TITLE NEWS

Official Publication

THE AMERICAN TITLE ASSOCIATION

★

VOLUME XXVIII NOVEMBER, 1949 NUMBER 4

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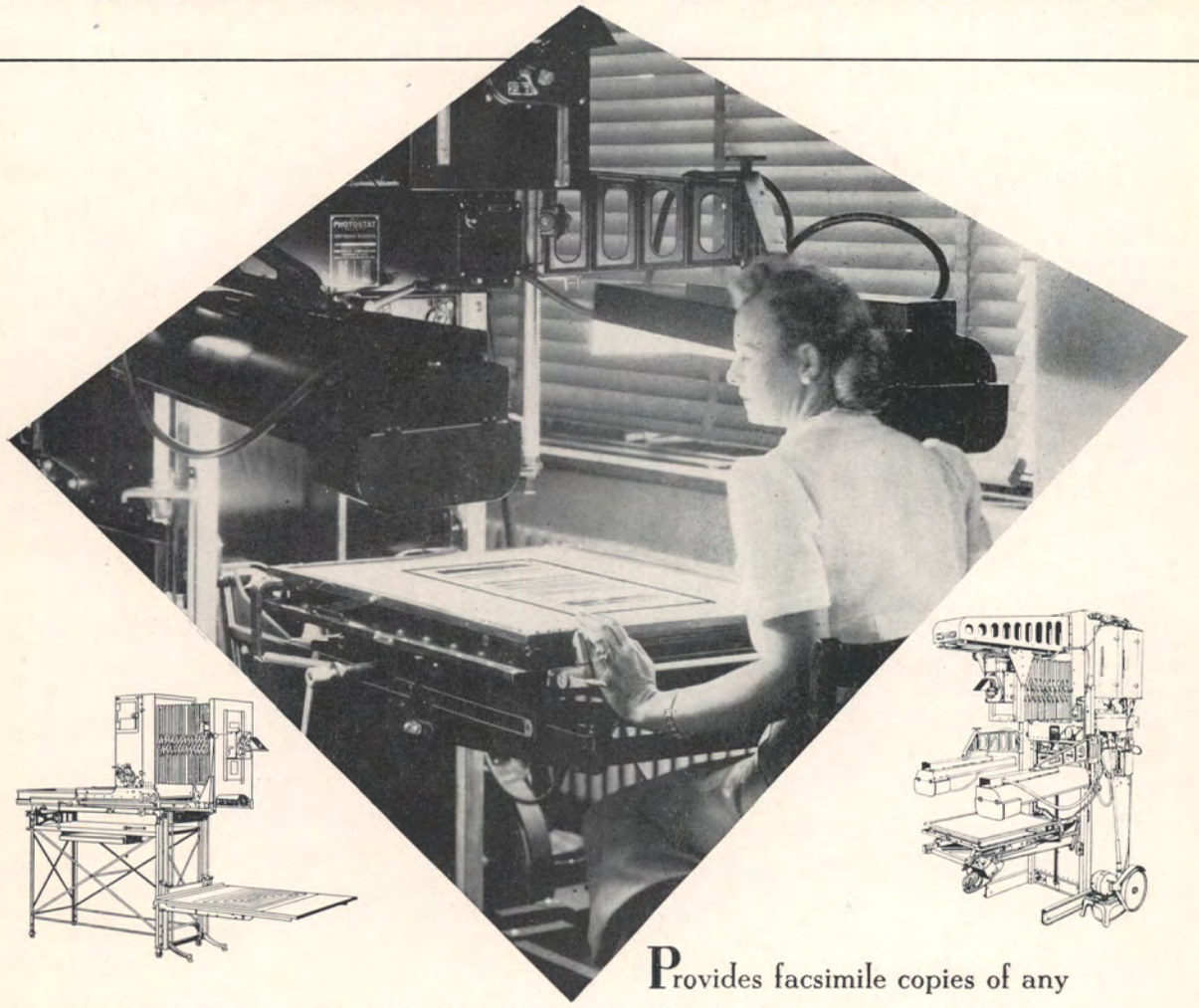

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THE AMERICAN TITLE ASSOCIATION

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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.

ROLL OF HONOR

Past Presidents of the American Title Association

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. Kenney	Elkhorn, Wis.
7.	1913-14	M. P. Bouslog	Jerseyville, Ill.
8.	1914-15	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.
39.	1945-46	A. W. Suelzer	Fort Wayne, Ind.
40.	1946-47	J. J. O'Dowd	Tucson, Ariz.
41.	1947-48	Kenneth E. Rice	Chicago. Ill.
42.	1948-49	Frank J. Kennedy	Detroit, Mich.

EARL C. GLASSON

National President, The American Title Association

President, Black Hawk County Abstract Co., Waterloo, Iowa

Proceedings of the Forty-Third Annual Convention
(In Part)
— *of the* —
AMERICAN TITLE ASSOCIATION
Atlantic City, New Jersey — September 28 to October 1, 1949

Report of National President

1948-1949 TERM

FRANK I. KENNEDY, *President*
Abstract & Title Guaranty Company, Detroit, Michigan

It seems to me that I have hardly entered upon my apprenticeship as President of the Association before the time has come for me to make my valedictory and depart into the twilight where all past presidents find refuge.

It has been an active and interesting year and a pleasant year for me and I hope a year not without slight benefit to the American Title Association.

Presidential Traveling

Since the last annual convention, I have attended the conventions of the Ohio Title Association and the Indiana Title Association, which were held last fall, and of the Michigan Title Association early this month. All of these meetings were well attended by the members and the programs were excellent. At the meeting of my own Michigan association, Jo Meredith, Chairman of the Abstracters' Section, was the guest speaker and I wish that every member of the Association could have heard the talk which he delivered.

I attended the Atlantic Coast Regional Conference of Title Insurance Executives, which was held at Atlantic City on May 6th and 7th. That meeting went off so well that we were encouraged to organize the Central States Region of Title Insurance Executives, which held a very good meeting at Chicago in July. I should add that your Executive Secretary was in attendance with me at both of these meetings.

Regional Conferences

I am a strong believer in regional meetings, whether of abstracters or of title insurance executives. I was impressed at both of these meetings, as I have been at regional meetings in the past, by the liberal exchange of ideas among those present and by the freedom of discussion regarding matters which the speakers would probably not discuss so openly and so fully at a national convention. I believe that these regional meetings are good for the organization and I heartily recommend that they be continued.

The national secretary and I attended the clinic of the Mortgage Bankers Association of America in Chicago in February.

We also called during the year upon the life insurance companies in New York and the adjacent territory.

Washington

I made one special trip to Washington, and another trip to Baltimore and Washington, for the purpose of calling upon the various federal agencies and departments which are interested in the use of abstracts and title insurance and of discussing some problems of interest to them and to us. Mr. Sheridan accompanied me on each of these trips and I was happy to note the very pleasant reception which was extended to him and to me in each of the offices where we visited.

The Association cannot and should not attempt to exercise any police power over its members or to interfere in the matter of its members' rates and charges. Despite this, through these meetings with the representatives of the government and of our largest customers, we can do a great deal of good for the membership generally and can frequently assist our customers as well. I believe that these visits are abundantly worth-while.

Other Trips

During the summer, the Executive Secretary and I were guests at a specially called noonday luncheon meeting of title insurance company executives in New York City and later in the same week at a special dinner of the New Jersey Title Insurance Association at Newark. Needless to say, we both enjoyed the cordial hospitality of the gentlemen who so graciously took time out from their affairs on a hot summer day to visit with us and to talk shop.

The Planning Committee

In 1946 the Planning Committee, which Past President Al Suelzer had appointed the year before, under the able leadership of our old friend and Past President, William Gill, presented to this Association a splendidly conceived plan which was adopted by us as a norm of activity to which we should, as soon as might be, attain. A supplemental report was made by the committee in 1948. We have not yet accomplished everything that was envisaged in the Planning Committee's reports. We have far to go to reach our goal. This is not surprising for it was a very ambitious report, projecting itself far into the future, and it was realized that we could not put all of its recommendations into effect immediately or even in one or two years. However, we have made much progress.

You will hear more of the Planning Committee at this convention from its own chairman but I want to pay my tribute now to how wisely that committee has planned and to tell you how, under its inspiration, the American Title Association is becoming welded more and more into a strong, vital, national institution, and the constituent state organizations are likewise developing and growing.

Committee on Title Plants

This year, as the result of the suggestion from our good friend, William West of Philadelphia, we have appointed a new committee for which we have fond hopes. Under the chairmanship of C. Perry Liverton, there has been organized a committee on Title Plants to study all the various methods and phases of title plant operations and to foster discussions between those men and women who actually operate the plants. You will find the work of the committee reflected in the program of this meeting. I hope that this year's work will be only the start and that it will be possible to have the committee expanded in size so that sufficient personnel can be provided for subcommittees to study important subjects relating to the problems and to the art of management of a complete title plant.

For the second time the Association has had a national advertising contest and I urge all of those present to inspect the exhibits that are present at this convention. It has been suggested that this exhibit, or some part of it, could profitably be displayed at our state conventions, moving from one state to another, so that the benefits of the display and the work of our Advertising Committee might be enjoyed more widely among our members. I hope that this suggestion can be worked out with the cooperation of the Executive Secretary.

There is also a commercial exhibit on display at this convention, which I recommend that you all inspect.

A Heavy Loss

Before the mid-winter meeting, it was our misfortune to lose from the Board of Governors the late Oscar W. Gilbert of St. Petersburg, Florida, who was the victim of a fatal accident. He was a modest, able and lovable gentleman who will be profoundly missed by all who knew him. The Resolutions Committee will, I am sure, take appropriate action regarding this, but, on behalf of the Board of Governors, I would like to pay this personal tribute to the memory of a fine friend and associate.

Many Hands

If you will refer, at your convenience, to the directory in the front of your program, you will notice that in addition to the four sections of the Association, namely, the Abstracters' Section, the Title Insurance Section, the National Title Underwriters' Section and the Legal Section, there are fourteen different committees, each of which is working along some particular line for the interest of the Association and of its individual members. Some of this work is reflected in the program which you will enjoy at this meeting. Much more is reported in the various publications which come to us from the office of the Executive Secretary. From the work of these committees come the reports on such subjects as abstracters' liability insurance, plant operation and modernization, new methods and materials, photography, reinsurance and coinsurance, taxation and many other things which have a general membership interest. You will hear more of this, in detail, when the committee chairmen make their reports.

My Personal Thanks

To the officials and members of these sections, to the chairmen and members of the committees, all of whom have given most generously of their time and talents, to our Vice President, Earl Glasson, and our Treasurer, Briant Wells, who also serve as members of the Executive Committee and the Finance Committee, I express my appreciation and thanks. They have made it a wonderful year for me and it has been most pleasant to work with them.

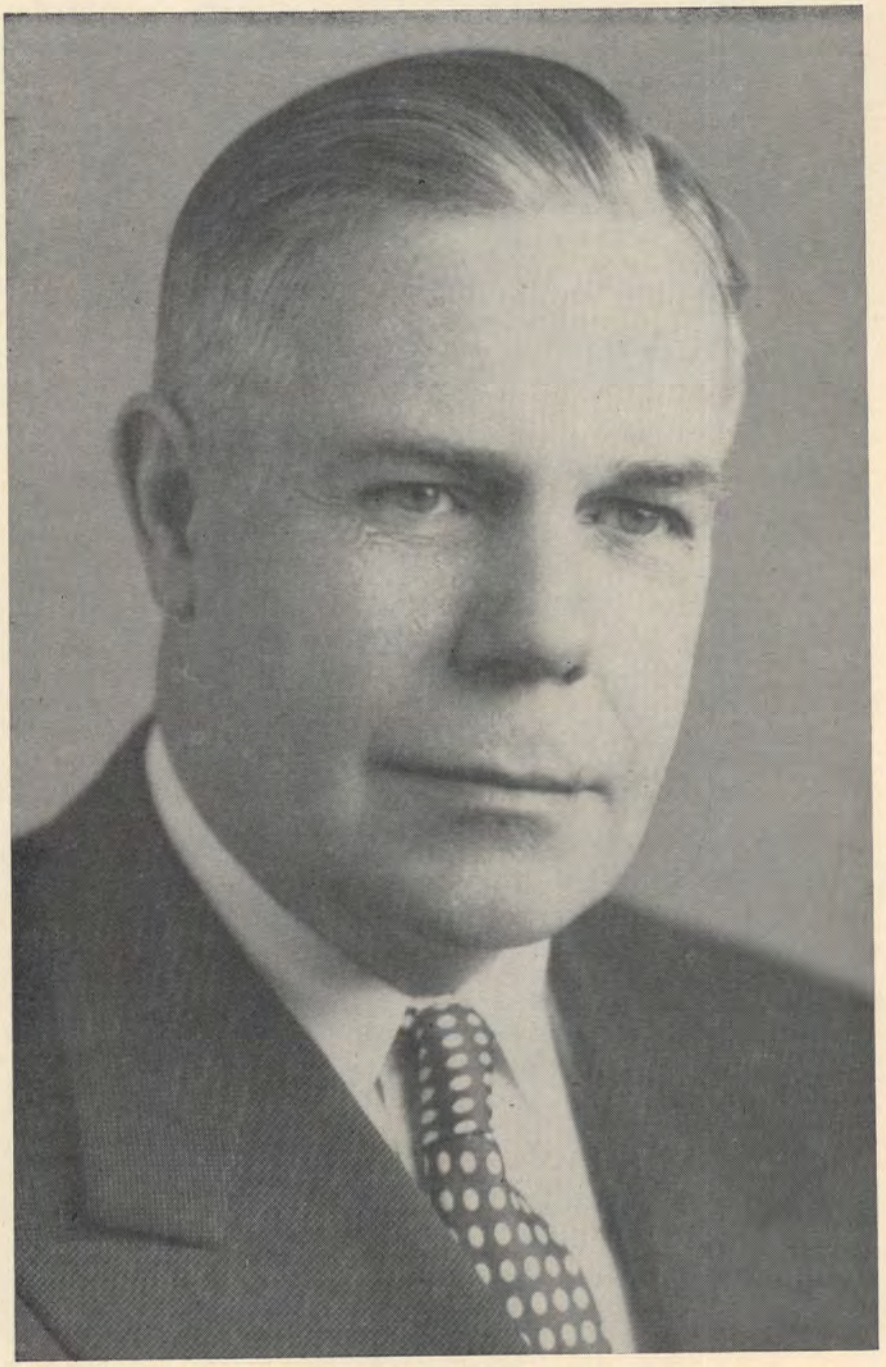
I have reserved a special word for our perennial Executive Secretary, Jim Sheridan, and for his genial and able associate, Clyde Morrison, with whose work most of you are familiar. They have always responded promptly when called upon and I must confess that on occasion they have not hesitated to prod your President a little bit where they thought prodding would help. They have done an excellent job.

Wherever we go, our member companies are gracious and hospitable. The members of the Pennsylvania Title Association will be hosts of the ladies at a bingo party to be held following the ladies' luncheon today. The companies of the New Jersey Title Insurance Association will be our hosts at a cocktail party preceding the annual banquet on September 29th. The South Chelsea Title Insurance Company and the Chelsea Title and Guaranty Company have furnished the staff who greeted you at the desk when you register for the convention. An entertainment committee under the leadership of Pres (Preston) Brenner, of Philadelphia, has planned and arranged for our entertainment here.

Our thanks are due to all of these for their kind and gracious generosity.

It has been a wonderful experience, working and meeting throughout the year with the members of this Association. I have enjoyed every minute of it. I cannot tell you how deeply I have appreciated the honor of representing the American Title Association during the past year.

This is the accounting for my stewardship.



FRANK I. KENNEDY

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Title Insurance Section

REPORT OF CHAIRMAN (1948-1949 Term)

MORTIMER SMITH, *Chairman*
Vice-President and Manager
Oakland Title Insurance and Guaranty Company
Oakland, California

Most of us will agree with our plant men and searchers of title that the examinations of title to sectionalized lands is in the main a whole lot easier than working on the titles to areas of the nature, for instance, which are known to us in the West as Spanish and Mexican land grants. That must have been the reason that the various Sections were formed within the American Title Association, to make the work easier for all of us, and to channel the activities of the Association through the Sections to us for our use. Whatever the reason, however, our Section work during the past year has not been heavy and I suspect very strongly that the reason has been that most of the problems which have arisen have been either of such a local nature so as not to require national thinking, or, more likely, have been cared for through National Headquarters.

From the State Organizations

Your Chairman has been on the mailing list of several of the various State Associations and this has been of considerable personal value, The Oklahoma Title Association Title Gram, The Bulletin of the Oregon Title Association, Texas Titles of the Texas Title Association, The Bulletin of the New York State Title Association, The Kansas Abstracter, The Montana Take-Off of the Montana Title Association and The Florida Title News, all have been very interesting and most instructive. It is exceedingly instructive to compare the problems of others with those of yourself and your local friends. More than once those different State organs have provided the material for a business talk before some real estate group or service club. These are days of rolling with the punches and as much information as a person can obtain is necessary to help us do that.

My Thanks

It appears that practically all businesses these days, which, of course, includes practically all title insurance companies, seem to have what might be called two major objectives. One,

MORTIMER SMITH

and very definitely the first, is to establish and maintain cordial and profitable relations with our clients. The other, and a close second, is to do the same thing as far as our own employees are concerned. As we sit in a meeting such as this one today, we must remember that our own people back home are not getting the advantages of our discussions. When we take home to them the results of our deliberations, we also should carry to them the reasons for those decisions and the backgrounds which bring them about.

For the daily business lives of all of our associates in our organizations, from the newest office boy to the top brass, are in many instances affected materially by what goes on here. Many times a practice with which all of us have been thoroughly indoctrinated is changed completely by a Convention or Section Session. When that happens, we must make certain that what we are doing as a matter of course is thoroughly explained at home, both to our own people, and to those with whom we do business. People like to do business with people who know their business.

Just before we came to Atlantic City, all of us, I am sure, had been attempting to analyze what the world was doing to itself by the various processes of devaluation. Well, we want to make certain that we do not devaluate our industry. Progressively, we must make our product of more value to its users as the years roll alone. As we do that, there will be no DEvaluation, as our real value will increasingly manifest itself.

Objectives

Thank you all for your aid and assistance this past year. It has been a privilege to work with everyone and I most certainly appreciate the opportunity of having been Chairman of the Title Insurance Section. Please accept my sincere thanks.

Abstracters Section

REPORT OF CHAIRMAN (1948-1949 Term)

JOSEPH T. MEREDITH, *Chairman*
President
Deleware County Abstract Co.
Muncie, Indiana

My Fellow Abstracters:

Welcome.

The last year has been one of relative high prosperity in our business. The volume has not been that scored in 1946 and 1947, but following a slump in orders during the first quarter of this year, business has increased in the number of orders and total net. That it will fail to reach the 1948 totals is generally conceded, but it is much better than was forecast following the first quarter. You know, when we get to quoting statistics, we can always come up with some favorable figures. We are still way ahead of 1939.

The trend following the first of the year, however, was probably a good thing. It brought us up on our toes and we began to figure how we could reduce the overhead, increase efficiency, and stay out of the red. Some have found that reduced office personnel could produce as much work as the former larger staff. A more adequate labor supply has had a wholesome effect upon employees, who are giving more for their wages than during the hestic days of 1946 and 1947.

More Efficient Operations

With crowded conditions in offices somewhat overcome, there has been a tendency to more efficient operation. Then, too, many offices have learned better ways of doing the same things. Which, by the way, is one of the things we hope to bring out during our sessions together.

We will find that our entire program this year has been built around the idea of giving you abstracters, first-hand information about the newer and better ways of conducting your business. These half-hour visitation periods inserted at the beginning our sessions, were put there so that you could mingle together and discuss your problems and find the solution to anything that has been bothering you.

Many of our members come here wanting to get advise and are compelled to search out abstracters in the corridors of the convention hotel to talk shop. We are attempting to make this easier for them, and we urge that all of you come here promptly at the beginning of the visitation hour so that you may be available to those who need your help.

We Can Help Each Other

It's a peculiar and a happy thing about our craft. Everyone is anxious to give his fellow member the benefit of his experience. I'll confess that I have imposed upon some of them unmercifully. A. J. Yates has wet-nursed me through the installation of photography, and without him I would have made costly mistakes and spent many hours of useless worry and agitation.

The forums have been planned to meet current, every-day problems, and are being conducted by successful abstracters. "Problems of the Small Title Plant" will be discussed by successful operators of small plants, located in towns ranging from 1,500 to 14,000 population. You can't get much closer to the grass roots than that.

Title Insurance

"The Abstracter and Title Insurance," is a question being discussed at all the conventions I have attended—usually in the between-session conferences, and over the tea-cups or clinking glasses. We decided that if it was a problem which interested our members we would bring it before our conference and let everyone attempt to clear the air and understand the relationship. Your panel on that subject is experienced and practical. Your frank and active participation in the discussion is urged.

The Chairman Traveled

During the year your Chairman has attended the State conventions held in Iowa, Montana, Michigan and Indiana. In every instance the representatives of the American Title Association were cordially received. In many other conventions there was a representative of ATA who attempted to bring before the members the over-all influence of our national program.

That there is developing throughout the country a strong virile profession of title experts certainly cannot be denied. From every part of the country and from an ever-increasing circle of influence within our various state associations there is developing strong ties of loyalty and a unity of purpose.

As we have met together during the last two days you hear such expressions as "How are you getting alone in Colorado? What are the boys doing there?" "What's the news from Illinois? Florida, Michigan, Tennessee, Arkansas, Texas, of California?" Then you hear the answers. How each part of our country is attempting to solve our mutual problems, usually with the help of neighboring states and from A.T.A.

For the Common Good

It's thrilling to see the members of our profession band together for the common good. Not necessarily for their own selfish interests, but more often for the protection of the rights of property, that commodity with which we work and plan and jealously defend.

JOSEPH T. MEREDITH

That our members unselfishly answer the call to fight adverse legislation and unfair practices, often at a very great personal sacrifice, bespeaks a brilliant future for the title business. They have discovered that by co-operation and presenting a united front, no problem is without solution. Competitors in an ever-increasing number of cities have likewise found that there is a community of interest around which they can resolve difficulties and this more effectively serve their communities and themselves.

All over the world we are witnessing the strangling of both personal and property rights. The idea of the super state is not dead. It was not defeated in the last war. To us, whose every existence, in a business sense, depends upon the ability of the individual to buy and sell and possess land, this threat of curtailed property rights, calls for definite and aggressive action.

Leadership in the fight to keep our freedoms, and in the education of our fellow citizens about the effects of socialism, is a burning necessity.

The Fight Is Still On

It is not a political problem, it is an American problem. The threat is not superficial or temporary, it is basic. It points a dagger straight into our hearts.

Let me urge you as leading abstracters in your various states, to take back with you a fervent determination to weld your groups together in a strong, powerful organization. Keep it free from any factional strife, because, in our fight to preserve property rights we will need the combined strength of every element of our profession. Every vistage of our power and force must be marshaled. Every segment of our craft must be alerted.

It is not enough to wait and declare yourself for the final battle against collectivism. We, as the guardians of the rights of man to the ownership of the land itself, must alert ourselves to the first intrusion of those rights. We must enlist in the vanguard of the soldiers of freedom and defend our position from every angle and from all attacks.

It should be the first and foremost duty of the officers of your organization to muster out all the forces which are within our group. To inject into them that feeling of solidarity so necessary for success. To sponsor and inculcate a unification of purposes which will weld us all together into the kind of a national organization you are so anxious to achieve.

The Abstracters 14-Point Program

The universal adoption of our Abstracters Fourteen Point Program is being rapidly accomplished. Many more states formally adopted it at their conventions this year and are attempting to meet its requirements. Yes, we have a national program. We have a national ideal. We have a national obligation to the citizens and to our clients.

To the accomplishment of that ideal and to the fulfillment of that obligation we earnestly seek your help and your abilities.

Legal Section

REPORT OF CHAIRMAN (1948-1949 Term)

W. R. KINNEY, *Chairman*
Chief Title Officer
Land Title Guarantee and Trust Co.
Cleveland, Ohio

This report on behalf of the officers and executive committee of the Legal Section will be comparatively brief.

For the most part there is little new to which to call your attention.

As you know, War Assets went out of existence on June 30th of this year, the authorities and duties of the office being now handled by General Services Administrator.

F. N. M. A.

Current requirements of other Government Agencies have been the sub-

ject of Bulletins put out by our Executive Secretary have also been discussed to some extent at prior gatherings, and need no further comment here. In this connection, however, I might mention the fact that, in the Cleveland area, FNMA has indicated that it is going to require that riders be attached to previously issued A. T. A. revised policies, specifically naming it as the insured, despite the fact that such policies apparently by their terms automatically so provide.

Foreign Divorces

The U. S. Supreme Court has added nothing helpful to the Foreign Divorce muddle. During the past year, it decided the Rice case but, so far as I see, the only result was to give Mr. Justice Jackson an opportunity to make some rather pointed comments in his dissenting opinion.

Tide Lands

Congress is still in labor with Tidelands legislation, with a Caesarian operation of some kind indicated as the only way of producing a delivery.

Racial Restrictions

Lawyers in Ohio are still arguing over whether the U. S. Supreme Court's decisions in the Shelley-Kraemer and Hurd-Hodge cases on the subject of racial restrictions preclude judicial enforcement of penalty provisions—with, seemingly, a fairly even division of opinion.

Government Assisted Hospitals

At the mid-winter conference in St. Louis last February, Bill Nethercut called attention to possible lien dangers in Public Law No. 725 passed by the 79th Congress which relates to hospitals financed with Government assistance. We have had one instance in Cleveland where the question confronted us as an actual and not merely an academic proposition and declined to insure against such possibilities.

Open End Mortgages

Many of you have undoubtedly seen the article in the September issue of Fortune Magazine about "open-end" mortgages. (In Ohio we have been calling them "future advance" mortgages.) Either term, of course, refers to the type of mortgage which provides that the mortagee may, during the life of the mortgage, make additional later advances for repairs, modernization and various other purposes connected with property maintenance and improvement, and which type of mortgage usually provides also that such future advances, if and when made, shall constitute a first lien upon the premises of equal priority with the lien of the original indebtedness.

I mention the matter in this report because of the following statements in the magazine article, which require, it seems to me, careful consideration and appraisal by title men in many jurisdictions:

"The big point at issue in the open-end mortgage was the lien status of additional advances under state mortgage laws and court decisions. If the additional advance had priority over an

WILLIAM R. KINNEY

intervening lien or judgment (English common law), the lender could safely make an advance without a title search. If the advance did not have first priority, the lender would have to make sure no lien had been placed against a property since the original mortgage date.

"After careful legal research, Goldman discovered that more than twenty states had followed English common law in recognizing open-end mortgage contracts as having first lien status, provided the lender was without notice of the intervening lien. In New York and other states, however, the courts did not uphold English common law. . . . Goldman and the Forum (Architectural Forum) are trying to get laws passed in New York and other state legislatures so that the title search can be skipped. They have run into opposition from groups with a vested interest in conventional short-term credit. But they have the support of many manufacturers who see in the open-end advance a means of selling a high-cost, high-quality line of home appliances."

It so happens that in Ohio the common law rule cannot be relied upon in many situations and for several years our company has refused to insure the priority of permissive future advances over intervening liens and has included a stock exception to that effect in its mortgage policies.

So much for specific matters.

During the three years in which it has been my privilege to serve as Chairman of the Legal Section it has become increasingly apparent to me that the scope and functions of the Section are rather loosely defined. This may be unavoidable. It may also be desirable. It does, however, result in an overlapping of some activities and, at times, unintentional encroachment upon the functions of some of the Association's standing committees—such as, for instance, the Legislative, Federal Legislative and Judiciary Committees. If the presently retiring officers of the Legal Section have stepped on anybody's toes inadvertently during the past year by encroaching upon their activities in any way, I here and now apologize on behalf of the Section.

My Personal Thanks

One last thing. I would be very remiss and ungrateful if, in submitting this report, I failed to acknowledge the friendly and helpful co-operation which has been extended to me by various and sundry members of the Association on numerous occasions. To all such, and on behalf of all of the Legal Section's officers and executive committee members, our sincere thanks.

Report of Legislative Committee

L. A. REUDER, *Chairman*
First Vice-President
Title Insurance Company of Minnesota
Minneapolis, Minnesota

The legislators having met in most of the states during the year 1949, it is obvious that the legislative committee would not be lacking in material on which to make its report. The response from many committee members was most gratifying, forty-four active and busy title men having contributed material in one form or another, from which I have prepared and submit to you, Mr. President, this report which represents the work of a mighty fine group of men who have been most co-operative.

From the voluminous amount of material submitted, it was somewhat difficult to select the items of legislation which might be of interest to our association members as a whole, particularly in view of the fact that some of the reports were not received until very recently. I have arranged the data or information submitted according to the alphabetical order of the states; and for your consideration, I therefore submit this report.

ALABAMA

Mr. Maclin F. Smith, President of Title Guarantee & Trust Company, Birmingham, Alabama, reports on two bills recently passed in his state pertaining to the unauthorized practice of law by title insurance companies.

One of these bills amends certain sections of the Code relating to state supervision of title insurance companies and requires the insurance ex-

aminer to report any drafting of legal documents by title insurance companies to the Attorney General, who is instructed to forthwith ask for an injunction to stop such practice and upon the failure of the title company to comply with the injunction to ask forfeiture of its charter.

The other bill made certain changes in existing statute prohibiting the practice of law by any other than duly licensed attorneys. The original law carried a provision that it should not preclude abstracters and title insurance companies from making abstracts or insuring titles. The new amendment adds a provision that such companies, however, shall not be authorized to prepare or assist in preparing any document affecting secular rights unless the company has a proprietary interest in the property involved, provided, however, that they may draw affidavits setting forth simple matters of fact, such affidavits to be retained in the office of the title company and not filed for record.

ARIZONA

At the regular session of the Nineteenth Legislature, four laws were enacted, one of particular interest. Three have applications to taxation and are of local interest only. The other relates to county planning and zoning and should be interesting to any of our people confronted with problems of this kind—Mr. L. J. Taylor, Vice President of the Phoenix Title & Trust Company, reported from Arizona.

ARKANSAS

Mr. L. V. Rhine, of the Greene County Abstract Company at Paragould, reports no legislation affecting our industry, but also comments with a great deal of disgust on the defeat of a bill regulating and bonding abstracters due to lack of support of some of the abstracters. The bill passed by the House but was defeated in the Senate. According to his letter, another attempt will be made next year. We from Minnesota know how that feels as the report from that state will indicate.

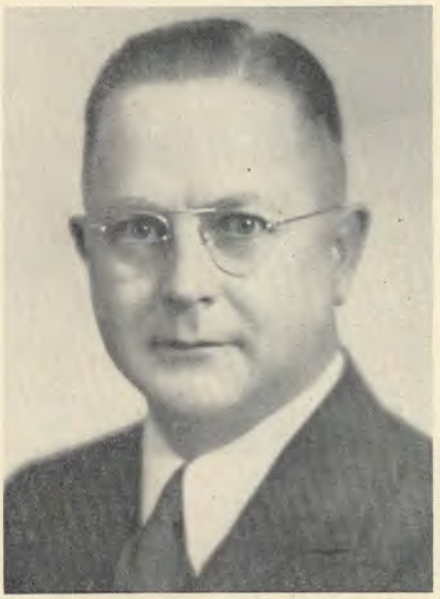
CALIFORNIA

The California Land Title Association sponsored 28 bills which were enacted into law.

S.B. (Chapter 293) is an act proposing for the vote of the people an amendment to the Land Registration Act (Torrens Act) which would permit land registered under the Torrens system to be withdrawn therefrom and placed under the conventional recording system. Members of our association who have to compete with the Torrens system may be interested in obtaining additional information from our friend in California on this regulation.

S.B. 457 (Chapter 891) should be interesting to people in Title Insurance and Escrow business. It repeals Section 750.1 and 750.2 of the Insurance Code and adds Section 12401 to 12412, inclusive, thereto to (a) prohibit any title insurer, underwritten title company or controlled escrow company from making rebates of their fees on charges, paying commissions, or unfairly discriminating in their fees or charges; (b) require every title insurer to adopt, print, make available to the public, and display in their office and in the offices of controlled escrow companies and underwritten title companies to which they relate, a schedule of the fees and charges for title policies of said title insurer; (c) require that the entire charge to obtain a title policy shall be specified on such policy; and (d) provide penalties for violation.

Another law enacted which amends a previous section of the California code and which is part of Sec. 1191 of their mechanics lien law now reads (1) specifically provide that where street improvement work is done under a separate contract from any contract to construct residential units or other structures, then such street improvement work shall not constitute a commencement of the work of improvement consisting of the construction of any residential unit or other structure; (2) provide that a trust deed or mortgage given solely or primarily to finance street improvement work shall be inferior to mechanics' liens for such work unless the loan proceeds are impounded to be used to pay for such work or unless a bond is given; and (3) authorize the giving of a bond to assure payment of all claims for street improvement work in which event the line of a trust deed recorded after commencement of such work is prior to any mechanics' lien for such work.



LEO A. REUDER

These are the highlights from the California report and I regret that time and space does not permit further comment on the many other interesting laws on which Mr. Cerini, Executive Secretary of the California Land Title Association, reported.

COLORADO

Donald B. Graham, Vice President of the Title Guaranty Company of Denver, sent me copies of seven laws passed by the Colorado Legislature, two pertaining to estates of deceased persons, being amendments to the present statute, one to partition actions, one relating to tax procedure and another concerning the vacation of public roads. The last act describes the method of vacation and also determines the vesting of title upon vacation, but the most important measure reported by Don, is the abstracters' bill which was passed on April 18, 1949. This last measure should be interesting to many of us.

CONNECTICUT

James E. Rhodes II submitted a digest of public acts passed during the 1949 special session. None apply directly to our industry, but I notice under the title of "Insurance" a provision or amendment: "supplying penalty in payment of insurance commissions to unlicensed persons."

DELAWARE

Mr. Benjamin N. Brown, representing Lawyers Title Insurance Corporation at Wilmington, Delaware, found it impossible to obtain information on pertinent legislation to our industry on account of too recent adjournment of the legislature.

FLORIDA

A title bill patterned largely after the Missouri statute was introduced but failed to pass. The Commissioner of Insurance was anxious for the bill to be passed but opposition from Lawyers Title Guaranty Fund, the latter being a business trust composed of attorneys, was the principal reason for its defeat. Mr. DeBlois Milledge, Vice President, American Title and Insurance Company, indicates in his report that another try will be made at the next session.

GEORGIA

Mr. Pearce Matthews, President of the Atlanta Title Company, states that there is no new legislation of interest to our association. While Mr. Matthews reports no interesting legislation, I might at this point state that our company was compelled to defend a perfect record title in the State of Georgia, the lower court having held in favor of the plaintiff or petitioners. The case was appealed to the Supreme Court; and to the astonishment and amazement of the title and legal fraternity, the Supreme Court upheld the lower court. It caused considerable unrest; and upon a re-hearing, the Supreme Court finally reversed its original decision. Had the Supreme Court not reversed its decision, the title situation in Georgia would have been in a state of confusion.

IDAHO

John B. Bell, President of the Idaho Title Insurance Company, sent in a brief summary of laws passed in his state, all of which have only local application.

ILLINOIS

The report from our committee member from Illinois, H. F. Payton, President of The Sangamon County Abstract Company, states that "There have been no enactments affecting our industry passed at the last session of our legislature, recently adjourned."

INDIANA

Charles P. Wattles, President of The Abstract and Title Corporation of South Bend, calls attention to several laws passed in Indiana, pertaining to tax delinquencies, recording fees, notary public, etc.

IOWA

Committee member from this state, Cyrus B. Hillis, President of the Des Moines Title Company, reports no legislation of interest to us.

KANSAS

Charles Hall, President of the Hall Abstract and Title Company of Hutchinson, Kansas, states in his letter, "There were no laws actually passed in Kansas, which would affect abstracting or title insurance."

KENTUCKY

From Louisville, a letter from J. C. Graves, Vice President of the Louisville Title Insurance Company, states: An extraordinary session of the General Assembly of Kentucky convened on March 1, 1949, and adjourned on March 30. The legislation that was passed at this extraordinary session is of no particular significance to title companies. It pertained largely to amendments concerning education, school districts, rural electrification.

LOUISIANA

As the Louisiana Legislature does not meet in 1949, there need be no comment in your legislative report to the American Title Association.

The above excerpt from the letter of Lionel Adams, representing Lawyers Title Insurance Company at New Orleans.

MASSACHUSETTS

Mr. Theo. W. Ellis, President of Ellis Title Company of Springfield, informed me on August 8th that no bills affecting real estate had been introduced in the legislature which was still in session at that time.

MICHIGAN

From the home state of our President, we have a letter from Ray L. Potter, Vice President of the Burton Abstract and Title Company from which we quote: "After more than century, Michigan has now returned to the common law rule against perpetuities, or, more accurately, perhaps, has repealed the statute prohibiting the suspension of the power of alienation beyond two lives. This by virtue of Act No. 38 of the Public Acts of 1949. The repealing act, by its terms, applies only to testamentary instruments executed by persons who die after the effective date of the repealing act and to deeds and other instruments executed after the effective date of the repealing act."

MINNESOTA

The Minnesota Title Association under the able leadership of its President, Donald Duerre, was able to get an abstracters license bill through the House, but met defeat in the Senate committee by one vote. Other enactments, according to N. J. Whitney, Secretary-Treasurer of the Freeborn County Abstract Company, which pertain to real estate, are curative and limitation acts.

MISSISSIPPI

Mr. O. B. Taylor, President of the Mississippi Title Insurance Company of Jackson, informed early in March that the legislature would not convene in that State, consequently, nothing to report on.

MISSOURI

A brief report from W. R. Barnes, President of General Title Service Corporation, Clayton, Missouri, reads as follows: "The recently adjourned session of the Missouri Legislature failed to enact any laws of particular interest to our Association."

MONTANA

Several bills were introduced which, if passed, would have affected the abstract business. According to C. W. Dykins, President of the Realty Abstract Company, one bill was introduced to repeal the present abstract law and another required anyone writing title insurance to own and maintain a set of tract indexes. These bills did not pass, but Mr. Dykins was kind enough to report on them in detail and if other members have problems along these lines, I suggest you contact our friend from Montana.

NEBRASKA

A brief report from Ward Lindley of Geo. T. Lindley & Son, Abstracters at Omaha, states that no legislation was passed affecting our industry.

NEVADA

Mr. Robert Mack Light, Vice President and General Counsel of the Pioneer Title Insurance and Trust Company, states in his letter of August 1st, that "the items of legislation passed by the Nevada Legislature which might conceivably have some measure of interest for the title men, and some of them, however, having no measurable interest except for the title man operating in Nevada." In his letter, he mentions among others a statute authorizing the use of microfilms or photostats in recording. Abstracters may desire more information on this enactment. In closing, Mr. Light writes, "During the course of the Legislative Session, the title fraternity presented objections to a bill, Senate Bill 88, which would have permitted District Attorneys to purportedly compromise and settle any claim for taxes. They also presented objections to Senate Bill 194, which was a "screwball" measure providing that no document in the nature of a policy of title insurance should be issued unless it actually guaranteed a "warranty title to the real property described in such policy." These objections proved effective in each instance."

NEW JERSEY

The report from New Jersey was submitted by James J. McCarthy, Vice President and Secretary of the New Jersey Realty Title Insurance Company of Newark. Of the bills introduced in the legislature and which were approved, that have some relation to real property, are:

Chapter 180—Permits title insurance companies to charge payments of title losses and claims against reserve funds.

Chapter 215—Validates deeds made by friendly or enemy aliens from April 6, 1917, to April 8, 1940, except where lands have been seized by U.S. Property Custodian.

NEW MEXICO

On September 7, 1949, Wm. P. Bixler, President of Las Cruces Abstract and Title Company, communicated with me as follows: "We have finally gotten a copy of the session laws passed by the last legislature and find that there is nothing among them that materially affects our profession. Apparently the entire effort of our legislature was spent in making appropriations and in increasing taxes.

NEW YORK

From the Empire State, I received a summary of 1949 statutes prepared by Sedgwick A. Clark, Solicitor for the Title Guarantee and Trust Company of New York. Mr. Clark in his letter states: "There is nothing of particular importance to report in respect to legislation enacted by the 1949 New York Legislature, but the following enactments may be of general interest to title men:

Amendments to Civil Practice Act.

Amendments to Insurance Law."

The latter pertains to rates and rating organizations, amendments to real property, law and rent laws. I suggest that you write to Mr. Clark for a copy of the pamphlet prepared by him.

NORTH CAROLINA

In this state, the 1949 Assembly enacted no legislation of general interest to our Association, according to W. A. Hanewinckel, Jr., Manager, Lawyers Title Insurance Corporation at Winston-Salem; but he does indicate some changes in residence requirements in divorce laws; execution of instruments under power of attorney and special court proceedings for the sale, lease or mortgage of a vested interest in real or personal property held by a class, the membership of which may be increased by persons not in esse.

NORTH DAKOTA

The only bill passed which may be of interest to abstracters of North Dakota, pertains to abstract charges. A. J. Arnot, President of the Burleigh County Abstract Company of Bis-

marck, North Dakota, writes: "There was considerable legislation during the session, but there was only one bill that interests us abstracters or that affected us, and that was a bill that we sponsored ourselves and put through the legislature with almost unanimous vote in both houses, and that was a bill which increased our fees for making abstracts in every respect by 50%; in other words we now are and have been since last February receiving 50% more for our work than before, and it has helped considerable, I assure you."

Nice going and congratulations to our friends in North Dakota.

OHIO

Fred Place, President of Ohio Title Corporation at Columbus, penned a brief note some weeks ago which reads: "The Ohio Legislature is operating with a cover on the clock. (It's still last Friday to them.)" Thanks, Fred, for this report on interesting legislation.

OKLAHOMA

The most interesting piece of legislation reported from the "Sooner" State, according to the report from Mr. H. L. Douglass, of the law firm of Douglass, Felix & Spradling, Oklahoma City, is the law repealing the Community Property Law. I quote the following from Mr. Dauglass' letter: "House Bill No. 13, effective June 2, 1949, repealed the Community Property Law and provided within one year from the effective date, a husband and wife may enter into a recordable agreement specifying the rights acquired by either or each of them under the terms of the Act, offering those rights, if they so desire, and describing the property affected and may record the agreement in the office of the County Clerk of their residence and in the office of the County Clerk in each County where any of the property may be located. This Act further provides that if the husband and wife are unable to reach an agreement, either may file an action in the District Court of the County of their residence for a determination of rights acquired under the Community Property Act, and that a certified copy of the judgment may thereupon be recorded in each County where any of the property is located. The Act further fixes a limitation of three years from the effective date of the Act and provides that after three years the property will belong to the person in whose name title appears of record."

He further reports: "The only other law which might be of interest is the fact that the real estate license law was adopted for the licensing of real estate brokers and salesmen under a State Real Estate Commission."

OREGON

Another repeal of Community Property Law is announced by V. D. McMullen, Vice President of Salem Title Company. He says: "Our Legislature passed numerous statutes pertinent to the title business; however, they were more or less routine matters peculiar to our state. Probably of some interest might be the repeal of our 1947 Community Property Law. The repeal undoubtedly will result in numerous problems and litigation, as between spouses and creditors; however, it presents no particular problem to the title companies. The Act provides that property acquired during the effective period of the 1947 Act, may be converted to any of the types of tenancies recognized in the state prior to the enactment of the '47 Act, by the execution in the same manner as deeds are executed, of an instrument declaring the intent of the parties. The Act also provides that upon the death of either spouse after the expiration of two years from the effective date of the repeal, all property, real and personal, which would have been the separate property of such spouse except for the presumption of the community interest under the '47 Act, shall be subject to disposition by will or descent and distribution as the separate property of such decedent."

PENNSYLVANIA

The state which increased its prestige by adopting our great Governor, Harold Stassen. Like so many other informative reports submitted, time and space does not permit the inclusion in this report of the many interesting items of legislation reported to me by James E. Schmidt, Senior Title Officer of the Commonwealth Title Company of Philadelphia. I quote from his letter: "Undoubtedly the Act which has the most far-reaching effect upon real property is our new Fiduciaries Act. Prior to the new Act, our law governing the transfer of real property at death was little changed from the common law of England which had been established in Pennsylvania at the time of William Penn. Real Property vested at death in the heirs or devisees and an executor or administrator had nothing to do with it unless it became necessary to sell said property for the payment of debts of the decedent. If a decedent died leaving sixty heirs scattered all over the world, his real property could only be sold by a Deed signed by the sixty parties and their spouses. Real property was not included in the accounting of the personal representative before the probate court and could only be divided by a very involved partition proceedings.

The new Act still provides that legal title of real estate of a decedent passes at death to his heirs or devisees—subject, however, to all the powers granted to the personal representative by the Act. The personal representative will now include real estate in his inventory and shall have possession of same, collecting rents and making necessary repairs. He may sell real property not specifically devised at public or private sale and without a petition to the court. In other words, an executor or administrator without a testamentary power of sale will be able to sell real property and can only be restrained by the court upon application of a party in interest. The title of the purchaser will be discharged from the lien of legacies, from liability for all debts and obligations of the decedent and from all claims of distributees and of persons claiming in their right. In a typical example where, under the present law some eleven objections would appear on the preliminary certificate of a title company, under the new lay, two objections would appear; namely, Federal Estate Tax and State Inheritance Tax."

Mr. Schmidt refers to seven other interesting laws passed but, again, these are of interest mainly to the people in the state where enacted. Some are curative acts, limitation acts and laws governing procedure. One Act passed provides property acquired by husband and wife as tenants by the entireties, upon divorce, will automatically be owned as tenants in common.

RHODE ISLAND

Mr. Ivory Littlefield, President of the Title Guarantee Company of Rhode Island, in his letter addressed to me under July 11, states: "The annual session of the legislature of the State of Rhode Island has been completed and no legislation was enacted which seems to me to be of sufficient interest to the membership of the American Title Association to warrant its inclusion in any report."

SOUTH DAKOTA

From A. L. Bodley, Secretary of the Getty Abstract Company, comes a similar report—"No legislation was passed which in any way affected abstracters in this state."

TENNESSEE

One item of legislation affecting real estate was passed. Mr. C. A. Hon, President of the Title Guaranty & Trust Company, describes it in his letter to me as follows: "If a spouse inherits or owns real estate with third parties, he or she can convey to themselves as man and wife and take an estate by the entirety, if they so give their intention in the deed to do so. Prior to this statute, the whole title had to be vested at one time in order to create an estate by the entirety."

TEXAS

No report.

UTAH

Most of us complain about our law makers being in session too long. L. B. Cardon, Manager of the Cardon Abstract Company at Salt Lake City, says, "The legislature meets only 60 days in Utah, which is not nearly long enough. No legislation of interest."

VERMONT

Nothing transpired in this state in the way of legislation concerning abstracters or title insurance companies this year, according to a letter from our committee member, Mr. Robert I. Lamson, Attorney, National Life Insurance Company, Montpelier, Vermont.

VIRGINIA

The legislature in this state convenes on the even years; as a result, Mr. Raymond H. Lee, Vice President of the Lawyers Title Insurance Company at Richmond, was able to make a brief report: "Nothing to report as a member of your legislative committee."

WEST VIRGINIA

No report.

WASHINGTON

No legislation which might affect our industry, but Herbert H. Sieler, President of the Lewis County Abstract Company at Chehalis, Washington, reports with a great deal of satisfaction, and I may state with a certain amount of glee that no torrens bill was introduced. Mr. Sieler was chairman of the legislative committee of Washington Title Association, and I quote the following from his committee report: "This is the first session in more than a decade that a Torrens Bill was not presented to the legislature. What prompted the usual sponsors to omit the usual introduction is not known to your Chairman, but I will give them credit that early in the session they graciously advised that they would not introduce such a bill. Probably you were fortunate in having your Executive Secretary acting as Sergeant-at-Arms of the Senate, and Yours Truly as Secretary of the Senate."

WISCONSIN

From H. M. Schmitt, President of the Harry M. Schmitt Abstract Company at Oshkosh, Wisconsin, we receive a letter stating that due to the recent adjournment of the legislature, the desired information is not available.

DISTRICT OF COLUMBIA

James T. Knight, Vice President for Lawyers Title Insurance Company at Washington, D.C., advised me that he was not informed of anything which may have transpired in Washington which might be of interest to the committee. (What? No more refrigerators?)

MARYLAND

Acts pertaining to laws on Conveyancing, Corporations, Divorce, Landlord & Tenant, Rent Control were reported passed by Joseph S. Knapp, Jr., Vice President of the Maryland Title Guarantee Company of Baltimore. One bill on Recording provides: "That the Clerk is authorized to charge three times the normal recording charge for any paper which cannot be photostated, or which contains riders which interfere with photostating."

Mr. President, I wish to thank all of the members of this committee who made this report possible. As I stated at the beginning, the response was most gratifying, and it was indeed a pleasure for me to be associated with a group of men who manifested such a keen interest in their organization. I regret that time and space do not permit the inclusion in this report of more of the material. A variety of laws are passed each session, but most of them have application only to the states where enacted. I suggest, however, that if this report makes reference to any legislation in which any member may be particularly interested, that he communicate with the committee member of the state who was kind enough to make the report. It may bring a suggestion or idea how a similar problem may be solved in some other state.

Report of Judiciary Committee

RALPH H. FOSTER, *Chairman*
Vice-President
Washington Title Insurance Company
Seattle, Washington

Comparatively few decisions of the courts of interest to title men on a national scale have caught the attention of the members of your committee.

Tax Cases

Three decisions involving tax problems have been handed down by the Supreme Court of the United States.

The first is the case of Commissioner v. Estate of Church, 335 U.S. 662, opinion announced January 18, 1949. The court overruled May v. Heimer, 281 U.S. 238. The decision has the effect of making trust property of irrevocable inter vivos trusts, notwithstanding the trust was created prior to March 3, 1931, taxable in the Estate of the settlor if he retained the income for life.

To relieve against the hardship occasioned by this decision, insofar as it might relate to trusts created prior to March 3, 1931, where the settlor died on or before January 17, 1949, the Commissioner has amended his regulations to the end that he will not apply the rule laid down in the Church Case. See Regulations 105, Sec. 8117.

The second one is the case of Estate of Spiegel v. Commissioner of Internal Revenue, opinion announced January 19, 1949. For Federal Estate Tax purposes, the court was called upon to consider a deed of trust established by Spiegel, a resident of Illinois. The income was payable to his three children or their issue during the settlor's life. Upon his death, the principal was to be paid to his children or to their descendents. When Mr. Spiegel died, the Commissioner included the entire principal of the trust in his estate, notwithstanding it went to his children. The Commissioner's contention was that the transfer did not take effect until the settlor's death, because when the trust was created, there was a remote possibility that he would outlive all the beneficiaries, and under the law of Illinois the corpus of the trust in such an event would revert to him. Therefore, Sec. 811 (c) of the Code was applicable. The United States Supreme Court sustained the position taken by the Commissioner. The result of the court's ruling was to impress a Federal Estate Tax lien in the Estate of the settlor on the value of the principal of trust, which may have been composed of real estate as well as personal property.

The third case is that of Henslee v. Union Planters National Bank and Trust Company, the Supreme Court's opinion having been announced on January 4, 1949. The court was considering a testamentary trust, where in the remainder of the trust corpus was given to charity. The court held that the charitable bequest is not deductible for Estate tax purposes under Sec. 812 (d) of the Internal Revenue Code. The reason for the holding is that the trustees in their discretion were empowered to invade principal of the trust for the benefit of the beneficiary —the trust setting up no standard by which such advancements could be measured.

The effect is that the possibility of invasion of corpus prevented ultimate charitable interest at settlor's death from having a "presently ascertainable" value.

Union National Bank v. Lamb, 93 Law Ed. No. 15, Page 888, decided May 16, 1949, involved a Colorado judgment against a resident of Missouri obtained in 1927 and revived in Colorado in 1945 on personal service upon respondent in Missouri. Suit was then brought in Missouri on the revived Colorado judgment. The Supreme Court of Missouri, though assuming that the judgment was valid in Colorado, refused to enforce it because the original judgment under Missouri's law could not have been revived in 1945. It held that the lex fori governs the limitation of actions and that the Full Faith and Credit Clause of the Constitution did not require Missouri to recognize Colorado's more lenient policy concerning revival of judgments.

The higher Court, speaking through Mr. Justice Douglas with whom six other justices concurred, held that there had been a denial of full faith and credit and that a reversal rather than a vacation of the judgment below was proper. The court said that two questions would be open on remand of the cause. The first question was whether the 1945 judgment under Colorado was a new judgment or a mere extension of the right of enforcement of the old judgment and the second question was whether the service on which the Colo-

rado judgment was revived satisfied due process.

Foreign Divorces

In Rice v. Rice, 336, U.S. 674, 69 S. Ct. 751, the United States Supreme Court added a new chapter to the book entitled "In What States Are You Married to Whom." The court held that the Connecticut court in a suit instituted after the death of the husband by the first wife, Lillian, to which the second wife, Hermoine, was a party had fairly tried the issue of fact as to whether the husband had acquired a domicile in Nevada sufficient to clothe the Nevada court with jurisdiction and upheld a judgment of the Connecticut court in favor of the first wife. In a vigorous dissenting opinion Mr. Justice Jackson quoted: "Confusion now hath made his masterpiece," and said: "I do not see the justice of inventing a compensating confusion in the device of a divisible divorce by which the parties are half-bound and half-free and which permits Rice to have a wife who cannot become his widow and to leave a widow who was no longer his wife. Lillian's standing as the relict of Rice is invulnerable, while her standing as his wife could be blasted by a Nevada decree in an action to which she did not need to even become a party."

Pengelly v. Thomas, an Ohio case reported in 84 N. E. 265, was a contest between the actual widow of a decedent and a woman who had in good faith supposed that she was the widow and did not discover until almost three years after approval of her final account as executrix of the decedent's estate, that her supposed husband had ever been previously married. The court held that by representing herself to the court that she was the widow of the decedent she was not guilty of "constructive fraud."

Possession—Recording Act

The Supreme Court of the State of Washington handed down a decision on May 10, 1949, of interest to title men on a national scope. The case is Mugaas v. Smith reported in Volume 133 of Washington Decisions No. 7, Page 421, and in Volume 206 Pacific 2d No. 1, Page 332. It involved the title to a strip of land 3½ feet in width and 135 feet in length claimed by the respondent by adverse possession and by the appellants under deed from the connected record owner. A fence which had marked the boundary line claimed to have been established by adverse possession between 1910 and 1928 had disappeared by a process of disintegration and when appellants purchased their property in 1941 by a legal description and with a record title sufficient to include the disputed strip, there was no fence or other evidence upon the ground indicating adverse possession of the disputed strip. The court was therefore called upon to determine whether a title once established by adverse possession would prevail against an innocent purchaser for value after all evidence of the possessory title had ceased to exist upon the ground. The court upheld the possessory title. The decision is of first impression in the State of Washington and adds to the list of hidden defects within the scope of title insurance coverage.

It was, of course, contended by appellants that respondent was estopped but the only element of estoppel upon which appellants could rely was the failure of respondent to keep her possessory flag flying.

The court refused to apply the provisions of the recording act making any unrecorded conveyance void as against any subsequent purchaser or mortagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded.

The court also refused to apply the provisions of another statute making a deed from the record holder of the legal title to real estate good as against any and all claims of any and all persons whatsoever not appearing of record in the auditor's office of the county in which the real estate is situated both because the statute relates to community property only, while the respondent was a widow, and because the court chose to adhere to a statement which the court had previously approved which appears in Towles v. Hamilton, 94 Neb. 588, 143 N. W. 935, to the effect that a title once established by adverse possession cannot be divested by parole abandonment or relinquishment nor by any act short of what would be required in a case where his title was by deed.

The court quoted from Ridgeway v. Holliday, 59 Mo. 444, and Seball v. Williams Valley R. Co., 35 Pa. 191, language strongly supporting the court's conclusion. These cases are in part distinguishable from the Mugass case because the parties in both cases claiming adversely to the possessory titles were not innocent purchasers for value.

Report of Executive Secretary

JAMES E. SHERIDAN
The American Title Association

Barring localities where local conditions outweigh national factors, our profession in 1949 has been in spotted and variable condition.

First Quarter of 1949

Almost from Coast to Coast, the first quarter reflected sharp decreases in new business and billings. In numerous spots, the shrinkage was as much as 50 % in billings.

For the first quarter, various of these companies reported operating savings which were barely a fraction of the decrease in billings. Against shrinkage in billings of from 25% to 40% for the first quarter, against the same quarter of 1948, most companies reported a decrease in operating expenses of from 6% to 10% against the same quarter of last year.

Practically no member company cut the pay roll by dischargings in the first quarter. But every reporting company except one or two stated it was not replacing employees who, for one reason or another, voluntarily quit his or her job.

Stockpiling of materials and supplies needed to operate member companies efficiently dropped—but not sharply.

Realty Prices—Urban

Realty values on urban properties in the first quarter of 1949 fell at least a national average of 20% against the same quarter of 1948. This reflected itself in the size of title policies written in that period—and thus the premium charges.

At conferences we attended in April, May and even June, most executive officers of title and abstract companies of our cities reported they expected gross revenue for 1949 would be 20% to 30% below 1948 levels.

Farm Property

Many abstracters in rural areas did not then and do not now expect a comparable shrinkage in realty values on farm properties. Unlike the 20's, our farmers did not, after World War II, pledge the free 80 to buy the adjoining 40. The farmer is prosperous, and, generally speaking, is out of debt. He is not now a distressed seller of land, trying to beat foreclosure action.

While he may not ride around in Cadillacs or Lincolns, he can make a living—and a good living—with farm products selling at much less than present levels.

Second Quarter of 1949

In the second quarter of 1949, the picture changed. Sales of title evidences improved and increased with the increase in demand for realty, urban as well as rural, by June. It has maintained itself—not to the level of 1947, to be sure, but to the extent we have recouped some, and in certain localities much, of the ground we lost in the first quarter. This improvement in sale and mortgaging of realty seemed to run the entire gamut of all types of property, including tremendous projects where the fee was purchased by institutions such as the life insurance companies and foundations, charitable and otherwise.

July was better than June—and August was better in many sections than

July. Private home building in July amounted to seven hundred millions, an increase of one hundred million over June and virtually as good as in July, 1948. New construction for the first seven months of 1949 actually shows an increase over the same months of 1948.

We have not reached any stage where we need go into the highways and byways to get new employees. But most of our companies today are busy on new orders.

And by September many of our members had concluded it wise to stop hand-to-mouth buying and to do some stockpiling; and once again to inquire seriously into the purchase of new equipment.

Public Housing

A factor which probably will have adverse effects upon our profession is public housing. We now have it with us. But to my mind, it is significant to note the public itself knows public housing units are on the way. Notwithstanding this knowledge, privately constructed homes are selling.

I like to think that nothing can ever destroy the century old urge on the part of human beings to "own their own home.' I like to think this is particularly true of our own blessed America.

But I am reluctantly forced to the belief we of the title world may not have done our full job in advertising to the public of our respective communities the wisdom and desirability of home ownership. Many companies carry on an excellent advertising program. But seemingly many do not. I submit to the latter they explore their own local situation more carefully; and I hope they will conclude they too can spend money, in reasonable amount, to further the idea of home ownership, privately constructed and financed. Or, to broaden this sentence just a little, let's all do our share, and more, along the line of preserving "Free Enterprise in Free America."

United States Government

The United States, per se, continues to be our biggest single customer. If but a small percent of the bills in the 81st Congress become law, the amount of land taken might just about equal the amount of land acquired in the war effort.

Keep in mind, please, Uncle Sam has moved the heart of financing. The ticket is no longer written on Wall Street. It's written in Washington—and at both ends of a certain street.

Under direction of our Governors, we are maintaining our contacts in Washington. There are many such. Of the more important ones (that is, important to us) the Department of Justice is still doing business at the same old stand and in a big way. Of course many calls are made upon many Federal agencies, but of them all, "must" calls are Justice, the housing agencies, such as Federal Housing Administration, the Reconstruction Finance Corporation and its subsidiaries, including Federal National Mortgage Association, and the Veterans Administration.

I recommend strongly you maintain close contacts with state and regional and field offices of agencies of the United States Government whose activities have to do with land.

Government Contracts

When you bid on a contract, be sure to protect yourselves if you bid a "per description" or "per tract" price that the description or title, as you view it, reconciles with the engineers' plat of the same tract.

For keep in mind, please, when you bid on a "per tract" basis, the Comptroller General's office approves payment "per tract" according to the conveyance to the United States.

In other words, if you bid on a "per tract" basis, be sure to qualify your bid by a saving sentence that it is based upon the public land records of the county wherein the land is located, or upon the tract books of your company, as of the date of your bid.

The Life Insurance Companies

Our relations with the life insurance companies continue satisfactory. The institution of life insurance has turned vast amounts of business in our direction. It is now well established that, even with its attendant headaches, the first mortgage is still the best investment a life insurance company can make. Untold millions of dollars are invested in mortgage paper by the life insurance companies.

Our Governors have instructed us to maintain regular contacts with these large users. That we have tried to do. The results over the years have been, I believe, satisfactory. Our principal job is to learn—and learn quickly—of trouble—to learn of the situation where one of our people may be at fault—and to move heaven and earth to get it straightened out. In such instances, we are authorized to communicate direct with the title or abstract company involved. This we do. And I am happy to report that virtually all these are straightened out to the satisfaction of all parties. Nothing clears the atmosphere like an "over the table" conference on situations of this type.

We have the same set of instructions from the Governors as regards Federal agencies. These contacts have paid us well. It might be said we try to get into the situation when it is still just a pin prick and before it has become a festering open wound, with everybody mad.

I earnestly hope these contacts with Federal agencies and with the life insurance companies always will be maintained. They are of definite value. They do much to head off any ideas some of these gentlemen might have looking to some public registration system. They are of value in the point of new business flowing to member companies.

Public Registration System

With pleasure, I report there has been little agitation looking to creation of a Torrens system in jurisdictions where there is none, or in expansion of it in states where it is in the code.

The only spot where we had real trouble was in my own state of Michigan. Under a special act of the Legislature, Michigan voters may authorize a County to engage commercially in the business of making abstracts of title based upon a title plant or tract index built, maintained and operated by the county itself and at the expense of the taxpayers.

Such a proposal was on the ballot in a Michigan County. It was necessary to do considerable public relations work to acquaint the people with facts. I am happy to report the proposal was voted down four to one.

But one cannot avoid reflecting a little. In the Michigan case, the move was initiated by a small group unfriendly to the local title man.

But when I think back to 1946, and all of 1947 and even some of 1948, I still shudder when I reflect the number of districts where we failed to give satisfactory service to the public.

We would not have in Michigan today the county owned tract index law if it had not been for poor service rendered over 25 years ago by our own people. But once such an Act goes on the statute books, then it becomes available for use throughout the state, even for frivolous reasons or because of personal animosities.

It's like passing a bill in the United States Congress which, in the first instance, provides for a modest appropriation. Just look at the appropriation for that Federal instrumentality ten years later!

Let's put out the fire while it is still a small brush blaze and before the whole forest catches afire. Let's be more aggressive and vigorous in our demands upon each other, in the policing of our own industry.

Title Insurance

Speaking to title insurance, more and more are large lenders extending the areas from which they will accept applications for mortgage loans, and more and more their portfolio of mortgage paper is on the increase.

The Prudential now has over two billions of dollars in mortgage paper.

I can well remember when the Equitable confined its paper to a carefully selected group of about 30 to 40 cities. They insisted upon a substantial volume before entering any city. That picture is completely changed. On my last call at the Equitable, about 60 days ago, they indicated they were lending in some 600 cities and that some 80 additional towns are under consideration.

Full coverage policies are in increasing demand. In large measure, this is due to the requirement of F.N.M.A. for this type of coverage.

Title insurance is growing. It is growing faster than we realize. Perhaps we are so deep in the forest we can't see the trees. Notwithstanding this gratifying increase, the inescap-

able fact still remains (and note I speak nationally) I know of transactions where large lenders, large developers, used the abstract and attorney-reading system instead of title insurance because they could not get the type of title insurance coverage they wanted—because they could not get it quickly and in satisfactory form —because they could not get it promptly for the amount of the loan or consideration.

Title insurance, via agency arrangements, is on the move. But there remains ground yet to be covered, or so it appears to me. I believe there can be improvements on the point of service brought about with the passing of time and by reason of more willingness on the part of the title insurer to place more authority in the hand of his local agent. Presently, in various instances, too much time elapses between the date the application is filed and the signed preliminary report given to the client; too much time runs between the actual closing and the delivery of the executed policy of title insurance.

Let's continue, gentlemen of the title insurance fraternity, to expolre ways and means thru which title insurance can be made available to every section, town and hamlet in the country, satisfactory in form and in amount, and at reasonable fees.

The yet untapped market for title insurance is mammoth in size. It deserves your continued study and your continued energies. It will not develop itself.

The Abstract of Title

Speaking to the Abstract of Title, I report much new thinking on the subject of price schedules.

Orders for "Complete" abstracts of title, numbering all the way up to a hundred and more entries were made with profit to the abstracter on the old basis of a flat charge per entry, a flat charge for searches for judgments, taxes, etc. Court work was at a flat charge per page. The abstracter's certificate was a flat charge whether the property was a $200 vacant lot or a valuable eight-story office building.

As I say, these orders for complete abstracts were profitable. But there is a day-to-day shrinkage of orders for complete abstracts. An ever-increasing portion of our market rests in orders for extensions.

To take up the slack in earnings, occasioned by this and other increased operating expense factors, various plans have been adopted. I enumerate some:

1. The horizontal raise. That is raising the price of entries, of judgment searches, and of the abstracter's certificate.

2. Extra charges for involved instruments, as, for instance, a metes and bounds description, or a conveyance involving a great many grantors and/or grantees.

3. Sharp limitation upon advance estimates.

4. A minimum charge.

5. A time charge, being a surcharge over and above the charge for entries and the abstracter's certificate.

6. A valuation charge, being a surcharge based upon the value of the property, over and above the charges for entries and the abstracter's certificate.

7. Various combinations of the time charge and the valuation charge, written into a formula.

8. A flexible charge for the abstracter's certificate only, varying according to the length of time since last the abstract was certified.

9. An increase in re-certification work, by reason of the running of the statute of limitations.

We report—and we are glad to make this report—that numerous abstracters in all sections of the country are going more and more to the idea of a valuation charge, or a time charge, or a combination of the two.

The move in this direction is too widespread to be referred to as isolated cases. There are many who have already adopted one of the newer plans —and I believe many are just about ready to make the jump.

Planning

I right well cover the United States in my job. I am privileged to talk to scores and scores of executive officers of title and abstract companies. Last year at our national convention I made an observation anent these top men. So many told me I was right that I risk its repetition at this meeting.

Yes, I know you are busy executives, busy with the duties of the desk. But it's my observation many are occupied with duties which, in my humble judgment, well could be passed on.

I can do no improving upon one sentence out of my last report, and, at the risk of lese majeste, I do now repeat it:

> "Busy though you are with the daily tasks of your desk, take a few hours off from your desk, put your feet on the window sill, stare into the skies,—and THINK.

Think about your budget for 1950—your probable market and probable operating expenses.

Think about rebuilding your plant from bound books into loose leaf books.

Think about switching over from tract books to geographic fiiling.

Think about that "dead-ender" you never should have employed in the first place—and what you are going to do with him.

Think about the camera for the take-off and other purposes.

Think about modernization of your plant through the new mechanical devices, as for instance the I.B.M. sorter —and many others—some exhibitors at this convention.

Think about the competition you are going to encounter for competent labor when the armament program gets going full blast,—pension plan, hospitalization, retirement, profit sharing plans?

Think about starting in now—right now—to train some one to take your place when the inevitable day arrives.

Think about ways and means of passing along to those who will follow you some of that vast accumulation of knowledge you have acquired in a quarter century (or more) in the title business.

It's your brain that largely keeps the organization going. Use that brain, not for routine tasks, but for truly executive functioning.

What's Ahead

Trying to crystalize the thinking of our people from all sections of the country on "What's Ahead" into one sentence, I should be tempted to put it this way:

Full speed ahead—cautiously—and with your hand on the brake.

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Foreign Divorces

A PANEL DISCUSSION

Members of Panel:

John A. C. Halbin, *Assistant Vice President and Title Officer,* Abstract Title & Mortgage Corporation, Buffalo, New York.

John W. Ziercher, *Title Officer,* Lawyers Title Company of Missouri, St. Louis, Missouri.

Fred R. Place, *Vice President,* The Guarantee Title and Trust Company, Columbus, Ohio.

William R. Kinney, Moderator; *Chief Title Officer,* Land Title Guarantee & Trust Company, Cleveland, Ohio.

Presiding: Leo T. Wolford, *Chairman,* National Title Underwriters Section, American Title Association; *Vice President,* Louisville Title Insurance Company, Louisville, Kentucky.

CHAIRMAN WOLFORD: The next thing on our program is a panel discussion on the subject of foreign divorces.

We used to have an old country judge down in Kentucky who had various settled ideas on all problems of both marriage and divorce. He remained single until he was 82 years old himself, and when he did marry, somebody asked him why he had planned it that way and waited so long, and he said, "Well, if she is a good woman, she is worth waiting for, and if not, you don't have to live with her for long." (Laughter.)

Moderator.

MR. KINNEY: The time allotted to this panel is so short that the Moderator isn't going to take up any of it with preliminary remarks. The subject is one which should be of interest to all of us, and I am going to ask Mr. Ziercher to open the proceedings.

JOHN W. ZIERCHER

Mr. Chairman and Members of the American Title Association, I have been allotted eight minutes in which to present to you some of the decisions in the various States of the Union on the question of "Foreign Divorce." This subject is in my opinion of importance to the Members of this Association, particularly to the Title Insurer.

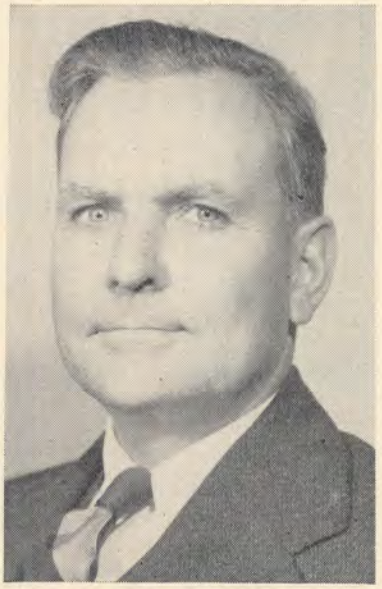
In order that we may have at least a partial understanding of the reasoning behind the numerous and conflicting decisions of the various States I believe that it is important that we know or at least become familiar with the provisions of Article 4, Section 1, of the Constitution of the United State of America, which is as follows:

Full Faith and Credit Clause

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other state and the Congress may by general laws prescribe the manner in which such acts, records or proceedings shall be proved and the effect thereof."

This clause is still the law and its command is that the judicial decisions of a State court shall have such faith d credit given to them in every court within the United States as they have by law or usage in the Court of the State from which they are taken.

I also believe that we should have before us the leading case of the United States Supreme Court on this point which in my opinion is the case of Williams et al vs. The State of North Carolina. The facts in this case are that two residents of the State of North Carolina being sweethearts not with their own husband and wife however, decided that they were at present mismated and that to correct this unfortunate situation they would travel west to the State of Nevada and there seek to have this wrong righted and



JOHN W. ZIERCHER

in furtherance of this plan they established what in their opinion was a domicile in the State of Nevada sufficient to give the courts of Nevada jurisdiction of the residence. After having resided in the State of Nevada the required length of time they proceeded to file their divorce petitions in said State Court and in due course both were granted a decree of divorce restoring to them all the rights of a single person, at least so they thought, and immediately after their respective divorces were granted they completed their love affair by joining with one another in the bonds of Holy Matrimony and then proceeded back to the State of North Carolina to take up where they had left off. As it turned out this was a serious mistake on their part because the deserted spouses, who were left behind, in all probability took such steps as were necessary in North Carolina to start the wheels of Justice grinding in the North Carolina Courts and they were both charged with bigamy, tried, found guilty and sentenced to prison. They of course in due time perfected their appeal to the Supreme Court of the United States which said Court in May, 1945, upheld the original convictions which decision was based in my opinion upon one fact only, that the parties had not established the necessary domicile in the State of Nevada so as to give that court jurisdiction to render a valid decree which could be accepted under the full faith and credit clause of the United States Constitution. For your information several of the Judges of this Court wrote dissenting opinions.

Missouri

The first State Court case that I will report comes out of our Missouri Supreme Court which was decided in July of 1948 being styled Keller vs. Keller reported in 179 Southwest 2nd 728. In this case we again see the question of jurisdiction presenting itself throughout. The opinion discusses the question of fact as to whether or not the plaintiff in the original suit in Nevada established a sufficient domicile so as to comply with the laws of the State of Nevada necessary to give the Nevada Court jurisdiction. The Supreme Court of the State of Missouri upheld the original divorce because of the fact that the defendant therein filed an answer in the Nevada Court wherein she questioned the jurisdiction of the Nevada Court to detrmine the issues and the Nevada Court found that they did have jurisdiction of the case and granted the plaintiff the relief prayed for. The Missouri Supreme Court determined that where a court of a State had original jurisdiction in the case its decision is final and must be recognized under the Constitution and is res judicata to another suit attempting to litigate the same cause of action.

For my report on the State of North Carolina I refer you to the Williams case hereinbefore mentioned.

California

In California the District Court of appeals in October, 1945, in the case of Baldwin vs. Baldwin, reported in 163 Pacific Reporter 2nd Series, page 54 held that the evidence presented established that the husband had in good faith established his domicile in Nevada and that the decree granted him was valid and was entitled to full faith and credit. The Court further determined that fraud on the Court is never presumed and must be proved affirmatively and that the question as to who is at fault has no relevancy to the existance of the power of a State Court to dissolve the marital status where the jurisdiction of said Court is once established.

Alabama

In Alabama the Supreme Court in 1943 in the case of Wilkes vs. Wilkes reported in 245 Alabama Reports 54 held that where the parties are domiciled in the State of Alabama and one of them moves to another state with intent to remain there no longer than necessary to obtain a decree of divorce such decree is invalid in Alabama as the necessary domicile was not established so as to render a decree with extraterritorial effect and come under the full faith and credit clause of the United States Constitution.

Tennessee

An interesting case comes out of the Court of Appeals of Tennessee in the case of Hamm vs. Hamm reported in 204 Southwest 2nd, page 11. The facts in this case are that the husband, a resident of Tennessee filed suit for divorce in Arkansas under a fraudulent representation to said Court as to the nature of his domicile and the court of course granted him the decree on his pleadings subsequent he filed a second suit in Tennessee, the original state of his domicile seeking a decree of divorce from the same wife that he attempted to divorce by the Arkansas decree and in this second suit he admitted his fraud on the Arkansas Court. His wife filed answer setting up as defense the Arkansas divorce which was procured by the fraud of the plaintiff and therefore he at this time should be estopped from denying the validity of the Arkansas divorce. The trial court found in favor of the husband, the plaintiff in this action, holding that the Arkansas divorce was void because of lack of jurisdiction and that the husband should not be estopped by reason thereof even though he was the guilty party in the fraudulent action. This decision was upheld by both the Supreme Court of Tennessee and the United States Supreme Court.

Nevada

In view of the fact that the courts of Nevada are limelighted throughout this report I believe it would be well to know the attitude of the Supreme Court of the State of Nevada on the question of jurisdiction on a case arising within their state lines and I refer you to the case of Lamb vs. Lamb reported in 65 Pacific reports wherein said court held that in order to give a Nevada Court jurisdiction in a divorce suit the plaintiff must establish a residence in the State in good faith for the whole statutory period, which for the information of those of you who may be interested is six long weeks. In the subject case the Nevada Court found in favor of the plaintiff determining that the facts established the necessary residence and granted him the divorce.

Pennsylvania

The facts of the Esenwein vs. Commonwealth of Pennsylvania reported in 348 Pacific 455 are comparable to those in the North Carolina case heretofore reported; the Supreme Court of Pennsylvania affirmed the decree of the lower court refusing to recognize a Nevada decree because of the fact that plaintiff therein did not establish a bona fide domicile in the State of Nevada and therefore the Nevada Court did not obtain jurisdiction sufficient to render a decree with extraterritorial effect. The validity of a Foreign Divorce does not always arise in another divorce action or in a direct proceedings but as in an Ohio case the question as to the validity of a Nevada decree was questioned in the Estate of a decedent wherein the right of the widow to act as Administratrix of an Estate was denied by the children of the decedent by a former marriage wherein they alleged that the Nevada decree rendered some twenty years ago in which the widow was divorced was void because the court lacked jurisdiction due to the fact that the parties were never domiciled in the State of Nevada. The Probate Court of Cuyahoga County, Ohio upheld the Nevada decree and decided in favor of the Administratrix which decision was upheld by the Ohio Supreme Court in November, 1947.

Bonafide Domicile

In summing up the decisions reported it is my opinion that where a divorce decree of a sister state is not founded upon jurisdiction established by a bona fide domicile of the Plaintiff the court of another state is not compelled, under the full faith and credit clause, to recognize said decree and I believe that the motive inducing the alleged change of domicile will in most cases govern in the decision of the court in either upholding or denying the decree of a sister state, thus many divorce decrees coming from states where divorces are easily obtained such as Nevada may be denied recognition on this basis!

MR. KINNEY: Thank you, Mr. Ziercher. I wonder if you would care to supplement those remarks by indicating what the attiude of your company is in title examinations where you run across a foreign divorce in the chain of title?

MR. ZIERCHER: Fortunately we haven't as yet been confronted with that situation. I don't know how we can find out whether a gentleman who has been married in one state and then goes to another state to be divorced, where he doesn't execute some instrument in the chain of title, that we can determine he was married to a certain wife and then comes up later with another wife, see what I mean?

MR. KINNEY: Yes, I see entirely what you mean.

MR. ZIERCHER: It is rather difficult situation whereby the title insurer can be put on guard, shall we say, as to such a situation.

One Way It's Discovered

MR. KINNEY: In our area the disclosure usually comes up this way. We will have a man in a chain of title who makes a mortgage with Mary, his wife, and then later on he will deed or make another mortgage as a single man or with another wife. Whenever that situation develops, of course, we want to know what became of Mary, and then it frequently develops that there was a foreign divorce; and it was a situation such as that that I had in mind.

MR. ZIERCHER: That would be the only way it would show up, if he had executed a mortgage or some conveyance in there, where we knew he had Marie as his wife—I use that name because that is my wife's name—and then he subsequently comes up with another wife.

MR. KINNEY: It doesn't occur frequently.

MR. ZIERCHER: No, it doesn't occur very often.

MR. KINNEY: Mr. Ziercher has laid the ground work with the Williams case. I am going to ask Mr. Halbin to carry on from there.

JOHN A. C. HALBIN

It can safely be said that if a husband and wife are in fact domiciled in a given state, a divorce granted by a court of that state will be given effect in the courts of all of the forty-seven sister states and in the federal courts. Beyond that simple situation, however, there are few, if any, statements that can be made on the subject of foreign divorce with any degree of safety or complaisance as is attested by the fact that most of the significant decisions have been made by divided courts and with vigorous dissents.

The Williams Case

Any current discussion of the subject, of course, stems from the decisions in the two **Williams cases** (1) (2). The first case flatly overruled **Haddock vs. Haddock** (3) which had been the leading case for forty years and the net result of the two cases, if I may indulge in a possibly dangerous oversimplification, is that under the full faith and credit clause the courts of a given state must give "respect" to the divorce decrees of its sister states and receive them as prima facia evidence of proper jurisdiction but may consider

and give effect to evidence tending to rebut the proper acquisition of jurisdiction by the sister state.

New York

In the State of New York adultery is the only ground for absolute divorce (4). Consequently, our courts are frequently confronted with cases involving the typical situation of the migratory divorce. The **Haddock** case (3) was the outgrowth of just that situation where a New York husband obtained a Connecticut divorce and returned to New York,, and prior to the **Williams** cases, (1) (2) it was to quote from the opinion in **Hubbard vs. Hubbard** (5), "the adjudged policy of this state to refuse to recognize as binding a decree of divorce obtained in a court of a sister state, not the matrimonial domicile, upon grounds insufficient for that purpose in this state, when the divorced defendant resided in this state and was not personally served with process and did not appear in the action." I am unable to find any modification of that policy by our Court of Appeals since the second **Williams** case (2) but it would appear that our courts will continue to apply that adjudged policy and will give the greatest possible effect to the rule that permits them to examine into the bona fides of the domiciles of plaintiffs in out of state divorces. In one case, **In Re Holmes Estate**, (6) which was decided in 1943, after the first but prior to the second **Williams** case, (2) the majority of the Court of Appeals considered themselves bound to recognize a Nevada divorce on the basis of the first **Williams** case (1) but there was a vigorous dissent much along the lines of the second **Williams** case (2) and it does not appear that the **Holmes** case is at all significant. **In Re Lindgrens Estate** (7) decided by the Court of Appeals in 1944 demonstrates the lengths to which the New York courts will go in giving effect to the policy of the state. A couple named Lindgren were married in New York in 1925. A child was born in 1926 and shortly thereafter the couple lived apart under a formal separation agreement. In 1939 the husband obtained a Florida divorce, entered into a second marriage in Maryland, and returned to New York where he resided until his death. The first wife was served by publication in the divorce action and did not then appear, but two years later she applied to the Florida court to amend the original divorce decree and recite her appearance nunc pro tunc on the ground that the original omission was through inadvertence. After the husband's death in 1939 the first wife applied for administration of the estate on behalf of the infant child. The Court of Appeals distinguished the first **Williams** case (1) and found that although the first wife and mother was estopped to deny the effect of the Florida divorce—that disability did not apply to the child. The net result was that the Florida divorce was found to be invalid and that the child inherited to the exclusion of the second wife.

In Re Petersens Estate

One of our trial courts recently gave effect to the second **Williams** case (2) in a probate matter entitled **In Re Petersens Estate** (8) when a wife was denied participation in her second husband's estate on the ground that an Oklahoma divorce by her first husband was ineffectual. Here both parties to the divorce attempted to remarry but the defendant was not personally befor the court and there was abundant proof that the plaintiff's residence in Oklahoma was temporary. As the court succinctly stated: "His only purpose in taking a train ride there was to procure a divorce."

JOHN A. C. HALBIN

Need for Caution

Bearing in mind the avowed policy of our state it is axiomatic that title examiners and title companies are extremely cautions when confronted with a title where marital status dependant on a foreign divorce forms one of the links in a given chain of title. Fortunately, most migratory divorces involving parties of financial substance are accompanied by appropriate property settlements. As a matter of policy I doubt that any title company would deliberately permit itself to be placed "in the middle" of any marital squabble. I personally have always felt that an affidavit of title serves a useful function in a real estate closing and every form of affidavit that I have seen has included the customary statement on the part of the affiant that he or she has never been married to any person now living except—. Most people tell the truth and it has been my experience that this portion of the affidavit has occasionally opened up questions of marital status in time to permit appropriate curative work before closing.

Dower is becoming less and less of a problem in New York as it was abolished September 1, 1930 (9) except as to real property owned during coverture and prior to that date.

I would sum up the effect of foreign divorce on examinations of New York titles in two words—"Be cautious." The latent possibilities that may be hidden several steps back in a given chain of title are certainly an insurable risk and perhaps should be incorporated into our publicity along with the ever referred to risk of forgery but current transactions, particularly those involving unsettled estates should be scrutinized with great care.

CITATIONS

(1) Williams vs. North Carolina (October 1942) 317 U.S. 287.
(2) Williams vs. North Carolina (May 1945) 325 U.S. 226.
(3) Haddock vs. Haddock (1905) 201 U.S. 562.
(4) Civil Practice Act of New York, Section 1147.
(5) Hubbard vs. Hubbard (1920) 228 N.Y. 81.
(6) In Re Holmes Estate (1943) 291 N.Y. 261.
(7) In Re Lindgrens Estate (1944) 293 N.Y. 18.
(8) In Re Petersens Estate (1948) 78 N.Y.S. 2nd. 572.
(9) Real Property Law of New York, Section 190.

MR. KINNEY: I had the opportunity before this afternoon of reading both Mr. Zercher's and Mr. Halbin's papers. I knew that it was entirely safe to have them address you.

The only think I know about the next gentleman's paper is what I have been able to get by glancing out of the corner of my eye as we sat there, and not being able to decipher his handwriting, I don't know what you are in for. (Laughter).

FRED R. PLACE

MR. PLACE: For the benefit of Mr. Zercher I think I should bring him up to date. That Indian reservation in Ohio is called Cuyahoga.

Now, all I have to do is read my writing too.

My end of this subject is "Annulments, proposed curative legislation," and I quote, "The present attitude of title insurance companies toward foreign divorces in general," unquote. Eight minutes. (Laughter).

I will cover these subjects in the inverse order.

Last August I broadcast a plea to about forty of my friends in the title business, hoping to elicit some help and information relative to these branches of the foreign divorce subject. In reply, I received legal advice worth at least a half million dollars (Laughter), and I had some literary gems which when copyrighted and published should bring royalties well into my declining years. (Laughter).

Apparently There Is Doubt

Now, with reference to the title company attitude, the answer is, yes—no. (Laughter). Perhaps — maybe — we

should — we shouldn't — I think so — we lost on this once, but we'll do it again (Laughter) — we won't — we will — how in the hell do you know (Laughter) — you don't — why — maybe (This second "maybe" is from another company) — we always — we never — why doesn't somebody do something — nuts. (Laughter). And some other new and novel answers, all of which, summed up, lead me to the conclusion that in those cases where you get a look, you take a broad slant at the domicillary jurisdiction and the service,—and hope for the best.

But in the four million, nine hundred thousand cases where neither you nor your title examiners knew nor had the opportunity to know that the unmarried guy who conveyed to your assured, achieved that status by means of a "quickie" divorce while working in a war plant many miles from home, you must walk in with your eyes closed and take it on the chin if the blow comes.

How frequently does the blow come? Not often—in fact, not as often as it could, I am sure, but the risk is always present.

Now, on the subject of legislation, you have all heard about Harry's 80th Congress. Well, he said they did nothing, and he is right on one point. They didn't do anything about foreign divorces. (Laughter).

Proposed Federal Legislation

Senator McCarran had a bill in, too, Senate Bill 1960, but it didn't pass. If it had, it would have provided:

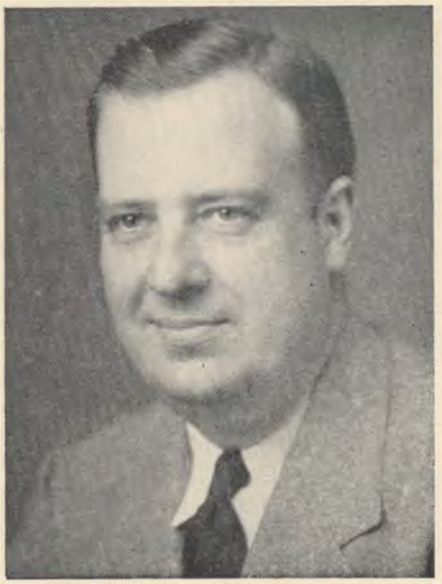
> "That where a state has exercised through its courts jurisdiction to dissolve the marriage of spouses, the decree of divorce thus rendered must be given full faith and credit in every other state as a dissolution of such marriage, provided (1) the decree is final; (2) the decree is valid in the state where rendered; (3) the decree contains recitals setting forh that the jurisdictional prerequisites of the state to the granting of the divorce have been met; and (4) the state wherein the decree was rendered was the last state wherein the spouses were domiciled together as husband and wife, or the defendant in the proceeding for divorce was personally subject to the jurisdiction of the state wherein the decree was rendered or appeared generally in the proceedings therefor. In all such cases except cases involving intrinsic fraud the recitals of the decree of divorce shall constitute a conclusive determination of the jurisdictional facts necessary to the decree."

I quizzed John Bricker and John Vorys, our Senator and House Member from Columbus, before I came up here, regarding this Federal Legislation, and I gathered from both of them—both lawyers—that the lack of enthusiasm for this legislation and similar legislation stems from the general idea that it might well be unconstitutional, anyhow.

Kansas

There is one state, however, which has done a job. That is Kansas. General Statute 60-1518 of Kansas provides:

> "A judgment or decree of divorce rendered in any other state or territory of the United States, in conformity with the laws thereof, shall be given full faith and credit in this state; except, that,in the event the defendant in such action, at the time of such judgment or decree, was a resident of this state and had not been served personally with process, or did not personally appear or defend the action in the court of such state or territory,



FRED R. PLACE

> all matters relating to alimony, and to the property rights of the parties and to the custody and maintenance of the minor children of the parties, shall be subject to inquiry and determination in any proper action or proceedings brought in the courts of this state within two years after the date of the foreign judgment or decree, to the same extent as though the foreign judgment or decree had not been rendered."

I can see where that would be of some help.

Now, of course, if the United States Constitution was amended, and laws were passed by Congress persuant thereto, and if every state in the Union passed a uniform divorce act, we could still lose money by reason of divorces which do not comply with anything. They are not in the chain of title, the same question which was raised a minute ago. Joe Doakes comes into the chain of title. You don't know what he was doing prior to that.

Annulments

Now, on the question of annulments, I felt somewhat like Omar Khayyam, who, as you remember, said he had chewed the fat with some pretty wise guys, and ended up by saying, "I came out by the same door wherein I went."

That was my case. In fact, it seems to me, the courts, periodical writers, students and lawyers have produced reams of material pro and con the status of John's other wife. (Laughter.) Then, when they discover that wife No. 1 is the lawful spouse, what happens to the alleged wife No. 2? Well, she never was, excepting under certain circumstances, such as in the Haddock case, which, while expressly overruled in the Williams cases, is not a dead issue even today.

There the parties ended up something like this:

Mr. Haddock was unmarried in Connecticut and was there free to marry a woman other than his divorced wife, whereas if he so remarried in New York, he would be guilty of bigamy; for although divorced in Connecticut, he was not divorced in New York. In New York, he could cohabit only with his divorced wife; in Connecticut his cohabitation with her would be immoral. Mrs. Haddock could not legally marry in New York. If after Mr. Haddock had legally remarried in Connecticut, she should re-marry in New York, she would commit bigamy. She became a wife without a husband; he a husband divorced and not divorced, and legally free in different places at one time to have two wives. (Laughter.)

I might mention the Rice case. I don't think anyone has mentioned that yet. That is another case that comes out of Connecticut.

That was an action for a declaratory judgment, by Lillian, his first wife, to set aside the divorce decree which Herbert—that was her husband—had obtained, Lillian claiming that the decree did not dissolve the marriage.

Herbert had married Hermoine in Nevada 20 days after the decree. Herbert died December 23, 1944—get the significance of the dates. Hermoine was rather young. Herbert was divorced in June, died in December of the same year.

Herbert went to Reno in March, 1944, and commenced an action the following May. Lillian, the first wife, was served in Connecticut with a copy of the complaint.

Herbert rented a room at Reno. After his remarriage, he and his wife went to California, to work, and although living with his new wife in a rented bungalow, kept his room at Reno.

No Bonafide Residence

The Superior Court in New Haven County referred the case to a State Referee who found that Rice never established a home in Reno. He intended to do so in the future if he did not like it at Herlong, California, but did not have an unqualified intention

to make a home there at present and Reno was not his bona fide domicile.

The Court reasoned that having been domiciled in Connecticut and not having acquired a new domicile, and domicile in the jurisdiction of the divorcing court being essential, the decree of divorce was not valid. That is, the marriage between Lillian and Herbert was not dissolved.

When the Supreme Court comes out with an answer to that, it may do something to the Wiliams case.

In summing up this whole thing, the language of Justice Rutledge used in the Wiliams case. is quite apt. He sounds like he is just a little sick of the subject. He says:

"Once again the ghost of 'unitary domicile' returns on its perpetual round, in the guise of jurisdictional fact' to upset judgments, marriages, divorces, undermine the relations founded upon them, and make this court the unwilling and uncertain arbiter between the concededly valid laws and decrees of sister states. From Bell and Andrews to Davis to Haddock to Williams and now back to Haddock and Davis through Williams again —is the maze the court has traveled in a domiciliary wilderness, only to come out with no settled constitutional policy where one is needed most."

MR. KINNEY: I would like to call your attention to two cases that have not been mentioned. That is Parker against Parker and Cole against Cole, which was decided by the United States Supreme Court last summer. They did not, however, involve substitutive service. Either the party was present or was represented by attorney.

May I thank you, Mr. Halbin, Mr. Zercher and Mr. Place, for your very interesting handling of this subject.

Reverters

A PANEL DISCUSSION

Members of Panel:

Bernard J. Docherty, *Office of General Counsel,* New York Life Insurance Company, New York City.
Golding Fairfield, *Counsel, Title* Guaranty Company, Denver, Colorado.
Leo A. Reuder, *First Vice President,* Title Insurance Company of Minnesota, Minneapolis, Minnesota.
W. Herbert Allen, *Executive Vice President,* Title Insurance and Trust Company, Los Angeles, California.
John F. Denissen, *Attorney,* New York Life Insurance Company, Chicago, Ilinois.
L. J. Taylor, *Vice President and Secretary,* Phoenix Title and Trust Company, Phoenix, Arizona.
Paul J. Wilkinson, Moderator; *Vice President,* The Title Guarantee Company, Baltimore, Maryland.

MODERATOR WILKINSON

A reverter may be defined as the residue of an estate left in the Grantor to commence in possession after the determination of some particular estate granted out by him.

The words "reverter" and "reversion" seem to have the same meaning, and are, therefore, interchangeable.

Examples

A reverter is set up by the creation of an estate of lesser character than the estate held by the Grantor. The following are simple examples of this estate, (a) the owner of a fee simple estate leases it for a term of years, the estate remaining in him is a reversion or reverter, which will revest at the end of the term, or (b) the holder of property for a term of years subleases it for a lesser term, in which case his right to reacquire at the end of the term is a reversion or reverter, (c) a deed of an estate to (A) until the death of his wife (B), who was then living, creates an estate which will terminate in (A) upon the death of his wife, and will then revert to the Grantor, and (d) a deed of an estate to a corporation or an individual for so long as the property shall be used for a designated purpose.

Of the four examples given above, the first two have definite termination dates, whereas the latter two are based upon conditions subsequent. In the first three examples reverters are certain to result, whereas in the fourth there is only a possibility that it may result, depending entirely upon whether or not the property is diverted from the particular use specified.

Estates arising similar to the fourth example indicated are by far the most important types of reversions or reverters from a title insurance point of view.

In all cases where the reversion or reverter is certain to result, there is an estate vested in the original Grantor which may be sold, mortgaged, conveyed or devised, or in any other legal way disposed of by the Grantor and his heirs, devisees, legatees or assigns.

Possibility of Reverter

This does not hold true where the reverter is not certain to take place, and a situation of this kind is termed a "Possibility of Reverter," which, under common law, was not considered an estate, and was not, therefore, transmissable by will or deed, but the right thereto passed to the Grantor's heirs, who were such at the time the reverter became effective. This rule is still in force in all common law jurisdiction unless changed by statute in the particular State.

The above is a very brief statement of the general subject of reverters. The subject will be covered more specifically by the other members of the panel. There will, no doubt, be much overlapping of subject matters, but this is difficult to avoid. The purpose of this panel is to give you all a clearer understanding of the problems created by this particular type of estate, and suggestions as to the disposition of such problems as affecting title examination and title insurance. The other members of this panel are outstanding authorities upon title questions, and I consider it an honor and a privilege to be associated with them in this discussion. The subject will be covered in a general way, and then certain specific features will be discussed. Limited time will not permit a complete coverage of the subject, and I must apologize to all the members of the panel for having to allot so little time to each of them for the presentation of his particular phase of the subject.

Some years ago a philosopher said that nothing is impossible, but I can assure you, with the technicalities of this subject and the size of the panel, that it will be impossible to finish within the time limit.

The preliminary statement on this question is to be rendered by Mr. Bernard J. Docherty of the Office of General Counsel of New York Life Insurance Company, New York City. Mr. Docherty, will you take over, please.

(Applause.)

BERNARD E. DOCHERTY

This is my first attendance at an Association Convention, and here I am a member of a panel. It reminds me of a story I heard the other day of the late Herbert Brune. He was attending a church wedding and as the couple was in front of the altar, an old lady leaned over to him and said, "Just think, they are getting married and have only been keeping company for two weeks." He said to her, "Well, I know of no better way of getting acquainted.'

Many years ago an elderly attorney from one of the western New York counties was arguing an appeal in our highest court, the Court of Appeals, which is situated in Albany. Apparently, the attorney had had little occasion in the past to appear before this court, the jurisdiction of which is quite limited by our Constitution. During the course of his argument, the Chief Justice injected the inquiry: "How did you get here?" meaning, of course, under what particular provision of the law. But counsel being somewhat deaf did not hear the question and continued with his argument. A moment or two later, a little irritated, the Chief Justice repeated the question. This time counsel heard and replied: "Oh, I came by the New York Central."

How did I get here? I, too, came by the New York Central, but by reason of a letter which our Company in July, 1947 addressed to its mortgage loan correspondents. Copies of this letter, I believe, have been made available to you and reference will be made to it further in the discussion.

New York Statute

New York insurance companies are interested in reverter and forfeiture clauses because of the provisions of Section 81 of the New York Insurance Law which sets forth the classes of reserve investments for insurers. The subparagraph of that Section pertaining to mortgage loans reads:

"6. Mortgage loans. (a) Bonds, notes or evidences of indebtedness other than those described in subdivision two, which are secured by first mortgages or deeds of trust upon improved unencumbered real property located in the United States. Real property shall not be deemed to be encumbered within the meaning of this section, by reason of the existence of instruments reserving mineral, oil or timber rights, rights of way, sewer rights, rights in walls, nor by reason of any liens for taxes or assessments not yet due, nor by reason of building restrictions or other restrictive covenants, nor when such real property is subject to lease under which rents or profits are reserved to the owner, if in any event the security for such loan is a first lien upon such real property and if there is no condition or right of re-entry or forfeiture, under which such lien can be cut off, subordinated or otherwise disturbed. . . ."

Other States

The States of California, Illinois, Massachusetts, New Jersey, and Pennsylvania have a similarly worded restrictive provision in their statutes. There may be other states with similar legislation; special mention of the above states is made only because of their size and because they are the domiciles of many of our large insurance companies.

In view of the fact that our discussion will pertain to qualified estates, it would probably be apposite to define the three types of such estates. I believe that the following definitions will be found to be generally acceptable:

Estate upon Condition—Any estate which is subject to forfeiture for the breach of a condition contained in the instrument creating it, is an estate upon condition. Forfeiture enforced by entry or by the bringing of an action of ejectment or equivalent action is the distinguishing characteristic of this type of estate.

Estate upon Limitation—Where land is conveyed or devised to a person and his heirs but subject to a limitation which is future and contingent upon the happening of which the estate, by the terms of the instrument creating it, is to terminate, the estate is one upon limitation. Such expressions as "until", "as long as" and others which define a period of time are ordinarily invoked in the establishment of such estate. When the contingent event occurs, the estate immediately terminates, no re-entry being necessary. In such cases the grantor has what is called a possibility of reverter. This possibility at common law was not assignable or devisable; it is not a reversion and is therefore not an estate, present or future. It passes on the grantor's death to his heirs. Such estates do not involve a forfeiture.

Conditional Limitation

Estate upon Conditional Limitation—When upon the happening of the future event which determines the estate, the instrument provides that the fee shall then vest in a third person, such estate is known as one upon conditional limitation.

Our Insurance Law provides that the real property must be **unencumbered**; however, the realty, it will be noted, is not deemed to be encumbered by reason of the existence of certain matters if there is no condition or right of re-entry or forfeiture under which the lien can be cut off, subordinated, or otherwise disturbed. The most generally accepted definition of the word "encumbrance" is the following: An encumbrance may be defined to be every right to an interest in the land which may subsist in third persons, to the diminution of the value of the land, but consistent with the passing of the fee by the conveyance.

In 1891, the New York State Attorney General rendered an opinion to the Superintendent of Banks on the question whether a building and use restriction was an encumbrance so as to prevent a savings bank from investing in the property. Such institutions were restricted to bonds and mortgages on unencumbered real estate. At the conclusion of a somewhat lengthy opinion the Attorney General gave the following rule as that which he thought should govern: "If the restriction is not in the nature of a condition, and no forfeiture can result from its non-observance, and the fee to the property can in no way be taken from the owner by reason of non-observance of the restrictions, or the title disturbed thereby, and the value of the property will not be reduced in consequence thereof, then such a restriction would not be an encumbrance, I think, within the meaning of the banking law, but that the effect of the restriction should be, however, taken into account in determining the value of the property."

There is a division of thought as to whether the wording of this provision of our Insurance Law applies, to a more stringent degree, to estates upon limitation and estates upon conditional limitation than to estates upon condition subsequent. Because the first two kinds of estates can be considered to be encumbered by reason of the limitation itself and there is no saving exception such as exists with respect to estates upon condition, some think that such titles, without exception, are unacceptable. The opposing viewpoint is that all qualified estates are eligible if there is no possibility of the lien being extinguished by a reverter or forfeiture of title; in other words, that the word "condition" in the law is used in its broad sense and covers all conditional or qualified fees. Which is the correct viewpoint need not concern us. The qualified fee which is most frequently encountered is that which is subject to building and use restrictions enforcible by a condition subsequent and we shall, therefore, confine our discussion to that particular kind of title.

No Right of Re-entry

In view of the restrictive provision in our law, life insurance companies domiciled in New York, and life insurance companies domiciled in those states which have a similar legislative restriction, must receive assurance, when making a mortgage investment, that the mortgagor's title is not subject to a right of re-entry for breach of condition. A high percentage of the mortgage loan portfolios of life insurance companies, particularly residential mortgage loans, is bought in the secondary market on a national scale. The purchasing company can, of course, require that in each residential loan (one to four family houses) there be submitted to it verbatim copies of the restrictions affecting the title, a complete statement of the revelant circumstances and the decisional law, if any. With such information before it, such secondary lender may determine for itself whether the fee is subject to a condition subsequent, and, if so, whether under all of the facts and circumstances and the law of the jurisdiction such condition is enforceable in the event of a breach.

Expensive Procedure

Such procedure is unsatisfactory from several viewpoints. It is expensive. It involves delays in loan closings. It requires the primary lender to obtain from the secondary investor a preliminary expression as to the acceptablity of the title; for otherwise,

the originating mortgagee may find itself with an investment which its outlet is unwilling to purchase. When one considers the very impressive number of residential loans which are purchased today in the secondary market by insurance companies, it is self-evident that any alternative method of processing such loans which does not involve the expense and delays inherent in the above process, and, at the same time, furnishes the secondary investor with the assurance that it requires, is highly desirable from the viewpoint of all concerned. It was to accomplish these purposes that our Company was prompted to issue its July, 1947 letter. That letter reads as follows:

"Until further notice, it will no longer be necessary for you to forward verbatim copies of restrictive covenants on all types of residential loans purchased by assignment from your company, provided:

A title insurance policy is furnished as good evidence of title and the exception concerning restrictive covenants in the policy is followed by:

1. A statement to the effect that the restrictive covenants have not been violated at the date of policy.
2. A statement that the restrictive covenants contain no forfeiture clause, or if they do, that the policy insures against forfeiture for a subsequent violation.
3. If for any reason a survey is not furnished, the policy contains no exception concerning surveys.

We believe that this change, which you may put into effect August 1, 1947, will reduce the expense and the time required of the title company or your company in securing and forwarding copies of such covenants."

This letter poses two questions: First, how may a purchaser of loans of all types in the secondary market best protect itself against loss by reason of forfeiture for breach of a condition subsequent in the title? This leads naturally to the second question. Is insurance against loss by reason of the exercise of a right of entry or forfeiture under a condition subsequent, an appropriate risk for a title insurance company?

A Title Company Risk

After having given considerable thought to the subject and after having discussed it with the executive officers of some of the large title companies, we believe that insurance against loss by reason of enforcement of a forfeiture clause can be considered a proper function of a title company. A secondary lender purchasing mortgage loans has an insufficient knowledge of local conditions and of the facts and circumstances which, while not a matter of record, may affect the title. It may have an inadequate knowledge of the decisions of the courts of the several states on questions of title. Whether or not the language of a particular restriction will be interpreted as a covenant or a condition may depend on the decisional law of the jurisdiction wherein the property is located and on local conditions and circumstances which as I have said, may form no part of the record title. There may be an express or implied waiver. The grantor may have died without heirs to whom the possible right of entry would descend. Perhaps the corporation which reserved the right of entry has been dissolved. Or it may be that the property was restricted against a particular use many years ago and the possibility of it ever being used for such purpose during the period of the coverage is exceedingly remote, if not non-existent; e.g., where land has been restricted against use for cemetery purposes and such land is now entirely improved with homes or business buildings.

Intimate Knowledge of Facts

The title company, either directly, or through its agents, necessarily has a much more intimate knowledge of the decisions of the jurisdiction in which it does business than has the secondary lender. The title company is more intimately acquainted with the peculiar circumstances and background which may determine whether it was intended that a right of entry be reserved in those cases where the language may not be clear; whether, if construed as such, courts would enforce the right to enter in the event of a violation; and whether the possibility of a re-entry during the life of the loan is so remote as to constitute a minimum of exposure.

Meets Statutory Requirements

If the title, as a matter of fact, is affected by a reservation of a right of re-entry for breach of a condition, but the title insurer, in the exercise of its sound judgment, is willing to insure against loss or damage by reason of the enforcement thereof, our office takes the position that the title would not be objectionable because of the wording of the aforementioned statute; in other words, the title on which a mortgage would not be a legal investment is that which is subject to an **enforceable** right of re-entry for breach of condition. In those cases, therefore, where the title company, after careful consideration of the facts and the law, is willing to issue a policy with an exception written in accordance with the Company's letter of July, 1947, our office has concluded that it has proper and sufficient evidence that the investment complies with the New York Insurance Law. Furthermore, the evidence complies with the requirements of the New York State department of Insurance which, in connection with mortgage investments of New York insurance companies, is willing to accept as evidence of title the policies of those companies which have qualified with the Department. In the circumstances, the title company is not requested to substantiate or explain the basis for the insurance of this particular exposure for the same reason that we do not require it to substantiate or explain the basis upon which it is willing to insure the title generally.

Volume of Business

The volume of residential loans purchased by our Company is very large. To cope with it, we were compelled to establish a regular pattern of procedure with little necessity for the devotion of any considerable amount of time to the study of complex title questions and correspondence in connection therewith. With respect to business loans, however, our operation is otherwise. The amount of money involved in each case is usually substantially greater and we can devote more individual attention to matters of title. On business loans, therefore, we require submission of verbatim copies of restrictions. If there is any question as to whether a condition enforceable by re-entry exists, we solicit information as to all of the relevant facts and circumstances and as to the decisional law of the jurisdiction. If we conclude that the lien will not be cut off by re-entry for breach of condition, we approve the title if the title company is willing to buttress our conclusion by issuing its policy with an exception worded as set forth in our July, 1947, letter.

It is our opinion that our procedure for processing residential loans, as it has been here outlined, serves the purposes not only of our Company but also of the title company and the correspondent. We believe that it permits our correspondent and the title company to close loans with a minimum of time, expense and vexation.

It is our conclusion, after having carefully reviewed the question with executive officers of some of the title companies, that a title company is acting within its proper sphere when, in the exercise of its sound discretion, it assumes whatever risk may be inherent by insuring against a possible forfeiture.

The Language in Policy

If the wording of the exception to be inserted under Schedule B can be improved so as to express more clearly the insurance desired by our Company and that intended by the insurer, we shall, of course, be pleased to have the benefit of your criticism.

In behalf of my Company, my superior, General Counsel Dudley Davis, and myself, I thank you for giving me the opportunity to appear before you to discuss this matter.

MR. WILKINSON: Thank you very much, Mr. Docherty. Mr. Docherty, being a representative of the mortgage interests was given all the hard work on this program, and we made him go over the entire subject. The rest of the gentlemen on the panel will take up individual topics.

The next speaker will take a pre-

liminary view of the subject of reverters, and I will call on Mr. Golding Fairfield of the Title Guaranty Company and Denver, Colorado.

GOLDING FAIRFIELD

It is difficult to separate this statement into the four parts indicated. However, in the short time allotted me, I will attempt to define the subject in such a way that there will necessarily follow something concerning the nature, incidents and creation of reverters.

Defined

Legal authorities classify "Reverter" and "Reversion" as synonymous terms denoting an estate vested in interest, although not in possession. The words are derived from the Latin "Revertee," meaning to turn backward. Coke said that reversion is the residue of the fee after a less estate has been carved out of it, both these interests being but one estate. A modern definition of an ESTATE in reversion is a residue left in the Grantor to commence in possession after the determination of some particular estate granted out by him. The ACT of reversion or reverting means a returning to a preexisting former state. The term reversion therefore has two meanings. It is the estate left in the Grantor during the continuance of a particular estate; and it may also mean the returning of the land to the Grantor or his heirs after the grant is over.

How It Arises

A reversion arises wherever a Grantor has conveyed less than his whole interest or estate, the undisposed of portion being his when the grant is terminated. It has therefore been held that so much of the clause of a deed, after a grant of a life estate, as directs a reversion to the Grantor's estate, is inapt, a reversion arising by operation of law and not by expression or direction in a deed or will. The most common example of a reversion is the remaining interest of the Grantor where Grantor has conveyed a life estate. Deeds and wills are the most common sources of reversions. A reversion, being presently vested, may be alienated; it may be devised by will, and as intestate property it may descend to heirs.

No Estate

A reversion should be distinguished from a possibility of reverter, which arises on a grant so limited that the grant may last forever. At common law this possibility of reverter was not an estate. It could not be alienated or assigned, and could not be devised by will. It could, however, descend to heirs. Until the contingency happened, the whole title was in the Grantee. The holder of a bare possibility of reverter cannot maintain an action for injury to the property. There is a conflict of authority as to whether or not a possibility or reverter is within the rule against perpetuities. An example of a possibility of reverter would be a conveyance of land to a church with the conveyance providing a reversion to the Grantor whenever the land should cease to be used or occupied for a church. In such a case, the Grantor retains no future, vested estate, but merely a naked possibility of reverter.

How Lost

A reversion may be lost through adverse possession just the same as any other interest in real property. The possession of the life tenant, however, is not an adverse holding. A reversion may cease to exist by operation of law when there is a union or merger of the particular estate and the reversion either in the hands of the particular tenant, or in the hands of the reversioner.

Entire text books have been written on a subject which I have attempted to present in five minutes.

GOLDING FAIRFIELD

MR. WILKINSON: Thank you very much, Mr. Fairfield.

The next question to be discussed is the question of alienation or devise of reverters. Mr. Leo A. Reuder, first Vice-president of the Title Insurance Company of Minnesota, Minneapolis, will take over. Mr. Reuder.

L. A. REUDER

Upon accepting my assignment on this panel, Mr. Paul Wilkinson, our moderator, informed me that the topic in question had been divided into four parts, and that the phase of the subject matter which had been assigned to me was "Alienation or Devise of Reversions or Reverters and Termination Thereof."

Obviously, in the brief time allotted, it will be impossible to go into an elaborate or detailed discussion of this particular subject. Most states whose laws follow or are based on the English Common Law are fairly uniform. States having a different basic law may be different. Minnesota follows the English Common Law. For the purpose of this discussion, any statement I make, therefore, will be based on and limited to the decisions and statutory law of the State of Minnesota. It is apparent to me, also, that insofar as possible, we should in a discussion of this kind avoid technicalities and endeavor to arrive at some understanding as to how we can in a practical and safe manner give protection to investors in real estate mortgages and in so doing, benefit not only our own business but all of those who may be interested in the making, selling and purchasing of mortgage securities.

Conditions Subsequent

Conditions subsequent, coupled with a forfeiture provision for breach, are a headache to all who deal in real estate titles, be it from a standpoint of owner, lessee or mortgagee. My remarks will be limited to estates upon condition, therefore, because this type of an estate is causing most of our difficulty.

Estates upon condition are those whose existence depends upon the happening or not happening of some uncertain event whereby the estate may be created, enlarged, or defeated. Those dependent upon an event which will create or enlarge an interest are conditions precedent. However, an examining attorney is more likely to encounter an estate already vested to which, by the terms of the instrument creating it, there is attached a condition by the subsequent occurrence, nonoccurrence, performance, or nonperformance of which the estate may be defeated.

The component parts of a condition subsequent are:

(1) a condition or restriction; and
(2) a right of re-entry.

But no particular technical words are necessary, and, if there is sufficient evidence otherwise to prove this to be the character of a clause, the right of re-entry will apply. Due, however, to the disfavor in which forfeitures are held, the courts are inclined whenever possible to construe a clause as a covenant only, rather than as a condition subsequent.

Re-entry

Courts in different jurisdictions are not in accord as to whether the right to re-enter for condition broken is synonymous with a "right of reverter." Under the common law, this right of reverter was deemed a mere possibility, a mere chose in action, not coupled with an interest in real estate. It could not be assigned, conveyed or devised nor could it be transferred by will. That was the law in Minnesota until 1937 when the Legislature amended our laws by adding to the Section in point the following: "and hereafter contingent rights of re-entry for breach of conditions subsequent, and rights to possession for breach of conditions subsequent after breach but before entry made, and possibilities or revert-

er shall be descendable, devisable, and alienable in the same manner as estate in possession."

I understand other states also have made changes by Legislature enactments, making it possible to assign and devise this so-called reversionary interest. Other jurisdictions hold that the right to re-enter for condition broken is an interest in real estate.

I believe most of us are not so much concerned about the category in which we place our problem but what we can do in our industry to facilitate the satisfactory consummation of transactions when we are confronted with conditions of this kind in titles before us.

Construction

Whether the wording of a particular restriction will be construed as a condition or a covenant naturally depends upon the jurisdiction in which the land is located; but regardless of what the interpretation may be, we know that a title hazard is created. We, as title people, have been called upon in the past and will be called upon in the future to insure against this type of hazard. I believe that each case must be considered on its own merits and only after careful investigation of all the facts can we make a decision as to whether it is a good business risk to insure the mortgagee against the hazard in question. In a good many instances, releases can be obtained where a violation occurred and our risk is reduced. It is in cases where no releases can be obtained that caution must be exercised before undertaking the risk.

Determining Factor

Facts and circumstances in each case after careful investigation should be the determining factor as to whether or not a policy should be written. Laches, estoppel, waiver and abandonment may be relied upon in assuming risks of this nature. Facts may disclose that the parties who inserted the conditions have died many years ago and no heirs can be located who could bring an action. Likewise, in cases where the charter of a corporation which put restrictions in a deed has expired, it may be good business to assume this responsibility.

In those cases where insurance is written, the protection of the mortgagee must be definitely understood. The guaranty should extend only to damages which might result by attempting to enforce the conditions and under no circumstances would it be safe or a good business policy to insure the marketability of title. Some insurance companies seem to be satisfied with a guaranty that the restrictive covenants contained no forfeiture clause, or if they do, that the policy insure against forfeiture for a subsequent violation.

Illustration

In closing, I would like to call attention to a case recently submitted to our company and which we agreed to insure:

There were two properties and two separate chains of title involved. Each tract was improved with a theatre and office building. Each title was encumbered by a restriction with a forfeiture clause. One deed given on May 13, 1899, by the Trustees of an estate, restricted the use of the South 60 feet of Tract A to residential purposes only, and imposed a set back of 53 feet from the street. The theatre and office building located on the property violates both the use restriction and the set back. Subsequently, the successor Trustees under the will executed to the owners of the premises a quit claim deed containing an express recital that it was given for the purpose of releasing the reversionary rights created in the 1899 deed.

The other deed was given in 1891, prohibits the use of the North 126 feet of this property for the sale of liquor or the conducting of a livery stable or "any business detrimental to the interest of a first class residence neighborhood" with provision for forfeiture and reversion of title in case of violation.

No release of the forfeiture clause contained in the latter deed can be obtained because neither the grantor or his heirs can be located.

Both properties have been improved for over twenty years. At the time these restrictions (1899-1891) were imposed, the whole area in which the property is located was residential in character. During the past 25 to 40 years, the character of the neighborhood has changed and the street on which the theatre is located is built almost solidly with business buildings in the vicinity of this theatre property. Courts of equity will not enforce such restrictive covenants where the character of the neighborhood has so changed as to make it impossible to accomplish the purpose intended by such covenants. Inasmuch as the buildings have been erected since 1927, a period of more than twenty years has elapsed, during which the possession of the property by the violating user has been open, notorious and unchallenged, the possibility of any action being brought seems very remote.

Safety

The officers of our company in considering all of these matters, felt it a safe risk to undertake, and the insurance company making the loan is willing to take a title policy containing two guarantees on these restrictions as follows:

> "The company expressly guarantees against loss or damage resulting to the holder of this policy through the assertion of any claim that the foregoing restrictions are violated by the structure or use presently existing upon the mortgaged premises.
>
> "The company expressly guarantees the assured that any violation of the foregoing restrictions by the structure or use presently existing upon the mortgaged premises will not work a forfeiture or reversion of title."

MR. WILKINSON: Thank you very much, Mr. Rueder.

Mr. Rueder spoke of the decision of the Supreme Court and it sounded as if it was very important, but you have to be very careful.

Just a short time ago, possibly three years ago, in the state of West Virginia, the Statute which had been passed by the Legislature was taken to one of the local county judges and he decided the act was unconstitutional. It was immediately appealed to the Supreme Court, and the Supreme Court upheld it.

Another act was prepared by the Legislature and immediately after the act was passed, there was another case brought before this county Judge. The county Judge again held the act was unconstitutional, whereupon it was appealed to the Supreme Court. The Supreme Court decided it was constitutional. So it was remanded to the lower court, and when the case was tried on retrial, the Judge again declared that the act was unconstitutional.

So one of the counsel who had been ruled against, went up to the judge and said, "Well, your Honor, I don't understand how you take this position in view of the decision of the Supreme Court on this case."

So the Judge moved the chaw of tobacco to the other side of his mouth and spit in a nearby spittoon and said, "By God, I overruled them." (Laughter.)

The next gentleman will cover the rights, remedies and liabilities of a reversioner. Mr. Louis J. Taylor. (Applause.)

LOUIS J. TAYLOR

The phase of this subject, which has been assigned to me, covers the rights, remedies and liabilities of a reversioner.

I believe we are all agreed that the type of reverters which we are discussing will arise as a result of a condition subsequent and that the whole title to the property is vested in the Grantee and his successors until the revesting of title through re-entrance for condition broken or reversion of title upon the breach of the condition subsequent.

If, because of the wording of the instrument, there is any question as to whether a provision is a covenant or a condition subsequent, the courts will favor a construction creating a covenant. On the other hand if there is no ambiguity and the wording plainly shows a condition subsequent, the courts will enforce a reverter, therefore, one of the first questions to be determined in any given instrument is whether a covenant is created or whether there is actually a condition subsequent existing.

Conditions Subsequent

Conditions subsequent are usually attached to the title and run with it

against subsequent Grantees with notice, but the intention of the parties controls, and, if the language shows an intent to create a personal obligation it will be so construed.

At common law the power of reentry for condition broken was not assignable, hence such right could be exercised only by the Grantor who created the condition or by privies in blood; according to the Restatement of the Law, Property, this rule is still recognized except in cases when the power of termination supplements a reversionary interest also had by the owner of such power and the owner of such reversionary interest and power makes a conveyance of both such interests.

Future Interest

The Restatement defines a future interest as being an interest in land which is not, but may become a present interest, and defines a present interest as an interest which includes the right to the immediate beneficial enjoyment of the affected thing. This definition of a future interest is sufficiently broad to include the possibility of a reverter.

It also states that a possibility of reverter is any reversionary interest which is subject to a condition precedent. The present rule is that the owner of any reversionary interest in land has the power by an otherwise effective conveyance, inter vivos, to transfer his interest or any part thereof. It includes all reversions and possibility of reverter, and thus, except for the power of termination, includes all future interests which can be retained by, and created in favor, of a transferor, after he has transferred some interest in the thing owned.

Owner of Power

The owner of a power of termination in land has no power to transfer his interest, or any part thereof, by a conveyance inter vivos except when it constitutes a release or when the conveyor and conveyee are both persons then entitled, as successors of an original creator, acting jointly, to assert such power upon breach of the condition; or when as above stated the power of termination supplements a reversionary interest also had by the owner of such power and both of such interests are conveyed.

A possibility of reverter descends to the heirs in case of intestate death and is subject to the testamentary disposition of the owner, as does likewise the power of termination if it is supplementary to the possibility of reverter. Many states have statutes specifically declaring the powers of termination devisable, or that any interest is devisable which is descendable. These would apply to the powers of termination as well as the possibility of reverter.

Statutory Law

Many of the statements which I have previously made are not the rule at common law, but seem to have been pretty well covered by statutes in most of the states. The benefit of a condition or breach cannot be availed of by a stranger; by a person who has no title; by a person who has no present right, legal or equitable, to the part reserved; or by a mere naked trespasser; by a person who does not sufficiently appear to be entitled to the benefit of the condition; by the owner of adjacent land; by the Grantee of other lands; or by the public except in circumstances where only the state may be entitled to re-entry.

Because of the fact that the courts will favor a construction creating a covenant instead of a condition subsequent, it is almost essential that an action in court be maintained first, to determine whether the wording creates a condition subsequent or whether it

L. J. TAYLOR

creates a covenant. The conditions in the deed may be waived before or after breach, consequently the question whether such waiver has taken place must be determined. The power of reentry for a breach of the condition subsequent may be released by the Grantor or his heirs. Inasmuch as the persons, who have a right to enforce the reverter, are limited it is necessary to determine whether the plaintiff has such a right.

Equity

As a general rule equity will not enforce a forfeiture. In a proper case, however, equity may relieve from forfeiture adapting the relief to the nature of the case, but where the parties have themselves enforced a forfeiture by providing for re-entry and re-entry has been made, a court of equity is powerless to relieve.

It is pretty well settled that a breach of a condition subsequent in a conveyance does not of itself determine the estate conveyed, but a re-entry or some act equivalent thereto is necessary to revest the estate. Notice and demand of a conveyance is not the equivalent to re-entry. An action of ejectment is the appropriate remedy to enforce a forfeiture upon the breach of condition.

Non-Fulfillment

The legal responsibility for nonfulfillment of a covenant in a deed is that the party violating it must respond in damages. The consequences of nonfulfillment of a condition subsequent in a deed is forfeiture of the estate conveyed, and the Grantor or his successors may re-enter and possess himself of his former estate. Noncompliance with a condition subsequent does not of itself determine the estate since the right to enforce forfeiture may have been waived, but the estate abides in the Grantee until it is defeated and determined at the election of the Grantor or his heirs, and election may be signified by re-entry or some act equivalent thereto.

Forfeiture resulting from a breach of a condition subsequent may be released or waived and the waiver may be either express or implied from the circumstances, but mere inaction does not amount to a waiver of a forfeiture for a breach or a condition subsequent.

A waiver or estoppel arises only when the Grantor does some act inconsistent with his right of forfeiture and where it would be unjust for him thereafter to insist upon a forfeiture.

Indulgence not a Waiver

A mere indulgence is never to be construed into a waiver of a breach of condition. A mere silent acquiescence in, or parol assent to, an act which has constituted a breach of an express condition in a deed will not amount to a waiver of a right of forfeiture for such a breach. Long continued silence of a Grantor does not preclude him from insisting on a forfeiture and claiming possession. Mere inaction does not amount to a waiver for a breach of a condition subsequent.

The Grantor in a deed containing a condition subsequent upon breach thereof is not revested with the title until there has been an entry. He may enter peaceably if he can, or assert his right to enter by an action for the recovery of the possession of the land against the Grantee. Such an action is the equivalent of an entry. Ejectment would lie for the recovery of the land on breach of a condition subsequent.

Injunction Relief

It has been held that there is no liability on the Grantor or his successors for waiving the right to forfeiture upon breach of a condition subsequent. The theory being that this is a mere personal right and that the owners of other land covered by a similar provision, having themselves no right to enforce a forfeiture, are in nowise affected by the action of the Grantor in waiving his rights. Under the ordinary and usual building restriction covenants and conditions, if a general

plan be shown, or if the covenants were made for the mutual benefit of the lands conveyed, the right to injunctive relief still remains in the other owners of the property for whose benefit such conditions were made.

Summary

To summarize:

1. The power of re-entry and right of forfeiture is in the Grantor or his successors. His successors are privies in blood, or in states recognizing the right to convey a future interest, in his Grantee; or in states where such a future interest may be devised, in his legal representatives or devisees.
2. Re-entry must first be made before a forfeiture can be enforced.
3. An action in ejectment is the method of enforcing the right of re-entry and forfeiture. Equity may, in proper cases where there is no other remedy, enforce such rights or relieve from the consequences of a breach.
4. There is no liability on the Grantor or his successors for waiving the power of re-entry and the right to forfeit.

MR. WILKINSON: Thank you, Mr. Taylor.

The next speaker to carry on in a general way will be Mr. John Denissen, attorney, New York Life Insurance Company, Chicago, Illinois.

JOHN W. DENISSEN

My discussion will be confined to a very narrow aspect of reverter rights, namely, as such rights are affected by statutes of limitation.

For convenience I classify such statutes as:

1. Those which limit an action for enforcement of reverter rights;
2. Those which confirm title free of the rights; and
3. Those which limit duration of the rights.

In the first class are statutes which bar an action for the recovery of the title to or the possession of land after a prescribed period of years. In Illinois the period is twenty years.[1]

Re-entry

Professor Simes takes the position that enforcement of a right of entry would not be barred by indefinite delay, because the Grantee is rightfully in title even after the breach and, therefore, his possession is not adverse to the owner of the reverter right until the latter declares a forfeiture, and that only then does the statute begin to run.[2] While there is undoubted merit in Professor Simes' position, I believe it is untenable in Illinois because the statute specifically provides that if the owner of the right of entry claims title by reason of a forfeiture or breach of condition, the right shall be deemed to have accrued when the forfeiture was incurred or the condition was broken.[3]

In the case of an estate on limitation, upon the happening of the contingency, the title returns to the Grantor by virtue of the limitation, and thereafter the Grantee is not rightfully in title or possession. Therefore, the limitation period begins upon the happening of the contingency.

In view of limitation acts such as those of Illinois, I would not hesitate to approve a mortgage where the prescribed period of time has elapsed since the condition was broken or the limitation event occurred, and the mortgagor and his predecessors in title have been in undisturbed possession of the property during the prescribed period.

Limitation Statutes

The second class of limitation statutes are those which provide, in substance, that a person in the actual possession of land under claim and color of title in good faith, and who shall for a prescribed period of years continue in such possession and pay all taxes legally assessed, shall be held and adjudged the legal owner of the land to the extent and purport of his paper title. The Illinois statute prescribes a period of seven years.[4]

On the authority of the decision of the Supreme Court of Illinois in Storke vs. Penn Mutual Life Insurance Company,[5] I would approve a mortgage where the property had previously been conveyed on limitation if the contingency or reverter had occurred, and THEREAFTER the then owner of the estate on limitation had conveyed or had purported to convey an unqualified estate to a Grantee who had accepted the conveyance in good faith and who had for seven successive years thereafter continued in possession of the property and had paid all taxes legally assessed thereon.

Right of Entry

However, I would hesitate to approve a mortgage if the future interest was a right of entry, the distinction being that the conveyance after the breach of the condition may not constitute color of title, and the paper title may be no more than the qualified estate which the Grantor owned. As defined by the Supreme Court of Illinois, color of title is not perfect title, but is a conveyance purporting to convey real estate which, in fact, because of some imperfection, does not do so; an apparently good, but actually imperfect, title.[6] If a re-entry has not been made, the title has not reverted and, nothwithstanding the breach, the qualified estate abides in the Grantee until it is defeated at the election of the owner of the reverter right.[7] It would therefore appear that the title acquired by a conveyance after condition broken and before re-entry is as perfect as a title acquired before condition broken, so that the conveyance in fact conveys the qualified estate and, therefore, the deed does not constitute color of title. Nor is it certain that the purport and extent of the paper title is not simply the qualified estate.

Limitation Statutes

Statutes of the third class, which are not, strictly speaking, statutes of limitation, are those which limit the duration of reverter rights. Illinois enacted such a statute in 1947.[8] Previously, Massachusetts, Michigan, Wisconsin and Minnesota, and perhaps some other states, had passed such limitation acts, but only the Illinois statute operates retrospectively as well as prospectively.

Insofar as such statutes are prospective in operation, I think there is little doubt of their validity, and I would have no concern in approving a mortgage where a reverter right is terminated by operation of a statute enacted before the right was created.

The trouble with statutes which operate only prospectively is that the realization of their benefits is, in most cases, many years in the future. I need not bore you with specific examples to illustrate the need for more prompt relief. An owner of property harassed by the effort and expense exacted of him when he seeks to sell or mortgage his property, particularly when the reverter rights are of ancient origin, needs prompt relief. He needs a remedy now, not five or twenty years hence. For an excellent treatment of the adverse effect on marketability and improvement of real estate encumbered by reverter rights, I recommend the article in 54 Harvard Law Review at page 248.

Illinois Reverter Act

In an effort to alleviate the evils incident to the encumbrance of real estate by ancient rights of entry and possibilities of reverter, the Illinois legislature in 1947 enacted what is familiarly known as the Illinois Reverter Act. This statute limits the duration of rights of entry and possibilities of reverter to fifty years from their creation, whether created before or after the effective date of the Act.

Obviously, doubts have arisen as to its constitutionality.

In determining the constitutionality of the Act, I believe it will be conceded that unless prohibited by constitutional restraint, the legislature has the power to enact such laws as it sees fit respecting the terms and conditions and the tenure upon which property may be held by private persons.[9]

As pertinent to the Illinois Reverter Act, the constitutional restraints are twofold:

1. That the statute shall not impair the obligation of a contract.[10]
2. That no person shall be deprived of his property without due process of law.[11]

A contract is an agreement by which a party undertakes to do or not to do a particular thing and the obligation of a contract is the law or duty which binds the parties to perform their agreement.[12] In a grant upon condition subsequent or on limitation there is no covenant or agreement on the part of the Grantee to do anything.[13] As there is no contract by which the Grantee undertakes to do anything, and in consequence no contract obligation, none can be impaired. Therefore, it should follow that even though

the statute operates retrospectively, it is not invalid as impairing the obligation of a contract.

Does the statute, in its retrospective aspect, deprive a person of his property? The property contemplated by the constitutional prohibition must be vested; not contingent, expectant, or inchoate. A right of entry or a possibility of reverter is a mere expectation of property in the future. Therefore, neither is a vested right.[14] It has been held in Illinois that the possibility of reverter which remains in dedicator of streets by statutory plat is not a vested right; that it is not an estate and is not protected by any constitutional limitation; that it is perfectly competent for the legislature to abolish this possibility of reverter or to change the devolution of title upon the happening of the future contingency in any way it may see fit.[15]

Power of the Legislature

The rule has been applied to uphold the power of the legislature to change, modify or abrogate expectant or contingent rights in respect of inchoate dower and courtesy; [16] the descent of property;[17] installments of pensions payable in the future;[18] and to the right to destroy a contingent remainder by merger of the particular estate and the reversion.[19] Similarly, where the effect of the enactment of the Adoption act was to destroy existing contingent remainders, the act was nevertheless sustained by the application of the rule that the rights of the remaindermen, being mere expectations of property in the future, could be changed, modified or abolished by legislative action.[20] The power of the legislature to change the law respecting joint tenancy and estates tail has never been questioned.[21]

Rights of entry and possibilities of reverter exist by reason of the common law, in which, or in its anticipated continuance, no person has a vested interest or right which precludes its legislative change or repeal.[22]

The Clear Intent

Only if there is a clear conflict between the provisions of a statute and the constitutional inhibitions will courts presume to declare the statute invalid.[23] The apparent purpose of the Act in question is the unfettering of estates so as to bring them into the market for sale or development. Such legislation is favored.[24] It will be presumed in favor of the statute that the legislature considered the constitutionality of its action and determined that it was valid.[25] If the court has a doubt of the power of the legislature to enact a particular law, the doubt will be resolved in favor of the power.[26]

Presumably the legislature had in mind the desirability and in some instances the absolute need of freeing real estate from the encumbrance of ancient future interests in order to make the property marketable. The question of the validity of a statute is, of course, for the courts. But in determining that question, the courts will have regard for all the existing circumstances and contemporaneous conditions, the objects sought to be attained, and the necessity for the statute.[27]

In my opinion the Illinois Reverter Act, despite its retrospective aspect, is constitutional and valid.

Problems for the Future

Lest what I have said may reach the ears of prospective mortgagees, I close with a word of caution, that even though a mortgage may be valid where a reverter right is unenforceable, a prudent mortgagee will look beyond the present to the time when he may own the property and wish to sell it. Viewed in that light, additional problems will suggest themselves, which, obviously, within the time allotted cannot now be discussed.

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[1]Ill. Rev. Stats., Ch. 83, Sec. 1.
[2]Simes, Future Interests, Vol. 1, Page 306.
[3]Ill. Rev. Stats., Ch. 83, Sec. 3.
[4]Ill. Rev. St., Ch. 83, Sec. 6.
[5]390 Ill. 619, 61 NE (2) 552.
[6]Payne vs. Markle, 89 Ill. 66, 69.
[7]Powell vs. Powell, 335 Ill. 533, 538.
[8]Ill. Rev. Stats. Ch. 30, Secs. 37 (b) to 37 (h).
[9]People vs. City of Chicago, 349 Ill. 304; 25R. C. L. 383, 384; Tiedeman, Real Property, 819; People vs. Simon, 176 Ill. 165, 177; Sheaff vs. Spindler, 339 Ill. 540, 555; Prall vs. Burckhartt, 299 Ill. 19, 26.
[10]U.S. Const., Art. 1, Sec. 10; Ill. Const., Art. II, Sec. 14.
[11]U.S. Const., Art. XIV, Sec. 1; Ill. Const., Art. II, Sec. 2.
[12]Sturges vs. Crowinshield, 4 Wheat 122, 4 L. Ed. 529; Bruce vs. Schuyler, 9 Ill. 221, 241; 6R.C.L. 324.
[13]Sanitary District vs. Chicago Title & Trust Co., 278 Ill. 529, 537; Powell vs. Powell, 335 Ill. 533, 537.
[14]Jennings vs. Capen, 321 Ill. 291, 297; Butterfield vs. Sawyer, 187 Ill, 598, 601.
[15]Prall vs. Burckhartt, 299 Ill. 19, 36.
[16]Henson vs. Moore, 104 Ill. 403; McNeer vs. McNeer, 142 Ill. 388.
[17]Sayles vs. Christie, 187 Ill. 420, 432.
[18]Dodge vs. Board of Education, 364 Ill. 547.
[19]Wood vs. Chase, 327 Ill. 91; Jennings vs. Capen, 321 Ill. 291.
[20]Butterfield vs. Sawyer, 187 Ill. 598.
[21]Prall vs. Burckhartt, 299 Ill. 19, 27.
[22]Wood vs. Chase, 327 Ill. 91; Dodge vs. Board of Education, 364 Ill. 547, 58 S Ct. 98; 6 R.C.L. 309.
[23]Zurick Acc. Ins. Co. vs. Industrial Comm., 331 Ill. 576; Michael vs. Hill, 328 Ill. 11.
[24]6 R.C.L. 316.
[25]People vs. City of Chicago, 349 Ill. 304, 319.
[26]City of Chicago vs. Green Mill Gardens, 305 Ill. 87, 94, 95.
[27]City of Chicago vs. Green Mill Gardens, 305 Ill. 87, 94. 95.

MR. WILKINSON: Thank you, Mr. Denissen.

We have reserved for the last speaker Mr. Allen, who is going to be the clean-up man and give you the practical problems and the application.

Mr. W. Herbert Allen, Executive Vice-President of the Title Insurance and Trust Company of Los Angeles.

W. HERBERT ALLEN

MR. ALLEN: Thank you, Mr. Wilkinson.

Referring to the program, the report of the nominating committee began about twenty minutes ago. So I will follow the noble example of our Chairman and spare you further details, agonizing though they may be, on the subject of reverters.

Yesterday I sought out Mr. Paul Goodrich and told him I had been given the doubtful honor of being low man on this totem pole. I was afraid before I got through most of my audience would have established domicile in one of the Edgewater bars and be under the jurisdiction of three Old Fashioneds. (Laughter.)

Anybody that had the toughness and fibre to last this far probably would prove loyal unto death. However, I will not test the loyalty of you gentlemen.

I am only going to say I follow the example of the father of a friend of mine, who gave some advice to his son. The father had one leg that was six inches shorter than the other. He had difficulty, consequently, in walking and getting about, and he had a son who stuttered. So one day the son came to him and said, "Father, I have a great idea."

The father said, "What is that?"

Well, it seems the great idea was that the father in getting about town should walk in the gutter, put the short leg on the curb and the long leg in the gutter, and then everything would be fine. His father thought that was a pretty good idea.

So he started downtown, and it wasn't long before a truck came along and gathered him in and he went up in the air, and the truck ran over him, badly beat him down. They took him to the hospital. The son came rushing down to see how father was getting on.

He said, "How are you, father?"

"Pretty bad, son, pretty bad."

The son said, "Well, father, I am awfully sorry."

"Well," the father said, "So am I, son, but is isn't as bad as it looks. Something good may come out of this. In fact, it may prove a blessing in disguise. As a matter of fact," he said, "while lying here I have been thinking and I have thought of a way to cure you of your stuttering."

The son said. "Well, that is fine, father. What is it?"

He said, "Keep your darn mouth shut."

(Laughter.) (Applause.)

In Southern California, title insurers are prepared, IN ALL PROPER CASES, to afford lenders insurance against loss of lien or title resultant upon enforcement of conditions restricting the use or occupancy of property.

The Insurance code of California contains provisions similar to those referred to by Mr. Docherty. (I.C. sec. 1176). Although estates upon limitation or conditional limitation are encountered so seldom as not to merit discussion, practically all desirable property in the Los Angeles area (as elsewhere) is restricted, much of it under conditions subsequent; and so, perforce, we have become quite conversant

with their nature and effect. Hardly a day goes by when we are not asked to afford some measure of protection against restrictions.

Older Restrictions

Many of the older restrictions are in the form of straight conditions subsequent, enforceable only by the grantor or his successors in the ownership of the right of enforcement. Such right may be lost, however, by proof of changed conditions, estoppel, waiver, laches or abandonment. A large percentage contains the so-called "good faith" clause protecting encumbrancers. When the property is improved and utilized in conformity with restrictions, the danger of future violation is often quite remote.

The mutual plan form of restrictions has, in recent years, generally replaced the straight condition subsequent. This form combines the right of termination in the grantor with equitable rights of enforcement vested in the owners of other lots or parcels in the subdivision. It has recently been established that, in such cases, when the common grantor—the subdivider—has parted with title to all the property in the enforcement area, he no longer has a basis for enforcing his right of termination, and reversion of title will be denied.

Enforceability

In the absence of the factors I have referred to as militating against enforcement of the right of reversion, there is no doubt that our courts WILL enforce conditions subsequent, not as a reserved estate or interest in the land, but as a right of termination of the fee title conveyed on condition.

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Actual instances of such enforcement have been rare, nevertheless, because of the courts' abhorrence of a forfeiture and the possibility, in most cases, of alternative relief by way of injunction abatement or damages. The right is never self-operating, always requiring judicial enforcement unless the violator be willing to deed back; and the holder of the right must act promptly.

It is, of course, true that enforcement of a condition results in the termination of the estate of the grantee on condition and those claiming under him, including encumbrancers not protected by a "good faith" clause. Under the protection of such clause, however, the reversioner reacquires title subject to any mortgage or deed of trust in favor of a lender who acted without knowledge of the violation, including a good faith lender not involved in a subsequent violation.

Careful Consideration

Insurance against loss of lien or title, therefore, is never a routine procedure, but always the result of study; consideration being given to the nature of the condition, the character of the property, the improvements built or to be built thereon, the existence of a "good faith " clause or the propriety of procuring a release, consent or waiver. In short, the same care is exercised by the insurer that otherwise would have to be taken by the lender.

We recognize the need of this protection to lenders and welcome the opportunity it affords to furnish another valuable service to our customers.