of a homestead exemption from five thousand to six thousand dollars for the head of the family and from one thousand dollars to two thousand dollars for any other person, and finally, to provide that the exemption is over and above all liens and encumbrances on the property.

Sections 1560 and 1561 of the insurance code were repealed. These sections had to do with retaliation against insurers organized in other states if such other states discriminated in favor of their domestic insurers and against California insurers. The repeal of these laws no doubt was done to meet the decision in the Southeastern Underwriters case.

Section 328F is added to the civil code to provide that no corporation or registrar or transfer agent shall be liable for transferring to a surviving joint tenant or tenants, any share or shares or other securities issued by such corporations in joint tenancy on the books or records of the corporation.

Judgment dockets of the superior court are apparently passe in California. The laws relating to docketing of judgments have been repealed and new sections added to the civil code to provide that satisfactions of judgments of the superior courts are to be entered in the register of actions and not in the docket.

A new Section 6007 was added to the Government Code to provide that the status of a newspaper of general circulation remains unchanged in the event that the publication of the newspaper is discontinued by reason of economic or other conditions induced by war, and the publication of which is renewed either while the war is still pending, or within one year from and after the date on which hostilities officially terminated.

A uniform simultaneous death act was enacted. Sections 296-296.8 and provides generally that where the title to property or the devolution thereof depends upon priority of death and evidence is lacking as to the priority thereof, the property of each person shall be disposed of as if he had survived except in the following cases:

1. Where two or more beneficiaries are designated to take successively by reason of survivorship, the property shall be divided into as many equal portions as there are successor beneficiaries.
2. In the case of joint tenants, the property shall be distributed one half as if one had survived, and one half as if the other had survived, and if there are more than two joint tenants, then the property shall be distributed in the proportion that one bears to the whole number of joint tenants.
3. Where the insured and the beneficiary in a policy of accident and life insurance have died simultaneously, the proceeds shall be distributed as if the insured had survived the beneficiary.
4. Where husband and wife have died simultaneously leaving community property, one half of the property shall be distributed as if the husband had survived and the other half as if the wife had survived. The act of course is not retroactive nor does it apply to instruments wherein specific provision has been made for distribution of property different from the act.

Section 259 of the probate code, dealing with the right of non-resident aliens to take real or personal property by distribution, from an estate of decedent, is amended to provide that it shall be conclusively presumed that there exists a reciprocal right on the part of the citizen of this country to take real or personal property by distribution, upon the same terms and conditions as citizens take in the coun-

try where the alien resides. Any one interested in the estate may file a petition to determine whether such reciprocal rights do exist. The burden of proof is upon the petitioner to prove that such rights do not exist. Before the amendment it would seem the burden of proof was on the alien of proving that in the country of their residence, citizens of the United States take by succession or under a will on the same basis as citizens of that country.

Estates of a value of $200.00 or less, being administered by the public administrator, may after the payment of the burial and last sickness expenses, be distributed upon affidavit.

In an estate under twenty-five hundred dollars, in the absence of fraud, an order of the superior court may be had setting aside to the surviving spouse or minor children the whole estate; such an order when it becomes final, is conclusive, except upon an erroneous assumption of death.

A new Section 761.5, is added to the probate code to authorize, a real estate commission in an amount to be fixed by the court to be paid upon confirmation of the sale, when the sale was procured without an agent, but the real estate agent procures the successful bidder.

Section 51A of the code of civil procedure has been amended, which permits a special proceeding to determine the identity of a person who has conveyed property under a name other than the one under which he acquired title. By the amendment it is broadened to cover situations where title was acquired by judgment or decree. Under the old act it required posting of a notice in three places; now a notice may be posted in but two, the court house, and upon the property affected.

Among the several amendments made to the business and profession code, we mention but a few.

An amendment to provide that within one month after the closing of a transaction in which title to real property is conveyed from a seller to purchaser through a broker, the broker must inform the seller and purchaser in writing of the selling price thereof. In the event of an exchange of real property, such information shall include a description of the real property and the amount of added money consideration. If the transaction be closed through escrow, and the escrow agent renders a closing statement which reveals such information and the statement is given to both buyer and seller, such statement will suffice. The obligation of the broker ceases one year after closing unless in the meantime the seller or purchaser has made a demand in writing.

A provision requiring a licensee who prepares an agreement authorizing or employing such licensee to purchase or sell real estate for a commission to deliver a copy of such agreement to the person signing the same. A provision requiring one licensed as a broker unless licensed prior to January 1, 1942, to be either an American citizen or an alien who has received his first citizenship papers. Yes, we checked this provision carefully and assure you that the act is silent as to requiring the licensee to be a native son.

Section 692 provides that no longer can one through spite give land to the state of California unless the gift be approved by the director of finance. Could it be they don't want the stuff even as a gift?

Hereafter in that state surveyors may not follow their profession unless they be citizens of the United States.

MELVIN JOSEPHSON

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A limitation upon the time in which to contest the validity of tax deeds was placed at one year after the date of the deed or September 1, 1945, whichever is the later.

We are informed that the title companies are going to let the court of last resort make a last guess on this act before insuring tax titles.

Certain sections of the tax code were repealed and new sections added to bolster up tax deeds. New legislation provides in effect that if a successful attack be made on a tax deed, that the deed be not declared void unless the former owner or other part in interest pays an amount equivalent to the amount that should be paid upon redemption as determined by the court. The amount fixed to be paid within six months and distributed as follows:

1. To the purchaser the amount paid for the tax deed.
2. The balance to the tax collector to be divided among the taxing agencies. If the amount be not paid in six months the court is to order a new tax deed and the title quieted in the grantee of the new tax deed. A taxpayer's action to contest the validity of a tax deed is fixed as one year.

Certain sections of the revenue and taxation code were amended and new sections added authorizing a procedure whereby the purchaser of tax deeded property or any other person claiming through him can bring an action to determine adverse claims to or clouds upon tax deeded property purchased from the state. One of the new sections would eliminate the requirement that the complaint set forth the interest of all the persons in the property. Hereafter it would only be necessary to include as parties defendant, persons who are known to the plaintiff or appear of record to have some interest in or claim or cloud on the land arising prior to the recording of the deed from the state, other than persons owning a special assessment, unless plaintiff seeks to determine the interest or claim of such persons. The purpose of the amendment was to exclude as a defendant in certain cases persons owning a special assessment and also persons who may, for example, have become a mortgagee or acquired some other interest after the deed from the state. The amendment permits joining heirs and devisees to be joined as such without naming them where the defendant is known to be dead.

Colorado

The legislative committee wishes to congratulate the Title Guarantee Company and the Landon Abstract Company on their joint efforts for publishing, in booklet form, the new legislation of that state bearing upon real estate titles. Much of the matter contained in this booklet is of interest only to the title men of Colorado. The inheritance tax laws were amended liberally as were their laws relating to the issuing of tax receipts; laws relating to certificates of taxes due; laws relating to the extinguishment of the lien imposed by certain tax certificates and certificates of purchase issued by county treasurers and laws relating to tax redemptions.

Senate bill No. 48 has to do with zoning regulations; and if we read the law correctly, the owners of real property in any given area already zoned in accordance with an existing law may petition the board of county commissioners of the county wherein such area is situated to provide for the regulation of the future construction and alterations of buildings, dwellings and structures together with plumbing and electrical installations. The law provides that the number of petitioners shall not be less than sixty per cent, nor more than seventy-five per cent of the total number of owners of the real property in the area to be zoned.

Senate bill No. 311 is an amendment and provides for a seven year statute

of limitations on deeds issued by the county treasurer. The act provides that any and all defects, irregularities, want of service, defective service and lack of jurisdiction or other grounds of invalidity, nullity or causes or reasons whereby or wherefor any such document might be set aside or rendered inoperative must be raised in a suit commenced within said seven year period, and not thereafter except that the act shall not apply to any of the following cases:

a. Forged documents.

b. During the pendancy of an action commenced prior to the expiration of said seven year period to set aside, modify or annul or otherwise affect such document and notice of such action has been filed as provided by law.

c. When such document has been by proper order or decree avoided, annulled or rendered inoperative.

d. Where the party who brings the action to question, attack or set aside the validity of such documents or his predecessors shall have been deprived of possession within two years of the commencement of the action.

Senate bill No. 319 relates to powers of attorney by persons in the military service. This act provides that these powers shall not be revoked or terminated by the death of the principal, as to the agent or other person who without actual knowledge or actual notice of the death of the principal shall have acted or shall act in good faith and makes the power binding upon the heirs, devisees, legatees or personal representative of the principal. Section 2 of the act provides that an affidavit executed by the attorney in fact setting forth that he has not or had not at the time of doing any act, pursuant to the power received actual knowledge of the revocation or termination of the power by death or otherwise, shall in the absence of fraud be conclusive proof of the non-revocation of such power. I would like to say at this point that a number of states have adopted similar legislation. A bill of this character was introduced in the Oregon state Legislature at the last session and was vetoed by our Governor, his reason being, and I believe it a good one, that the act was clearly unconstitutional. Act 3 provides that either an official or other report of the principals being listed as being missing or missing in action used in the military sense shall constitute knowledge or notice of the death of the person. The act terminates one year after the conclusion of the present war as proclaimed by the President of the United States.

House bill No. 759 provides that proof of execution of wills where witness is in military service or is unavailable may be made upon the testimony in person or by deposition of at least two creditable disinterested witnesses or some other sufficient proof that the signature to the will is that of the decedent. The court in its discretion may require in addition to such testimony, the testimony or deposition of any available subscribing witness or proof any such pertinent facts and circumstances as it may deem necessary to admit the will to probate.

Executors, administrators, guardians, conservators, and trustees may hereafter invest funds in notes secured by first mortgages or deeds of trust, such loans shall not exceed fifty per cent of the appraised value of the lands and improvements, or may equal sixty per cent of the value if the loan is to be amortized over a twenty year period. They may also loan upon real property which is under lease in its entirety, provided the term of the lease has at least ten years to run, and the lease provides that the lessee pay taxes, expenses of maintainance and a fixed rental, provided that the appraised value of the land and improvements is in excess of ten times the net annual rental reserved in the lease. They may also invest in notes or bonds secured by mortgage or deed of trust insured pursuant to title II of the national housing act.

Senate bill No. 318 provides that a written finding of actual death made by the Secretary of War, the Secretary of the Navy, or other officer employee of the United States authorized to make such finding pursuant to the federal missing persons act may be received in any court, office or other place as evidence of the death of the person therein found to be dead. The act also provides that a written finding by any of the above officials of a presumed death because of missing in action, may, after one year from cessation of war, in that theatre of war where missing, shall be received as evidence of death of the person therein found presumed dead and of the date, circumstances, and place of disappearance. It is further provided by the act that any finding before the record or duly certified copy thereof purporting to have been signed by an officer or employee enumerated hereinbefore, shall prima facie be deemed to have been signed and issued by such officer or employee, and that the official acted within the scope of his authority.

House bill No. 195 provides that a veteran eligible for a loan pursuant to the servicemen's re-adjustment act of 1944, even though he be a minor, may enter into a contract for a loan and provides that no defense may thereafter be interposed by reason of the fact that such veteran was a minor.

The State of Colorado has seen fit by the provisions of Senate bill No. 470 to authorize the state highway department to acquire excess property, the only requirement being that the highway department deem it in the interest of public interest, safety, or convenience.

Delaware

Our member from that state advised us on June 18 that an index of the legislation was being printed and would be sent us as soon as it was available. It must be that the printers in Wilmington went on strike for we have heard nothing from our member since that time.

Florida

It may be news to most of us that there is still lands subject to the homestead laws in this state of milk and honey, but there must be, for the legislature saw fit to authorize the homesteading of same by honorably discharged veterans of World War II.

A new statute of limitations was passed as to liens incumbering real estate. The only criticism your committee has of the law is that twenty years is too long a period.

A rather comprehensive guardianship law was enacted. We did not take the time to check it minutely, but venture the guess that it's an up to the minute code.

Florida, too, seems to have doctored up its statutes dealing with lands acquired by counties through tax foreclosure. We see a tendency throughout the nation to make these titles good.

Much legislation during the last session has to do with gas and oil—they just can't leave California alone.

A thorough job of amending seems to have been made in its probate code. We were furnished the legislative acts by our kind-hearted brethern from this state and it's impossible to determine in what respects these statutes were amended.

This state followed the usual pattern in enacting legislation having to do with missing persons and persons listed as captured, beleagured, interned, etc.

A foreign will devising real property in the state of Florida, may, by a new enactment, if the execution of said will conforms to the laws of the state, be admitted to record in the office of the county judge of any county in which the devised real property is situated.

This is predicated upon a probate in the foreign jurisdiction and a lapse of three years from the date of death of the testator.

Upon petition of any person, if the court finds from the duly authenticated copies that the will conforms to the laws of Florida, the county judge shall by short order admit the same to record.

When so recorded, it shall be effectual to pass title to real property and shall be presumptive evidence of the authority of any person authorized by the will to convey or dispose of the real property.

The statute relating to claims against the estates of decendents was amended to require the filing of claims within eight months from the first publication of notice to creditors.

It would seem that the statute is emphatic, that if claims are not filed the unsecured creditor loses all rights to enforce any claim he may have even

though the personal representative has recognized the claim to be valid.

The liens of mortgagees and persons in possession are, however, protected.

The statutes relating to adverse possession were amended and although your committee is unable to identify the new matter, we are of the opinion that the state of Florida doesn't mess around on the question. Seven years seems sufficient in the ordinary case, and three years suffices for one claiming title through a sale made by an executor, administrator or guardian. The statute is retroactive.

The University of Florida will, by Senate bill No. 599, turn out realtors who will know all the answers. Seventy-five hundred dollars was thought sufficient to start the job.

We have a few men engaged in selling real estate out our way who couldn't reach the end of the first semester on $7500.00 unless the university burned up.

Not to be outdone by its neighbors, Florida passed the necessary legislation to authorize housing authorities to clear blighted areas.

It now becomes the duty of the several clerks of the Circuit Court to ascertain from those presenting instruments (other than mortgages) for record to give that official the post office address of the grantor and grantee named in the instrument.

It only costs ten cents extra to get this service, and if we read the law correctly, it's worth all of that to the tax collector.

Estates tail are definitely out by an amendment and the rule in Shelly's case is no more.

How, may we ask, are the young lawyers of that state going to show their learning if they don't have to pretend they understand this simple rule?

Idaho

Mr. Turner, President of the Idaho Title Association and a member of our committee from that state, wrote us that an active group, including of course the state grange, was attempting to put through a constitutional amendment, which would enable the state of Idaho to use its credit in guaranteeing land titles. The bill which would have authorized this scheme was defeated through the efforts of the state association. At the time of his letter there was still a joint senate and house bill that had to be beaten before they were out of the woods. It was his opinion, however, that this joint bill was also due to fail.

Iowa

Mr. Earl C. Glasson of Waterloo informs us that there were but nine hundred and forty-six bills introduced at the 1945 session. While Mr. Glasson was good enough to send us what amounts to a senate and house calendar, his final report is so abbreviated that we can but give you the gist of the different enactments.

The limitation of actions to foreclosure the ancient mortgages shall hereafter apply to unrecorded as well as recorded mortgages.

The Mechanics Lien Law was broadened to cover shrubbery and landscaping.

The time was extended to file an inventory for inheritance tax purposes to eighteen months. To permit payment of a legacy to an incompetent where the sum involved is $200.00 or less to the parents or natural guardians. The assets of a guardianship estate where the amount involved is $200.00 or less may be delivered to the parents or natural guardians of the ward.

In common with many states, Iowa

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President, Pennsylvania Title Assn.
Vice-President, Land Title Bank & Trust Company
Philadelphia, Pennsylvania

saw fit to enact legislation covering the following matters:

To provide that powers of attorney made by persons in service shall be valid until actual knowledge or notice of the death of the maker is received, and to make such instruments binding on the maker's, heirs, legatees and personal representatives.

An act to provide that official notice of presumed death of persons in armed services shall be received as evidence of the fact.

An act to provide that proof of will of person dying while in armed services may be made by the testimony of two disinterested persons that the signature is that of the testator.

Kansas

Our member reports no bills introduced that would in any manner affect the title business.

Massachusetts

This we couldn't believe—a law providing that there shall be no limit to the number of times a person may take the bar examination, and we thought all their lawyers came out of Harvard.

This state, too, apparently seeks to give its tax titles a cloak of respectability.

Hereafter, if the land be in the hands of an innocent purchaser, only one year is allowed after final decree to vacate, modify or reverse the decree of foreclosure.

Veterans of World War II need not have completed college education to take the bar. We don't suppose there will be too much of a rush to take advantage of this liberal offer, as few veterans were under sixteen years of age when they enlisted.

Veterans of World War II, even though they be minors, may have full legal capacity to contract under G. I. Bill of Rights.

Guardians or conservators may, by decree of the Probate Court, be authorized to sell, mortgage or lease interest of his ward who owns land as a tenant by the entirety in conjunction with the other tenant.

Attachment of lands or interest therein expire six years from date of filing unless renewed.

Montana

Our member from that state advises that no bills were introduced that in any manner affect our profession.

Nebraska

Colonel Leo J. Crosby of Omaha reports, with the exception of a couple of items having to do with publication, our Legislation Session for 1945 did nothing of interest.

New Hampshire

Each day we learn something new; from our member from this state, Mr. Neal W. Cobleigh of Nashau, we learned that title insurance is not available in his state.

Hold your seats, gentlemen, give the lad a chance to come over voluntarily. His report is brief. To quote him:

"The only legislation which was adopted at this last meeting of the legislature was the clarification of our existing uniform acknowledgment law, which simply ratified our previous form of acknowledgment, thus making our law conform to the acknowledgment procedure for members of the armed forces with other states."

"An attempt was made at this legislature to enact a bill making an indefeasible title to real estate following a tax title. The bill presented very many interesting features and would handle a tax title in very nearly the same manner in which a foreclosure of a power sale mortgage might be handled. The bill went through committee process and received a favorable report on the bill provided that it would be redrafted. The bill was so redrafted and with an assurance of the majority of the committee, it was felt that this legislation would be

passed. However, something went haywire among the committee members and the bill failed to get out of committee, this, however, may temporarily close this proposition but I feel very confident that at the next session of the 1947 legislature this bill will become a law and will serve as a model for many other states to adopt because of its absolute features."

He adds that this bill was vigorously supported by his office.

New Jersey

Aside from passing the usual legislation relating to persons in the armed forces, i.e., acknowledgments, finding of presumed death pursuant to the Federal Missing Persons Act, suspension of statute of limitations during service, and some G. I. legislation, our member, Mr. Evans, found little to interest title men in other jurisdictions.

He blushingly told us, however, that chapter 162 of the laws of 1945 should be mentioned.

A law known as the Corporation Business Tax Act of 1945 was enacted which by its terms repeals the personal property tax on intangibles and substitutes a tax which in effect is an income tax.

A real joker in the act, he points out, is that it provides that the tax shall constitute a lien on all of the taxpayers property on and after January 1 of the year when due. However, under the provisions of the act, the return is not made until April 15 of the year succeeding, and the tax is to be paid thereafter.

He wants to know how to pass title from a corporation after January 1, but before the amount of the tax becomes known.

None of the members of this committee are smart enough to answer him, but maybe some member of the convention can give him the answer.

New York

Our eminent member from the state of New York reports as follows:

As most directly concerning title companies, of the nine hundred-odd bills enacted by the legislature in the first session this year (I say "first" because a later special session is promised), should be mentioned chapter 635, which amended 434 of the Insurance Law as to reserves of title insurance corporations. Without going into the detailed changes made, which would probably not interest the members of this committee nor the members of the Association, I will merely state that the compulsory reserves are increased, but not in a prohibitive or crippling degree. We were pleased to note that, by new language in the section, the "reinsurance reserve", newly so called, with which the legislation was principally concerned, shall "for all purposes be deemed and shall constitute unearned portions of the original premiums and shall be charged as a reserve liability of such corporation in determining its financial condition ———". Under applicable decisions of the courts that should make a little difference in taxation. Another and important innovation is that the Superintendent of Insurance, in case a title company gets into financial difficulties, is authorized to use the accumulated reserve fund of all the companies to pay losses of policy holders and holders of guaranteed certificates of title, searches and abstracts, and also to obtain, from other companies, reinsurance of the risks of the company in trouble. The intention of the amendments was to stabilize and strengthen title companies generally. Abstract companies are not included, as they are not organized, and do not operate, under the Insurance Law. But although the legislature did not go to work on them it did not forget my own company, which has a special charter which makes it subject to both the Insurance Law, as an insurer of titles, and the Banking Law, as a trust company. This legislation affected us also.

Chapter 10 amends the Insurance Law in view of the decision in the United States Supreme Court in United States vs. Southeastern Underwriters Association, decided June 5, 1944, which held, I need not remind you, that insurance is "commerce" within the meaning of the Federal anti-trust laws. This act exempts from personal liability officers, directors and trustees of insurance organizations who, in good faith in their corporation's interests, pay, or do not contest the payment, of fees and taxes in other states, from which the corporation might be exempt, under such decision, on the ground that it was engaged in interstate commerce. The exemption relates only to acts and payments after the date of enactment (February 14, 1945) and ceases if, prior to payment, the highest state court or the U. S. Supreme Court shall have decided the fee or tax was invalid, and also does not protect against acts and payments on and after July 1, 1946.

Mr. Clement H. Barsch, of this Association (Toledo, Ohio), prepared a very interesting analysis of the Bankruptcy Act as revised by the Chandler Act. I think his paper appeared in an issue of our title news in 1941. He pointed out that the notice and caveat to the whole world effected by the filing of a petition in bankruptcy, whereever filed, as a consequence of which a purchaser in good faith from the bankrupt, though without actual notice of such filing, took subject thereto, was safeguarded against if the laws of the particular state allowed the filing of either one of certain papers in the bankruptcy proceeding. Under New York law there is no authority to record any of the papers mentioned. A bill was introduced this year which would have enacted the required authority, but unfortunately it failed of passage by one of the two Houses. Apparently the only reason for its defeat was lack of interest in the House where it was not originally introduced. It seems a pity that a bill such as this without any selfish motive and in the interest of sound real estate titles, is allowed to die through the indifference of legislators to real estate titles.

North Carolina

Mr. W. A. Hanewinckle, Jr., of Winston-Salem informed us that he had to check through eleven hundred and fifty new laws to make his report.

It is a lucky thing for him and me, too, that only a few of them related to real property.

The fifteen year statute of limitations on mortgages and deeds of trust passed in 1923 was held by the Supreme Court of that state not to apply to such instruments executed prior to that date. Now by H. B. 880 it is provided that holders of notes executed prior to 1923 have until March of 1946 to protect their rights by a marginal entry showing that the debt remains unpaid.

H. B. 866 validates cancellations of deeds of trust by note holders instead of trustees made prior to January 1, 1930.

Believe it or not, married women may now acknowledge their deeds and deeds of trust the same as the menfolk of North Carolina.

However, if the deed or contract be between husband and wife, a special certificate is still necessary showing that the deal is not unreasonable or injurious to her.

These southern gentlemen are still noted for the way they protect the fair sex.

Counties and municipalities may warrant the title to the lands they sell—no personal liability, of course, but it might help to sell their tax foreclosed properties.

A will is revoked by a subsequent marriage except certain wills executed pursuant to powers of appointment. That's not news, but this might be; wills are revoked by a subsequent absolute divorce as to that portion of the will which would have devised or bequeathed property to the divorced spouse; such property will now pass under the residuary clause if any, if none to the heir or next of kin as in the case of intestacy.

G. S. 1-118 provides, "From the cross indexing of the notice of lis pendens only is the pending of the action constructive notice to a purchaser or incumbrancer of the property affected thereby."

H. B. 729 expands this section to suits in the Federal Court.

S. B. 243 re-defines the practice of law to include aiding in the preparation of deeds, wills and other legal forms.

Following the decision in United States vs. Southeastern Underwriter's Association, a commission of fifteen men was appointed to study the insurance laws of North Carolina and to

recommend changes in the existing insurance laws, to the 1945 session of the General Assembly. The commission's recommendations were embodied in eleven bills, all of which were adopted with minor changes. For a number of years the principal tax assessed against insurance companies has been a 2½% gross premium tax. However, if an insurance company had as much as 15% of its entire assets in certain specified investments in North Carolina, such company paid at the rate of only ¾'s of 1% of its gross premiums. The premium tax law has been rewritten and fixed at 2% for all companies, except the tax on unemployment compensation insurance premiums which was left at 4%. The Insurance Department of North Carolina has been enlarged to cope with its additional duties, and another commission of twenty men has been appointed to consider additional changes in the insurance regulations.

Since 1929, North Carolina has been a self-insurer under the Workman's Compensation Act. This year the state becomes a self-insurer against fire hazards, and a reserve fund to cover estimated losses has been set up.

Ohio

The ninety-sixth General Assembly of Ohio amended its general code relating to the payment of debts of an estate by an executor or administrator so as to make its provisions conform to the federal statutes in this particular.

Hereafter the secretary of state may not dissolve a corporation until all its current and delinquent franchise and personal property taxes have been paid.

S. B. 331 relates to taxes, fees, requirements and retaliatory statutes on insurance companies.

Legal instruments may now be filmed, microfilmed or microphotographed.

Ohio also gave to veterans of World War II the capacity to contract though still minors.

Oregon

In my own state, Oregon, little was done other than repeal a Mongrel Community Property Law enacted in haste in 1943 that could be classified as real achievement.

A testator may hereafter deposit his will for safekeeping with the county clerk; providing for filing fees for such deposit; providing for the safekeeping of such will and for the delivery of the same or the opening of the same in court.

The Limited Partnership Act was amended to provide that in event of any change in limited partnership, through character of contribution of any limited partnership, substitution of partners, retirement, death, insanity, or dissolution, that a new certificate shall be substituted and acknowledged and filed.

Our dower law was amended by eliminating the word or. Section 17-101 now reads: The widow of every deceased person shall be entitled to dower, the use during her natural life, of one-half part of all the land whereof her husband was seized of an estate of inheritance at any time during the marriage, unless she is lawfully barred thereof.

Our acknowledgment statute was amended for the steenth time. Just to be different, Oregon didn't tie it up to cessation of hostilities or any other event and apparently, like Tennyson's brook, "runs on forever."

We tried to help the bigamists out a little by enacting a law that validates decrees of divorce wherein service of summons upon the defendant was made by publication or personal service outside the state, and validates subsequent marriages by the parties to such divorce.

Chapter 161 is an amendment to our statute regarding service of process and now reads: In case of service by mail, the copy of the notice or other paper to be served must be deposited in the United States post office, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at his regular office address, or his address as last given by him on any document which he has filed in the cause and served on the party making service by mail; and if he does not maintain a regular office or if the filed documents do not contain his address he may be addressed at his usual place of abode. The service shall be deemed to be made on the day of the deposit in the post office, and not otherwise.

Service by mail may be made where the person on whom it is to be made resides or has his office at a place where there is a regular communication by mail.

Hereafter, the State Land Board must affix its seal to its deeds, lease, contracts, etc., same as other white folk.

Our lawmakers were also good enough to pass a curative act validating conveyances, satisfactions of mortgages, etc., heretofore executed by this body which instruments lacked a seal.

One year was thought too long a time for a contestant to make up his mind to contest a will. The time was cut down to six months.

Wills heretofore admitted are, of course, exempted.

Our escheat statute was given a real overhauling.

Conditional sales of personal property that may have become part of the freehold were always a nightmare. Now with a four year statute of limitations, our lot won't be so difficult. The vendors under the contract must act within four years from maturity, and if no maturity date shown, then four years from the filing of the contract.

Ours being a dower and curtesy state, it was but natural for our lawmakers to do something regarding these interests held by persons in service who are missing.

The act provides for the appointment of a trustee, the determination of the value of the interest, execution of a conveyance by the trustee and impounding the money representing value of the interest for seven years.

Chapters 340 and 389 are directed toward untangling the mess caused by the enactment of a community property law by our session of 1943. It's queer what some crackpot politicians will put through to gain votes.

Thank God that's out of the way, and believe it or not, we told them that the original law was screwball; but at the time, saving a few dozen people a few dollars in income tax seemed more important than keeping our property laws straight.

Pennsylvania

Hereafter, by an amendment to the Interparties Agreement Act of 1927, conveyances made by a husband and wife as tenants by the entireties to either husband or wife alone must be recognized and those heretofore made are sanctioned.

In Pennsylvania under what has come to be known as the Rule in Orr's Estate, 283 Pa. 476, 129 A 565, a fiduciary was obliged to obtain the highest price possible upon the sale of either real or personal property and could rescind a contract even after it had been signed and delivered if he received a higher price or more advantageous terms. Even after an Order of Court had been made authorizing the sale of the property, in cases when an Order of Court was necessary, the trustee could submit a higher offer to the court and have the first order set aside.

In many cases involving real estate, after the purchaser had gone to the expense of having a survey made and the title examined, both he and the broker who made the deal would learn, perhaps a day or two before the time for settlement was fixed, that someone else had made a higher offer and that the deal was off.

In the 1945 session of legislature was passed an Act No. 548, which became effective May 24, 1945, and on an active market such as we are now experiencing this might prove a nice little law to have in your collection, and I am sure Pennsylvania wouldn't object to your copying it.

When a fiduciary shall hereafter make a contract not requiring approval of court or when the court shall hereafter approve a contract of a fiduciary requiring approval of court, neither inadequacy of consideration nor the receipt of an offer to deal on other terms shall, except as otherwise agreed by the parties, relieve the fiduciary of the obligation to perform his contract or shall constitute ground for any court to set aside the contract or to

refuse to enforce it by specific performance or otherwise. Provided that this act shall not affect or change the inherent right of a court to set aside a contract for fraud, accident or mistake.

Under the law of Pennsylvania, Act of 1917 P. L. 447, the general debts of a decedent are a lien upon his real estate for a period of one year following the date of death and a lien may be continued for a further period of five years by the entry of suit within the period of one year from the date of death. In the absence of a direction to sell in a will the authority of an executor or administrator to sell real estate for the payment of general unrecorded debts is limited by the Act of 1917 P. L. 447 to a period of one year following the death of the decedent.

In all cases where the executor, administrator or a creditor of a decedent's estate within one year from the date of decedent's death petitions the court for sale of decedent's real estate for payments of debts under the provisions of section sixteen the lien on the real estate of such decedent shall continue for a period of six months from the date of the filing of such petition and the court before which such petition is pending shall have the power to extend the lien for such additional period as in its discretion it deems necessary where the proceedings on the petition have been delayed by litigation or dilatory practices without the fault of the petitioner.

Any minor who is at least seventeen years of age is hereby authorized and empowered to enter into any contract in this Commonwealth for any loan or loans guaranteed by the United States or any agency thereof in accordance with the provisions of the act of Congress known as the "Servicemen's Readjustment Act of 1944", and the rules and regulations promulgated from time to time pursuant thereto or any agency of the Commonwealth hereafter created and such minor is also authorized and empowered to execute and acknowledge all documents, deeds, mortgages and other or similar papers necessary and incident to such contracts.

The act further provides that such minors shall not be permitted to avoid such a contract by reason of the fact that he is a minor.

The constitutionality of this act is in grave doubt because it appears to be special legislation in violation of Section 7 of Article 3 of the Pennsylvania Constitution.

Act No. 265, approved May 17, 1945, amends the married woman's property act of 1893 P. L. 344 by providing that a married woman shall have the same right and power as a married man to mortgage her property.

Rhode Island

Mr. Ivory Littlefield reporting for Rhode Island informed us that the legislature of the state of Rhode Island at its January session, 1945, passed no legislation of particular interest or importance to the land title business with the exception of the following:

1. An act permitting executors and administrators to sell real estate of a deceased person. "Whenever in the discretion of a probate court such action seems desirable in effecting a prompt and efficient settlement of the estate; provided, however, that such authority shall not be given with reference to real estate specifically devised."

2. An act relative to the powers of a surviving executor.

3. An act authorizing cities and towns to control the subdivision of land.

4. An act enabling veterans who are minors and minor spouses of veterans to obtain benefits under the provisions of the "Servicemen's Readjustment Act of 1944."

South Dakota

Mr. A. L. Bodley reports that but two bills were introduced in his state, one extending the time in which a title plant could be completed (this bill had the state association's blessing), and the time was extended to July 1, 1949. The other bill was to fix the time in which an abstracter could be sued on his bond. The bill as introduced provided for a twenty year period, but through the efforts of the state association the time was reduced to ten years.

Tennessee

Mr. E. B. Walton informs us that few changes were made in the property laws of his state, although his report came in before the legislature had adjourned.

One of the proposed bills, which he ventured to guess would not become a law, was a bill to provide that before any deed or other instrument is recorded, that it first be approved by a lawyer. We sincerely hope his guess was right.

A bill he assured us would likely pass was one that provided that all official bonds of state and county officers when executed by a personal surety were to become liens on the real property of the principles and sureties and were to be recorded in the register's office.

A lien for a period of twelve months is provided for in another bill on the real property of decedent, the twelve month period dating from the decedent's death. The last bill reported provides that an executor or administrator, when the estate be ready for closing and no distribution can be made because the distributees cannot be located, may make payment into the hands of the county treasurer.

Texas

Our member from the great state of Texas promised us a report shortly after its legislature convened on May 28. The gentleman should not feel too badly for his failure to perform as he was only one of many who forgot his promise.

Virginia

Even though the legislature of Virginia did not meet this year, our excellent member from that state, Mr. Raymond H. Lee, took the trouble of notifying us of that fact, not once, but twice. Maybe he wanted to be sure the big boss, Laurie, didn't catch any of his boys napping.

Washington

Mr. Ralph H. Foster, Vice-President of Charlton Hall's company in Seattle, reports that the legislature of his state in the session just passed showed the title companies in his state a rather bad time right up to the day of adjournment.

A bill was introduced about a month after the session got under way sponsored primarily by the Grange. This bill was designed to provide compulsory registration of land titles in the state of Washington on a permanent basis, whereby an owner would not be allowed to withdraw from the system, as now permitted. The proposed law embodied a new idea in that a title insurance policy would be presented and filed with the application for registration, at the office of the County Auditor, and if the policy of title insurance showed no one claiming an interest, an owner's duplicate certificate would be issued, subject to public roads and any outstanding taxes and assessments which were excluded from the certificate. In case the title policy disclosed any outstanding interest, the required notice must be given, after which the certificate would be issued, unless an action was commenced. Since title policies in the ordinary form do not insure against the rights of parties in possession nor against the rights of labor and material men's liens, the law would undoubtedly be held to be unconstitutional.

If this law were to become effective, it would be necessary for each county to engage lawyers to pass upon the legal sufficiency of deeds and other instruments and upon court proceedings affecting the land carried on the register. Many counties would require an additional building program to provide additional space which would be necessary and people experienced in titles would have to be employed by the county to handle the work. Much congestion and confusion would result by reason of this radical change in the land registration laws of the state.

We encountered some surprisingly unfavorable criticism in most quarters when mention of title companies was made and there is no doubt in the minds of those representing the Washington Title Association at Olympia that Senate Bill 190 would become law if the same ever reached the floor of the Senate and the House.

Ralph sent us a rather comprehensive report on this bill and including its journey through the legislative mill. I don't want to take the time of the convention to read the report in

full, but I believe that every title man in the United States should be informed of what the Washington group found themselves up against.

Maybe Charlton, if time permits and the members want the full story, will consent to tell you about it.

I don't understand how, after an experience such as this, our member, Mr. Foster, had the heart for reporting on other matters, but he came through with a rather comprehensive report from which we take the following:

Chapter 39: Liberalizes laws relating to proof of wills when one or more of the subscribing witnesses are in the armed forces.

Chapter 59: Authorizes County Treasurers with the approval of the County Commissioners to petition the Superior Court to cancel delinquent personal property taxes attested to be beyond hope of collection.

Chapter 72: Amends Section 1347 Remington Revised Statutes; Pierce's Perpetual Code 199-17 by limiting inheritance by kindred of the half blood so as to exclude from such inheritance any estate which came to the intestate by descent, devise or gift from one of his ancestors, or kindred of such ancestor's blood, who are not of the blood of such kindred of the half blood: Provided that the terms "kindred of such ancestor's blood" and "blood of such ancestors" shall be construed to include any child lawfully adopted by one who is in fact of the blood of such ancestor.

Chapter 92: Makes uniform the law relating to limited partnerships.

Chapter 93: Authorizes leasing of county-owned properties or tax acquired properties or reserved mineral rights. Carries emergency clause.

Chapter 101: Makes findings by war and navy departments of presumed death prima facie evidence of death. Carries emergency clause.

Chapter 125: Authorizes transfer to counties of unused portions of state highways outside cities and towns. Carries emergency clause.

Chapter 126: Amends 8370-53 Remington Revised Statutes; Pierce's Perpetual Code 968-1 to exempt conveyances to the state of Washington from taxation of conveyances. Carries emergency clause.

Chapter 136: Makes uniform the law relating to fraudulent conveyances.

Chapter 137: Makes uniform the law of partnerships.

Chapter 139: Purports to make an agency created by a power of attorney given by a principal in the armed forces of the United States, a merchant seaman outside the limits of the United States or a person outside such limits in connection with prosecution of any war in which the United States is then engaged, survive the death of such principal. Carries emergency clause.

As to this act, Ralph comments as follows:

You will note that we summarized Chapter 139 as an act purporting to make an agency created by a power of attorney in certain cases survive the death of the principal. It is our view and the view of at least some of the legal departments of other title insurance companies that the validity of this act is open to question, especially in view of the fact that our statutes of descent provide that title of the decedent shall vest immediately in the heirs and devisees subject to debts and charges against his estate. No amendment of the statute of descent was attempted and we do not deem it safe to assume that the Supreme Court will give effect to the act since its effect upon the statutes of descent was not within the purview of the title of the act as required by the state constitution.

Chapter 142: Provides for taxation of property of the United States and its agencies when authorized or permitted under laws of the United States.

Chapter 146: Authorizes the Director of Highways to issue permits and sell or lease to cities and counties any real property no longer necessary for state highway purposes. Carries emergency clause.

Chapter 168: Describes, defines and adopts a system of coordinates for designating and stating the positions of points on the surface of the earth in the State of Washington.

Chapter 170: Authorizes rental of county-owned tax lands. Carries emergency clause.

Chapter 184: Amends Inheritance Tax Laws and limits the lien thereof to a period of ten years from and after the death of the decedent. The act is retroactive.

I believe I am safe in saying that the general statute of limitations in this state is six years.

Chapter 196: Amends Homestead Laws, increases the net value of the homestead from $2000.00 to $4000.00 and allows the homestead regardless of area.

Chapter 197: Amends 1473 Remington Revised Statutes; Pierce's Perpetual Code 205-1 and increases the net value of an award in lieu of homestead from $3000.00 to $4000.00 and purports to authorize the award in probate proceedings instituted more than six years after the death of the decedent. Applies only in case of death after effective date.

Chapter 271: An act relating to acknowledgments by members of the armed forces, merchant seamen outside the limits of the United States and persons outside such limits in connection with prosecution of any war in which the United States is engaged.

In closing, may I say that both Laurie and Jim were very helpful and patient with your committee.

To my committee members, I want to express to them many thanks for their co-operation.

Report of Committee on Federal Legislation

By
JOSEPH S. KNAPP, JR., *Chairman*
Secretary, The Maryland Title Guarantee Company
Baltimore, Maryland

Last year's report of this Committee concluded with the following:

"It is the hope of this Committee that ere the next convention time, the world will be a better place in which to live and the furrows in our brows, the perspiration in our eyes, and the sorrows in our hearts will not have been in vain."

Many things have happened since then; sorrows have impregnated the hearts of many more Americans, including many of our most loved and active members. For them, let us hope that their faith in our American way of life can and will be preserved, so their sorrows will not be cancerous in retrospect. All Americans have been, and are willing, to sacrifice for American principles, but resent losses and sacrifices futile for these principles and resulting in the furtherance of foreign influence and dominance.

May it not be too boring to recollect our early American history, upon which the success of this Country was founded and has since grown to the greatest nation this world has ever known. History reveals that the successful colonies were those founded not on community storehouses, but on individual ingenuity, industry, perseverance and courage.

We have now built this Nation to its present greatness, but we cannot be complacent; other great Nations and Empires were the greatest of their time, only to disintegrate when chiselers, grafters and racketeers, too smart and lazy to work, and too dumb and unconscionable to care, parasited themselves on the entrails of their Nation until the life blood was extinguished.

We have all heard of Nero fiddling while Rome burned. Should that not be

lesson enough to wake up every American, both those forced to pay homage for the privilege of working, as well as those who furnish the opportunities to work?

Free enterprise does not only mean the right to engage in business, without hindrance, shackles and the payment of royalties to those who toil not, neither do they spin, but also the right to work without the diminishment of take-home-pay as a prerequisite before the industrious can accept employment. Free will is still the foremost and primary American principle and this should be forcefully made known to those holding political office, who are interested only in their own continuance in office.

This is now the time to judge our representatives by their records, and not their party affiliation. We should think first of America and not other vague considerations.

Part of the above may seem extraneous, as it applies to a report on Federal Legislation, but those who have watched the trend of legislation, bureau directives and court constructions of existing and new laws, know that the trend is to reward the lazy, shiftless and indigent and not the energetic and competent.

The termination of the so-called "World War II" has diminished the apparent importance of much pending legislation, and so-called war and emergency laws, but sufficient time has not yet elapsed to stop the hysteria which naturally followed and to determine the pulse of the future.

Very few laws have been passed since then and most of those pending which seemed so important are losing support and will be abandoned if sufficient time can elapse to allow the legislators and populace to revert to sane and balanced considerations. Some of those which seem to be losing support are compulsory military training, the so-called full employment bills (S. 380 and H. R. 2202) and unemployment compensation bills (S. 1274 and H. R. 3736).

The following is some of the legislation, passed by the Congress, which may be of interest to members of this Association.

Senate Bill 340 signed March 9, 1945 **(Public Law 15)**. This legislation was a result of the decision of the United States Supreme Court of June 5, 1944 in United States vs. Southeastern Underwriters Association, et al, holding that certain fire insurance companies interstate activities came within the commerce clause of the Constitution and may be subject to regulation by Congress and also holding that insurance comes under the supervision of the Sherman Anti-trust Act.

By this Act Congress declares the continued regulation and taxation by the States of the insurance business, is in public interest and that the business of insurance and every person engaged in such business, shall be subject to State laws with respect to the regulation and taxation of such business. No Act of Congress, except the Sherman Act of July 2, 1890, as amended, and/or the Clayton Act of October 15, 1914, as amended, shall be construed to invalidate, impair or supersede any State law taxing or regulating the insurance business unless specifically so provided in the Federal Act.

Senate Bill 681 signed March 31, 1945 (Public Law 27) increased war housing insured loans under the National Housing Act from $1,700,000,000 to $1,800,000,000.

House Representative Bill 2404 signed April 3, 1945 (Public Law 28)

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increased the debt limit of the United States from $260 to $300 billion and authorized the Secretary of the Treasury to dispose of certain Government owned securities obtained through Judicial process.

House Representative Bill 685 signed April 19, 1945 (Public Law 33) amended the provision of law relating to sale of buildings and grounds in foreign lands acquired for use by the Federal Government.

House Representative Bill 914 signed April 19, 1945 (Public Law 34) granted consent of Congress to States of Colorado and Kansas to enter into a compact for division of the water of the Arkansas River.

Senate Bill 62 signed May 15, 1945 (Public Law 55) amended the Securities Act of 1943 so as to eliminate the application of the Securities Exchange Act to investments amounting to $300,000 or less. The exemption was $100,000.

House Joint Resolution 113 signed May 31, 1945 (Public Law 71) granted Congressional consent to an agreement between the States of New York and Vermont regarding the Lake Champlain Bridge Commission.

Senate Bill 510 signed June 12, 1945 (Public Law 84) amends the Federal Reserve Act so as to reduce reserve requirements of Federal Reserve Banks from 40% (gold certificates) and 35% (deposits) to a uniform 25% against both gold certificates and deposits.

House Representative Bill 3322 signed June 23, 1945 (Public Law 87) to provide housing for distressed families of servicemen and veterans with families.

House Joint Resolution 206 signed June 29, 1945 (Public Law 95) extends until July 1, 1946, the time for release of powers of appointment in connection with Wills of decedents.

House Representative Bill 2113 signed June 30, 1945 (Public Law 98) amends the Federal Farm Loan Acts.

House Representative Bill 3232 signed June 30, 1945 (Public Law 101) extends the Requisitioning Act of October 10, 1940 to June 30, 1946.

House Representative Bill 3234 signed June 30, 1945 (Public Law 102) extends the expiration of the Requisitioning Act of October 16, 1941 to June 30, 1946 as to requisitioning property and to December 31, 1946, for returning property requisitioned.

Senate Bill 937 signed June 30, 1945 (Public Law 107) extends to June 30, 1946 the Act to suspend for one year the statute of limitations in Anti-trust law violations.

Senate Joint Resolution 30 signed June 30, 1945 (Public Law 108) extends the Price Control and Stabilization Acts for one year to June 30, 1946

House Representative Bill 2754 signed July 2, 1945 (Public Law 116) purports to validate titles to certain lands conveyed by Indians to the Five Civilized Tribes.

House Representative Bill 3278 Signed July 3, 1945 (Public Law 125) authorized an increase in appropriations for the provision of housing in connection with National Defense.

House Representative Bill 3294 signed July 24, 1945 (Public Law 160) authorized an amendment of a compact between Ohio and Pennsylvania regarding Pymatuning Lake.

House Representative Bill 2613 signed August 11, 1945 (Public Law 179) authorized the Secretary of Agriculture to adjust boundary disputes by settling claims to certain so-called Sebastian Martin grant lands in the State of New Mexico.

House Representative Bill 3907 signed September 18, 1945 (Public Law 181) creates the office of Surplus Property Administrator and abolishes the existing Surplus Property Board.

House Representative Bill 3466 signed October 11, 1945 (Public Law

193) amends the Nationality Act so as to preserve the nationality of citizens residing abroad.

Senate Joint Resolution 109 signed October 22, 1945 (Public Law 200) provides that aluminum plants and facilities may not be disposed of until sixty days after a report of such disposition has been made while Congress is in session.

House Representative Bill 4309 signed November 8, 1945 (Public Law 214) reduces income taxes for the year 1946.

House Joint Resolution 225 which is still pending and has been controversial, is of special interest to title people particularly in the so-called tide water States, as it purports "to quiet the titles of the respective States and others, to lands beneath tidewaters and lands beneath navigable waters within the boundaries of such States and to prevent further clouding of such titles."

Other pending legislation as this report is written which indicates the trend and problems of the times are the Labor Bills (S. 1171 (B2 H1) and S. 1419 (McMahon).

Labor and its problems now occupy most of the time of the Congress with countless bills pending before it and while the Congress struggles with the many problems, man hours due to strikes primarily, and other causes retard the change over from War to Peace time production. Man hours, are wasted like water gone the dam never to be utilized again because "our todays and yesterdays are the blocks with which we build."

While we struggle with labor chaos and political ineptitude we can be grateful that we are free of the Four Horsemen of the Apocalypse, Fire, famine, pestilence and death, with which Europe is ravaged.

Report of Committee on Advertising and Publicity

By
JOHN G. McGREGOR, *Chairman*

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

We have all heard the story about the old maid and the bachelor telling parents how their children should be raised. For me to deliver a report on advertising and publicity must sound pretty much the same to you, because I am not an advertising man, and I have never written an ad in my life.

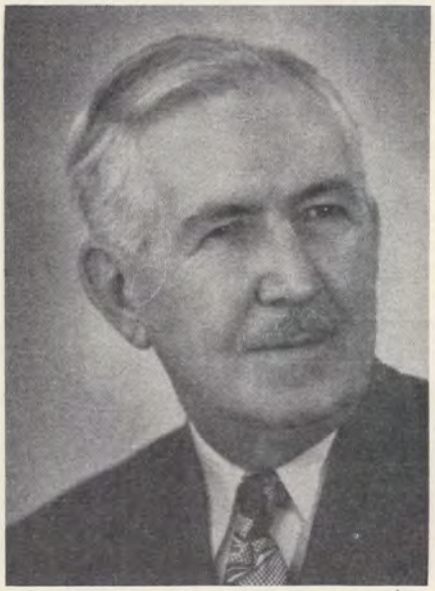
When I was appointed chairman of this committee I communicated with the other members in an endeavor to find out what constructive work our committee could do. As a result, I then jumped behind the well-known Yankee custom of answering a question by asking a question. Namely, when the Association members continued to ask me how our industry should be advertised, I asked, "How do the other members advertise?" Result—the Questionnaire that you received last August.

This Questionnaire containing 12 questions was titled "How Do You Tell People About Your Business?" About 630 Questionnaires were mailed to title and abstract companies throughout the United States, and your committee is very grateful for the flattering response shown by the number of returned Questionnaires. 48.4% of the Questionnaires were returned, and I am informed by a national advertising agency that a 30% reply on a mailed questionnaire is considered tops.

The purpose of this Questionnaire was to accumulate the information of what and how each member told his individual story to the buying public. As a result of this Questionnaire the Committee will place in the hands of Jim Sheridan, our National Secretary, a cross index report showing just what companies are using newspapers, billboards, radios, bus cards or any of the other 12 kinds of advertising mentioned in the Questionnaire.

Fearful there might be some (and there were many) who would have no chance to contribute to the information the committee sought, we headed the Questionnaire with this statement:

"To tell the truth, since January 1, 1945, we have not done any publicity or advertising except every day word of mouth explaining to our customers."



JOHN G. McGREGOR

The answer to this one was sure a surprise! (Advertising agencies should take notice). 20.2% of the total replies received stated they used no other method of advertising. These answers came from 26 states. Some of these replies offered a bit of humor, and some offered excuses such as, I quote, "We are doing so much business we do not have time to advertise." I quote another, "If you can tell us how to get some good help to do the work we already have, we will be glad to advertise."

To refresh your memory, the above mentioned Questionnaire requested answers to the following 12 questions:

A—NEWSPAPER ADVERTISING
- Number of papers
- Space used
- How often

B—RADIO BROADCASTING
- Number of stations
- How often
- Length of program and type

C—OUTDOOR BILLBOARDS
- Number of locations
- How often changed

D—BUS OR CAR CARDS
- Number of subjects
- How often changed

E—TRADE PAPER ADVERTISING
- Number of publications
- Space used
- How often

F—PAMPHLETS AND LEAFLETS TO CUSTOMERS
- How many
- Number distributed

G—MANUALS, HOUSE ORGANS AND SO FORTH
- Distributed to employees only
- Realtors
- Lending Agencies

H—EXHIBITS AT PUBLIC AFFAIRS AND STATE CONVENTIONS
- Public gatherings

I—SPONSORSHIP OF SPECIAL EVENTS, CLUBS, AND SO FORTH

J—STORIES TO NEWSPAPERS, TRADE MAGAZINES
Number of stories released
Number of publications

K—TALKS ABOUT YOUR BUSINESS TO SIGNIFICANT GROUPS
Number of talks
Size of audience
Illustrated talks

L—GIVE-AWAYS
Blotters
Calendars
Matches
Pencils
Scratch pads
Other items

Therefore, if, for example, you are considering a program to take up a particular type of advertising, you now do not have to depend on the say-so of the solicitor for its merits. You can drop a line to Jim Sheridan, and he will, by referring to his cross index, tell you what other company or companies are using that same type of advertising or publicity. You can then get first-hand information from a fellow member of the A.T.A. as to the success he has had, the cost, and how or what changes, if any, he would suggest if he intended to continue the same type of program. In short, if you use the cross index in Jim's office, it will save you a lot of guessing.

Now, let us get to the part that always bores listeners—the part in a report where figures must be given to get the true picture.

We have already disposed of about one-fifth, or exactly 20.2% of all answered Questionnaires by the inexpensive type of advertising—WORD OF MOUTH. Please do not belittle this kind of advertising. It is important, and every firm should do a lot of it, but to not support it with a more permanent type would be to knock this Chinese proverb—"One picture is equal to a thousand words"—into a cocked hat.

GIVE-AWAYS head the list by a big lead in the number of advertisers using this type of advertising. One hundred and forty-nine different firms use give-aways. Pencils seem to beat calendars by a half of one per cent. Blotters, matches, scratch pads, follow in this order. Many others give away items in smaller numbers.

NEWSPAPER ADVERTISING, as to be expected, plays a very important part and is undoubtedly the most expensive. Ninety-five companies use this method of advertising, averaging 58.9 inches per week per advertiser.

PAMPHLETS AND LEAFLETS DISTRIBUTED TO THE PUBLIC. This form of advertising has greatly increased during the last few years. Many companies have done some fine educational work through this type of advertising. Our report shows that 65 companies are using this approach. The California Land Title Association has issued many fine pamphlets which have been distributed by the California title companies, and we are sure that if you communicate with Floyd Cerini, the Secretary of the California Land Title Association, that the Association will gladly furnish you with samples of what they have used, also a report as to how each pamphlet has been received by the public.

The California Land Title Association, to my knowledge, is the only state title association that has a full-time paid public relations officer.

ADVERTISING IN TRADE PAPERS AND MAGAZINES seems to be very popular. Fifty-one firms use this method. Investigation shows that title and abstract companies in both large and small cities from coast to coast apparently believe that this medium produces favorable results. Reports show that spaces from one inch to a full page were used by 30 companies for a total space of 8,016 inches. Twenty-one out of the 51 advertisers failed to report the space they used.

TALKS DELIVERED ABOUT YOUR BUSINESS BEFORE SIGNIFICANT GROUPS. There was a total audience of 13,245 attended talks given by 39 different companies. A little less than one-third of these lectures were illustrated by moving pictures or slides. One company was responsible for 51 additional talks, but their reports failed to state the size of the audience and whether or not the lectures were illustrated.

There are 24 companies that create advertising (and good will) value by sponsoring special events such as donating prizes for real estate board contests, 4-H Club, golf tournaments, high school contests, church picnics and so forth. This is a feature of advertising that is no doubt controlled by local conditions.

STORIES USED FOR PUBLICATION. From January 1 to August 1, 1945, 866 stories were released to newspapers and trade papers by 24 companies. Our records do not disclose either the length or the subjects covered, but we all know that among the skeletons in the closets of every title plant there are germs for some real human interest stories that would make good publicity.

MANUALS AND HOUSE ORGANS for distribution to employees and clients. This is one phase of public relations that has been much neglected, as only 14 companies report that they publish a house organ or manual. Five of these companies are in California. One title executive told me that he would as soon attend an A.T.A. convention where everyone was muzzled as give up his house organ. He claims he never attended an A.T.A. convention without learning something, and he claims that from every issue of his house organ both executives and employees derive real benefit. You can see a few examples on display with the other exhibits.

EXHIBITS AT PUBLIC AFFAIRS AND STATE CONVENTIONS. The reports on this type of advertising were confined to seven states and only ten companies. The advertising value, I am informed, is not the first consideration, but more to help promote the success of the function at which the exhibit is displayed.

RADIO BROADCASTING. Seven companies report that they use this method of advertising. One company sponsors a half hour program once a week that deals with the history of the title business in relation to the property in the county and state in which they operate. It is reported that this program has 500,000 listeners. Four companies sponsor 15-minute programs with their advertisement spotted in their program occasionally where it most properly fits. Two companies have what is called "Spot Announcements" during the lull between other programs. The states in which the users of radio are located are Arkansas, California, Georgia, Indiana, Oklahoma and Texas.

OUTDOOR BILLBOARDS carry advertisements by seven companies in the title insurance business in only five states, and our report shows that one company uses 17 locations on which copy is changed only once a year. Another company has 12 locations with four changes of copy each year. Others have ten, six and two locations with copy changed two to five times a year. This type of advertising is, in a sense, restricted, because many cities do not allow billboards adjacent to highways where, of course, their value would be greatest.

BUS OR CAR CARDS. It would seem that in this kind of advertising there must be a rule that only one city and one title company in any one state can advertise in either a bus or car. Six A.T.A. members use this kind of advertising. The merits of this type were expressed to me by a title executive who uses it, as follows: I quote, "After a hard day's work when I ride home on the bus, it gives me a good feeling to see my name on display."

That ends the story of the results obtained by asking our question, "How Do You Tell People About Your Business?"

Your committee does not in any way attempt to advise your firm how it should advertise. We have shown you how members as a whole handle their advertising and publicity, so that if you choose, you may learn from each other how to do a good job better.

The committee is thankful to Jim Sheridan for his help in our work, and special thanks to Paul Pullen for doing a fine job in assembling the exhibit on display.