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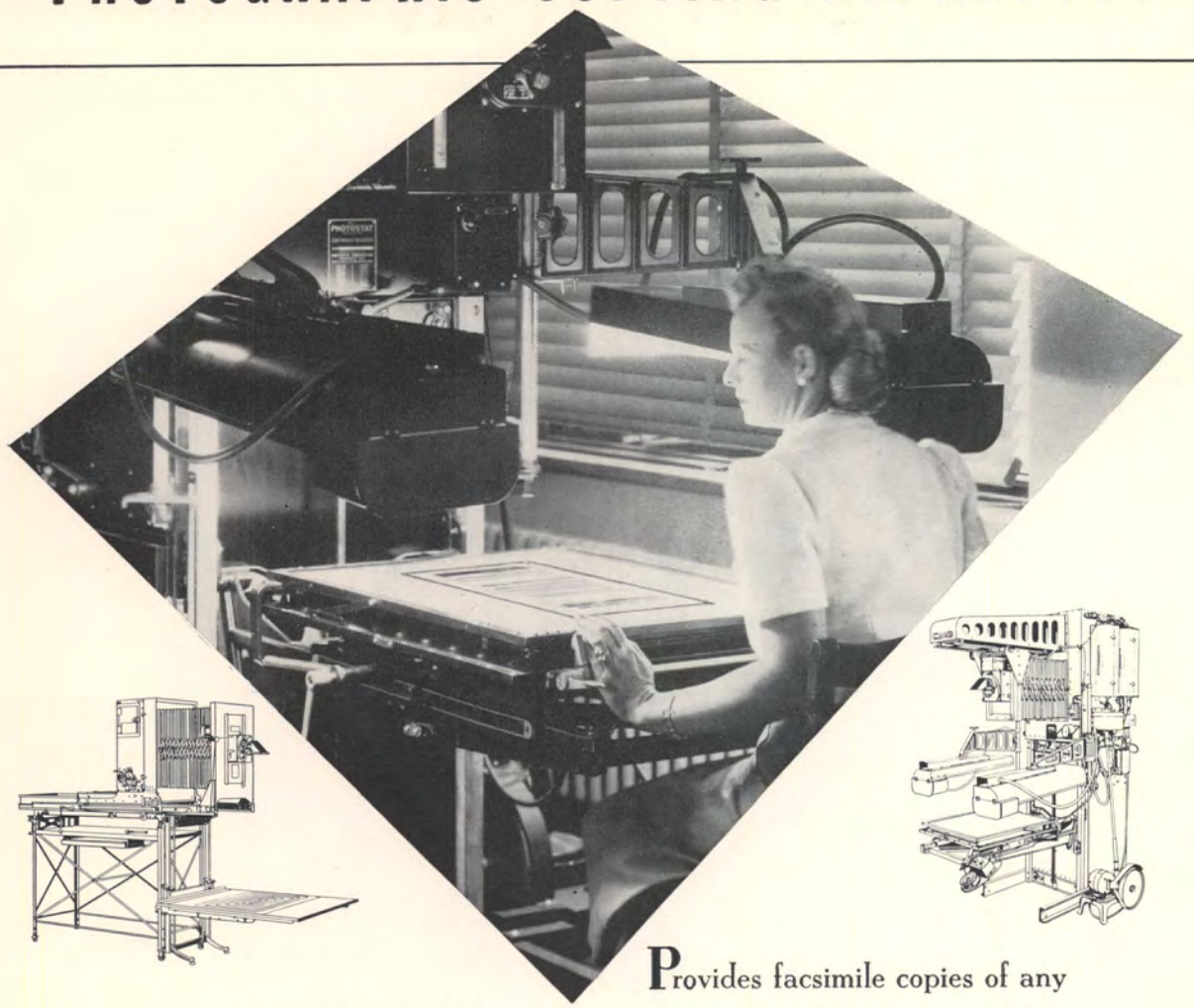

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The Land Speaks

By PHIL F. CARSPECKEN

Des Moines County Abstract Company
Burlington, Iowa

"They are the abstract and brief chronicles of the time." So spake Shakespeare of the players of his day, who sought to reflect by spoken word and appropriate gesture the entire gamut of human emotions—the lust of ambition, the woes of unrequited love, the insidious poison of jealousy.

The terms "abstract" and "brief chronicle" carry a connotation of interest to those in the title profession. A Chronicler is one who records "events in the order of time," which precisely defines the province of the Abstracter in tabulating the muniments of title. The most noted of all Chroniclers was one Holinshed, who detailed the events of English history. He was the typical Abstracter of his day, confining his narratives to "events in the order of time," with little comment or coloring by the narrator. His chronicles are now rarely read, being intolerably dull, even like the modern Abstract of Title.

It was Shakespeare who seized upon those chronicles as a framework for his imaginative creations. He amplified and glorified them, adorning the naked facts with the web of his finely spun poetry, and, with his rare dramatic touch, immortalized English history. Holinshed is neglected and forgotten, except by the curious minded who dig in the ruins of ancient folios, but the History of England, as presented by Shakespeare, and based upon Holinshed's Chronicles, still resounds in the ear of the modern scholar.

The Abstracter, I presume, will ever be what he now is—a patient and plodding Holinshed, who meticulously compiles compendia of dreary detail; and yet, latent in his breast, sparks a messianic urge for reform. He rebels at methodically and unibaginatively sketching the naked outline of a history that perhaps throbs with human interest and pleads for expression. The Clown would portray Hamlet, and the Holinshed would fain be a Shakespeare.

Many an Abstracter will confess to a yearning, never gratified, to compile the history of a title in narrative form, incorporating the appealing human interest, and evolving a tale instead of a tabulation. And, indeed, to thus intersperse in the chain of title bits of philosophical reflection and light touches of fancy, might well tend to deflect the churlish Examiner from his scent for technical defects, induce in the curmudgeon a more mellow and charitable mood, and perhaps woo him into the acceptance of a tile otherwise imperfect.

What would be his reaction, for instance, if he examined an abstract elaborated by Shakespeare from Holinshed data? Doubtless Shakespeare, in setting forth the estate of a decedent owner, would first like Hamlet go into a moody soliloquy—

"Alas, poor Yorick! I knew him well—a fellow of infinite jest, of most excellent fancy. Where be his jibes now? his songs? his flashes of merri-

PHIL CARSPECKEN

ment? He succumbed to the ills that flesh is heir to, and paid the Debt of Nature, on or about the 30th day of April, interstate," etc.

Or, when the tedium of the unfolding title became unbearable, Abstracter Shakespeare would probably break off and interpolate some such outburst as—

"For God's sake, let us sit upon the ground, and tell sad stories of the death of kings."

One can just see the outraged Examiner leap from his chair and go into a legalistic tail-spin. His scorching opinion would doubtless include caustic comment upon the irrelevancy of the showing, calling in question the accuracy of the abstract and the sanity of the Abstracter. But neverthless such interpolations might cause him to lean back in his chair and indulge in an interlude of reflection and philosophizing. It would at least moisten the aridity of the document he examines, and render it less like unto "a twice-told tale, vexing the dull ear of a drowsy man."

All of which is prefactory to that which I shall attempt in this article. A title recently came under my observation that seemed to plead for the narrative treatment I have so radically suggested. It concerned an irregularly shaped government lot of forty or more acres, now a stone quarry, south of the City of Burlington. Originally it was timber land, of relatively small value, but it boasted a flowing spring which, with the timber, appealed to the pioneers. In the northwest corner of the tract was a burial plot of one acre, excepted from all conveyance subsequent to 1840.

Left to my own devices, and yielding to the urge I have indicated, I would have permitted the land to weave its own tale in its own language. Had I done so, the following incidents would have come before the Examiner, all occurring in the year 1860, as gathered from the tattered estate and court files which I curiously and reverently inspected. I now forsake the role of Holinshed, and the land speaks:

"January 5, 1860. One John D. Wilson (wife Martha), who hail from Ohio, purchased me for more than I am worth, and the deed of conveyance was filed this day, together with the inevitable mortgage, calling for ruinous interest semi-annually. He little knows my soil is thin and unproductive, but what appealed to him was my timber and flowing spring and the view of the majestic Mississippi River from the knoll where the cabin stands. He and wife Martha, and a golden haired little girl, have moved their belongings in the cabin, and they seem hopeful and aglow with the pride of ownership and the spirit of adventure. Alas, former owners were also hopeful and ambitious, but they failed and lost me by Sheriff's Sale or Tax Deed, and many of them lie in that burial plot in my northwest corner. Strange, how many former owners and their families sleep in that northwest acre! It is as though they wearied of tilling my stubborn glebe, and sought to enrichen it by contributing their own exhausted mortality to that burial plot, where the grass grows lush and vivid green, and sturdy trees arch overhead.

"April 15, 1860. Violets and other spring flowers are peeping forth, and the little girl with the golden hair wanders far from the cabin, dancing

over my acreage like a blonde fairy, her curls tossing in the breeze. Kathie is her name, and I love to feel the imprint of her small feet on the yielding turf of my uplands. Today she gathered wild flowers and placed them on the sunken graves in my northwest corner. God keep her from that spring, far down in the glen! It is a lovely glade, where chill and sparkling water gushes from the rocks and oozes through the fern and brake, but I have my misgivings. Former owners drank from that spring, instead of the well on the knoll near the cabin, and they sickened and died and joined the others to enrichen the plot in my northwest corner.

"July 1, 1860. This day the mortgagee called for his interest. He is a weazened, grasping, miserly looking individual, of evil repute, who demands his interest when due. A money-lender from the city, he preys on the unfortunate, and is a familiar figure at all Tax Sales and Sheriff's Sales, where he bids cautiously and in a rasping voice. He argued heatedly with Wilson in the barn lot, and departed in a huff, muttering something about foreclosure. As he drove away he cast an appraising and lustful eye over my contours, sucking in his thin lips, with all the libidinous desire of anticipated ownership.

"July 15, 1860. Wilson and his wife perform their chores moodily and with little hope. They have learned that it requires more than timber and a flowing spring and a view of the Mississippi, to eke out a living from my thin soil. The interest is unpaid, and they anticipate the impending service of summons. Little Kathie still roams my hills and dales, growing more venturesome. There she goes now, tripping light-heartedly across the clearing south of the cabin, and entering the timber where the red squirrels scamper and scold in the black oaks. She is nearing the glen which leads to the spot where the spring issues from the rock. Stop, Kathie! She spies the sparkling spring with an ejaculation of delight, and stoops over a limpid pool where her curls are mirrored in the water. No! No! Kathie! Don't drink, Kathie! Don't dring! . . .

"July 18, 1860. Kathie goes daily to the spring, where she drinks of the water, and gathers fern and wild flowers.

"August 1, 1960. Kathie did not come forth to play today. For a week she has seemed listless and tired, and the pink has faded from her cheeks.

"August 5, 1960. Today the doctor came from the city, driving in his creaking buggy along rutted roads, following a heavy downpour. He seems puzzled about Kathie, and rumples her curls with his large hand, and peers into her throat. He left a supply of pills—calomel, I think—and drove away. He is a rugged old doctor, with a warm heart, but he knows little, if anything, about febrile disease. Later, his profession will learn more about spring water and seepage from burial plots—and deadly typhoid.

"August 10, 1860. This day Wilson cut fence rails and hauled them to town to pay the doctor. He returned with more pills. He seems downcast.

"August 20, 1860. There was candle-light in the cabin all last night. Toward morning, when a dim light was streaking the east, I heard a low moaning in the cabin, and the Mother came to the door, sobbing and wringing her hands, and looking helplessly out into the timber. Clumsily, but with evident affection, her husband sought to comfort her. God help them!

"August 22, 1860. This day they placed little Kathie in a rough-hewn coffin, and carried her to the lush plot in my northwest corner. An itinerant preacher read from a worn Bible, mumbling something about dust to dust and the spirit that survives. A ghost of a breeze lifted from the Mississippi and stirred the branches of the overhanging trees, where the red squirrels chattered and quarreled. Wild flowers were strewn over the small mound, which seemed strangely fresh and prominent among all those ancient and sunken graves. Far down in the accursed glen, amid the fern and the moss, the contaminated spring still gushes from the rock and trickles in a tiny rivulet, gliding like a glistening snake through brake and fen, and dissipating its flow in the spongy marsh.

* * *

And thus spoke the land to me, the incidents pieced together from faded scraps of paper taken from the dusty crypts in the office of the Clerk of the District Court. John D. Wilson soon followed Kathie to the plot in the northwest corner, and among the probate files I found the unpaid claim of the doctor, for "One visit to Kathie —and Calomel," with a credit of $2.00 August 10, 1860, for "Fence Rails Delivered," and a claim for hewing the small coffin, and one for digging the grave. None of these matters met the eye of the Examiner, who skimmed through the Holinshed version, noting only the deed to Wilson, the mortgage and its foreclosure, and, finally—

Sheriff's Deed to Jedediah Miller (the mortgagee), dated and filed November 3, 1861, conveying Government Lot No. 5, in Fractional Section 16, Twp. 69 N., R. 3 W., containing 40 Acres, more or less—

"EXCEPT one Acre in the northwest corner, used as a Burial Ground."

Escrows

By McCUNE GILL

Vice-President
Title Insurance Corporation of St. Louis

Closing a sale or loan in escrow is frequently of great advantage to the persons involved including the agent and may save a deal that might otherwise be lost. Let us set forth the advantages of closing in the Escrow Department of Title Iusurance Corporation.

Sale Escrows

There are many advantages for sellers and buyers and their agents in escrowing a sale of real estate. One advantage is that neither the other party to the transaction nor his wife can change his or her mind and refuse to consummate the sale. Such a refusal would leave the willing party with only a lawsuit, and without the money if he is the seller or the property if he is the buyer.

Escrows are advantageous also to an agent because he thereby is assured that he will get his commission, and not merely a suit to try to collect it. Also, an agent can utilize his time in selling property much more profitably than in closing sales and figuring adjustments; thus he could probably sell another house during the time he would save by having an escrowee close the sale of the first house.

Another advantage of an escrow is that, if desired, the escrow officer will figure the adjustments of rents, insurance, taxes and other charges, or will check adjustments already figured by the parties. His experience in doing this frequently results in his calling attention to adjustments that the parties have overlooked.

Some contemplated deals are so complicated that an escrow is necessary if they are to be closed at all. As for example where there are several or numerous owners residing in different parts of the country, or

where there are several encumbrances, such as deeds of trust, tax bills, judgments and the like, to be paid and released before the settlement can be made. Such escrows are particularly necessary where several lots owned by different owners are being assembled as one property. They are also frequently used where the property is owned by numerous bondholders who have acquired either the legal or equitable title in foreclosure. They can also be used where a bond issue is called but not all of the bonds can be brought in within the closing date. In such a case the entire amount is deposited in escrow to be available to the dilatory bondholders when they do produce their bonds.

Another advantage of an escrow closing is that the escrow officer will have the title examined from the date of the certificate to the date of closing, thus eliminating the possibility that deeds or mortgages may have been recorded, or judgments or taxes may have become a lien, during such interim.

There need be no fear that escrow officers will discuss any collateral feature of the deal, such as value or price, with the parties, as such officers are forbidden to express any opinion as to such matters.

Profit Escrows

Profit escrows are those used to consummate a transaction where a person is buying a property for a certain price and selling it at a higher price. This sort of profit deal could of course be handled by paying the price of the first purchase with the purchaser's own money or with money that he could borrow by putting a deed of trust on the property, and then selling the property at a higher price, thus getting back his invested capital plus his profit.

But it is entirely feasible to negotiate such a transaction without the investment of any money, by using the ultimate purchaser's money to buy the property from the original seller. This is done by a "profit escrow" which is simply two escrows. In one of these escrows the first seller deposits his deed of conveyance to the first purchaser to be used within a certain time if a certain amount of money is paid to him. In the second escrow, which can be arranged on another day, the ultimate purchaser deposits his purchase price, which is a larger amount than the original purchase price, to be paid out when title vests in such ultimate purchaser. Then a deed from the middle man to the ultimate purchaser is deposited in escrow and both sales are closed. Thus the first seller gets his price, the ultimate purchaser gets the property and the middle man gets a profit.

Sometimes a profit deal is much more complicated than the one outlined above. Several properties may be involved, each being sold to a different ultimate purchaser. It may be necessary to pay off old deeds of trust and to raise part of the purchase price, to be furnished either by the intermediate or ultimate purchaser, by new loans and deeds of trust. Escrows are usually the only way in which such complicated deals can be consummated. But they usually, because they are complicated, result in a larger profit to the middle man.

Loan Escrows

A loan escrow is the deposit by a lender of the proceeds of a loan and deed of trust with an escrowee to be paid to the borrower when the deed of trust is a first lien on the property. In addition to a payment to the borrower, such escrows also may involve the paying off of an existing deed of trust and the payment of taxes or other encumbrances. These loan escrows are largely used by lenders or lending institutions, either resident or nonresident, that do not make many loans and hence do not maintain closing departments of their own. They are particularly useful when the loan is to take up an existing bond issue and a few of the bonds cannot be located within the closing date. In such event, the sums to be paid to such bondholders remain in escrow until the bonds can be obtained.

McCUNE GILL

These loan escrows are of advantage to both borrower and lender. The borrower knows that his borrowed money will be available when he is in a position to close his purchase and the lender knows that he will obtain a first lien on an unencumbered property.

Probate Escrows

When a person dies owning real estate, the title immediately passes to the devisees named in his will or to his heirs if he leaves no will. However, such title is subject to the lien of debts of the decedent and of the Federal Estate Tax and State Inheritance Tax. If there was a will there is also the possibility that the will might be contested. But the devisees or heirs wish immediately to sell the real estate without waiting for the time to elapse in which administration may be closed in the Probate Court and in which the will might be contested. In order that the purchaser from the devisees or heirs may be protected against possible debts, taxes and will contest, it is customary to require that the full proceeds of the sale be deposited with the escrowee to be kept until the estate has been closed and all debts and taxes have been paid and the period within which the will might be contested has elapsed. Then the escrowee pays out the fund or purchase price to the sellers who are the devisees or heirs, or to the creditors if necessary. In this way an immediate sale is made possible and the deeds are recorded. The purchaser takes possession, and is protected against possible debts, taxes or will contest.

Save That Deal

Save that deal! But how? With an escrow. Let us show you how some real estate and loan deals, which seemed to be impossible to close, were saved (and the agent thereby got his commission).

A purchaser wanted to buy an apartment. The title was examined and disclosed the fact that the apartment was owned by six people. But one was a minor and hence could not sign a deed. The purchaser could pay half the purchase price in cash but had to raise the balance on a deed of trust. It seemed like the deal would be lost until someone suggested an escrow with the Title Company. Then the purchaser deposited his cash with the escrowee. The loan company deposited the proceeds of the loan with a deed of trust and notes signed by the purchaser. The five adult heirs deposited their deeds. A guardian was appointed for the minor and filed a petition in the Probate Court asking for an order to sell the one-sixth interest of the minor and take back the deed of trust in favor of the six owners. When this was accomplished in a month or two the sale was closed and the deal was saved.

In another case, a life insurance company occupied an old midtown building but wanted to trade it for a downtown building of greater value. It wished also to include as part of the purchase price several warehouse properties that it had acquired by foreclosure of deeds of trust. The owner of the downtown building would not take these properties but wanted cash. The agent found pur-

chasers for the properties and loans for those purchasers who could not pay in full. But how could he get all of these people into the closing at the same time? The answer was an escrow with the Title Company, where everyone deposited his deeds, deeds of trust and cash with the escrowee at different times. When the last depositor came in, it was easy to close, although closing would have been almost or quite impossible without the escrow. Thus the deal was saved.

A man owned a large home. He died and by his will devised the home to his widow with one dollar legacies to his grown children. The widow did not wish to continue to occupy the large home and her agent quickly found a purchaser who wanted immediate possession. But administration was pending in the Probate Court and there was the possibility that claims might be filed or the will contested, or that the estate tax might not be paid. How could the purchaser pay over his purchase price with safety? By the use of an escrow. The widow gave the purchaser her deed and he moved into the home. The purchase price was deposited with the Title Company as escrowee and was invested in Government bonds so as to bear interest. Within a couple of years the administration was settled and all estate taxes were paid and then the bonds were delivered to the widow. Thus the deal was saved.

A real estate salesman obtained a license to operate as an agent or broker and opened an office. But he had little experience in closing sales and figuring adjustments. So he escrowed his sales and loans for several years with the Title Company until his business increased and he was able to set up a closing department in his own office. In the meantime he learned all about closing sales and loans including the preparation of statements and adjustment of rents, interest and insurance. In this way he avoided mistakes and made possible and saved many deals that he would have otherwise been unable to close.

An agent had obtained a promise from an owner to sell a building for a certain price. The owner however seemed so undecided about the matter that the agent feared that he might change his mind during the period that the title was being examined. So the agent asked the seller to sign a warranty deed and deposit it with the Title Company as escrowee and had the purchaser deposit his purchase price. True to the agent's fears the seller did attempt to withdraw from the sale but of course could not do so because of the escrow. So a deal that otherwise might have been lost was saved.

A manufacturing company wished to expand its holdings by acquiring an adjoining block of ground. This comprised eight lots owned by different persons. The agent did not wish to disclose the name of the purchaser to each owner nor did he wish any owner to know that he was buying the other lots. This of course because he feared that the prices asked for each lot would greatly increase. So he had each owner deposit with the Title Company a deed to a nominee and had the purchaser deposit the purchase price, part of which was the proceeds of a deed of trust. Each purchase was to be consummated within 60 days. By this time all of the deeds had been obtained and put in escrow and the title had been examined. Then the owners did find out about the proposed assembling of the block and tried to make trouble. But they were unable to do this because of the escrow. And so another deal, and a very good one, was saved.

An apartment building was being sold and the purchaser was obtaining a deed of trust loan from a bank. There was an outstanding bond issue deed of trust on the property which was callable. There were numerous bondholders and most of them did not wish to surrender their bonds without being sure that they would be paid. So the deed of conveyance and new deed of trust as well as the purchaser's money and the proceeds of the new deed of trust were deposited with the Title Company as escrowee. The Title Company then wrote to each bondholder stating the facts and all except two or three immediately sent in their bonds. The transaction was closed and upon the later receipt of the other bonds the old deed of trust was released. Thus a difficult deal was saved.

Job Evaluation

By PAUL GOODRICH

Vice-President
Chicago Title and Trust Company,
Chicago, Illinois

In the title business where such a large percentage of our expenses is for wages, a soundly developed wage administration program is of the greatest importance. I want, therefore, to direct your consideration for a few minutes to that part of our personnel program which deals with Job Evaluation.

Late in 1943, our management decided to study the benefits that might be obtained through a Job Evaluation Program. The circumstances which prompted this decision arose out of the wartime situation: fluctuations in the general levels of wages and salaries, War Labor Board regulations requiring the classification and establishment of salary ranges for every job, the increased competition for employees in the labor market, and the successful experience of other companies with Job Evaluation Programs. The determination of the appropriate salary to be paid any employee had been traditionally a matter of individual consideration. However, there was an increasing feeling on the part of management that a more systematic and objective approach to the problem was needed.

We had three objectives which we hoped to achieve through the installation of job evaluation. First, to establish the relative worth of all jobs. Second, to provide for a fair rate of pay to all employees. Third, to facilitate adjusting our salary levels to the prevailing levels of salaries for comparable work in the community. I shall endeavor to show in this discussion of our experience with a Job Evaluation Program how it was designed to achieve these objectives.

Having decided to launch the Job Evaluation Program, we considered own personnel, or we could enlist the assistance of management engineers to help in developing the technical aspects of the plan. The latter course was followed. In addition to retaining a firm of business consultants, an officer of the company was appointed to devote full time to the development of the program.

Considerable study was given to the job evaluation experience of other companies. The alternate methods of evaluating jobs were considered, that is, ranking classifications, and the numerical point or factor comparison method. While each method has its own merits, it was our judgment that the factor comparison method with numerical point values was most suitable for our needs. The extent to which certain characteristics are present in each job is determined, and a point value assigned reflecting the amount or degree of that characteristic. The total of the points assigned in this way determines the worth of the job in relation to all other jobs.

Our first step in establishing the factor comparison method of job evaluation was to prepare a manual which would define and explain the factors or characteristics believed to be inherent in all jobs. It was realized that this was one of the most im-

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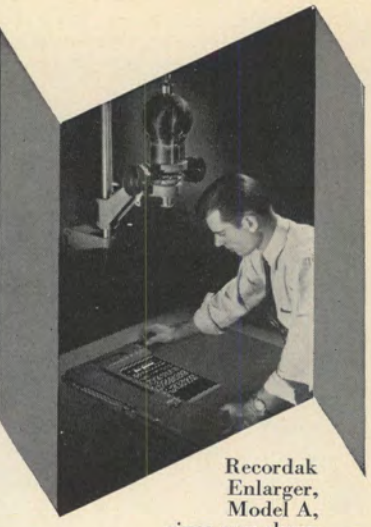

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portant and difficult aspects of the entire program. After considerable thought and discussion, it was decided that the following thirteen factors are present to varying degrees in all of our jobs:

1. Mental Capacity
2. Education
3. Experience
4. Manual Skill
5. Personal Requirements
6. Judgment and Initiative
7. Supervision Received
8. Supervision of Others
9. Dependability and Accuracy
10. Control of Confidential Information
11. Physical Application
12. Mental or Visual Concentration
13. Surroundings and Working Hours

A definition of each factor, carefully stated in order to assure uniform understanding of its meaning, was prepared. We also prepared a defiinition of the varying degrees to which each factor might be considered present in any job. Graduated point values were assigned to the correspondingly graduated degrees of each factor. When this was accomplished, we were ready to consider each job in relation to the thirteen factors indicated above.

While the Job Evaluation Manual was being prepared, a detailed position description was written for every job. The descriptions were prepared either by the department manager or the employee performing the job. Approximately four hundred and fifty positions were described in this manner.

A committee comprising officers representing all divisions of the company was appointed to establish the initial evaluations of typical jobs. These jobs were referred to as the bench mark positions and numbered thirty-five in all. The following facts were considered in selecting the bench mark positions:

A. Present salaries reflect the actual worth of each position
B. The duties are clearly defined
C. The duties are adequately performed
D. The jobs are representative of all levels of work

When the committee had completed the evaluation of the thirty-five jobs, fourteen were eliminated leaving twenty-one bench mark positions for which evaluations were agreed to by all committee members.

Having established the evaluations of the bench mark jobs, it was a relatively easy though time-consuming process to evaluation the remaining positions included in the program. The evaluation of the bench mark jobs afforded guide posts for determining the worth of all other positions. The evaluation committee comprised the officer having jurisdiction over the position being rated, the Personnel Officer, and the officer devoting full time to the development of the program.

When all jobs had been evaluated, they were ranked according to their total points for the purpose of inspecting the overall relationship of the jobs. This resulted in the review of certain evaluations which apparently did not reflect a true relationship among several jobs.

Up to this time no attempt had been made to group or grade jobs of similar evaluation. We had been dealing with the 450 individual positions. It was thought that a review of the job ratings would be facilitated if jobs of similar job difficulty were considered together. Therefore, 25

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grade groups having minimum and maximum point ranges were tentatively established. They provided the means of grouping the 450 jobs into segments whereby jobs of relatively similar value could be considered together.

Later, the number of grades was reduced to 18. Each grade was then assigned a salary range of approximately 30% spread between minimum and maximum salary. The salary ranges were typical of the prevailing rates of pay in the city for comparable jobs.

At this point in the development of our program it was felt that we needed some method for determining the appropriate salary with the salary range at which each employee should be compensated. In other words, a merit rating program was required. This has been developed and is currently being installed as an integral part of our salary administration program.

A Salary Administration Manual has also been prepared providing for the maintenance of position descriptions and evaluations as well as establishing procedures for periodic salary reviews. Provision has also been made to participate in a quarterly salary survey covering from 50 to 60 clerical and office jobs and participated in by more than 30 companies in the city. In this way, accurate and current salary data is secured on which to substantiate and revise our salary ranges.

In conclusion, a word about the degree to which we have achieved the three objectives to which I referred earlier in this discussion. You will recall that the first objective was to establish the relative worth of all jobs. Based on the pooled judgment of the committee which considered each job, we feel that we have achieved this objective to a satisfactory degree. At the same time, we are not overlooking the fact that the content of any job does not remain static. As the duties of any position change, we realize that a revision of the position description and a re-evaluation of the duties are necessary in order to maintain accurate and up-to-date evaluations.

Our second objective was to provide for a fair rate of pay to all employees. Here is where our merit rating program, which is now being tried out in several departments, will assist us in determining the salary within the salary range at which any employee should be compensated. Knowing the worth of the job through job evaluation and the worth of the individual through periodic merit rating, we feel that we shall be able to come closer to assuring a fair rate of pay than has been the case in the past.

The third objective of our job evaluation program was to facilitate adjusting salary levels to the prevailing levels of salaries for comparable work in the community. I have mentioned that we participate in a quarterly survey of clerical salaries. Our written position descriptions make accurate comparisons possible between our jobs and those covered by other companies in the survey. Also, our system of grading all jobs into a limited number of salary grades makes it unnecessary to compare more than a cross section sampling of our positions with comparable positions in other companies. The ranges established for the positions included in the survey are the ranges applicable to all other positions in the same salary grades.

Job evaluation is not scientific in the strict meaning of the word. Human judgment is still the most influential factor. But it is our opinion and experience that it is superior to the method of salary determination on an individual employee basis. Once established, it is not self-functioning. In order to earn the confidence of employees, all descriptions, evaluations, salary ranges and merit ratings, must be under constant scrutiny and review. If this is accomplished, the program will be successful and the effort expended will result in improved employee relations, higher productivity and lower costs.

Survivorship Deeds

This article appeared in June 20, 1949 issue of "Ohio Bar."

By C. H. BARSCH

Vice-President
Title Guarantee & Trust Co.
Toledo, Ohio

Our subject, "Survivorship Deeds," is one of wide interest. In our business we encounter it very frequently.

It has been said that "God reveals the truth and the Devil annotates it." It would, of course, be presumptuous of me to attempt a revelation of the truth regarding our subject, so let me attempt to annotate it.

We will mention the case law, the applicable statutes, the tax aspects, both State and Federal, forms of survivorship deed, appropriate wording and consider any pertinent questions which you may wish to raise.

The doctrine or incident of survivorship in estates involving real property, whether created by deed or will, is not new. Its history is bound up with the common law recognition of joint tenancy and tenancy by the entirety.

In the case of a conveyance or devise to A and B and to the survivor of them, the tendency of the courts of England and of this country has been to regard the language used as showing an intention to **either** create a cotenancy in A and B for their lives, with a contingent remainder in favor of the survivor, **or** to make A and B tenants in common in fee simple, subject to cross executory limitations between them, that is, with a limitation over as to A's interest, in favor of B, in case of A's death before B and a like limitation over in favor of A, as to B's interest, in case of B's death before A.

See Chapter VII (Co-Ownership) (Tiffany on Real Property.

Joint tenancy and tenancy by the entirety, recognized and defined at common law are not recognized in Ohio. Even though a deed conveys land to A and B "as joint tenants" nothing more than a tenancy in common will be created.

But, where the operative words in a deed clearly express an intention to create the right of survivorship, such expressed intention will be given effect and the survivor, by virtue of the terms of the grant and upon the death of the other grantee or grantees, will succeed to the entire fee simple ownership.

No particular language need be used **to create a right of survivorship.** Following are forms which would appear to evidence a proper intent:

FIRST: "To A and B during their joint lives, with remainder in fee simple to the survivor of them."

SECOND: " To A and B as tenants in common during their natural lives, with remainder in fee simple to the survivor of them."

THIRD: "To A and B, to them jointly, and to the survivor of them." (This language construed in Lewis vs. Baldwin, hereinafter mentioned.")

FOURTH: "To A and B, and the survivor of either." (This language approved in Re Dennis, hereafter referred to.)

FIFTH: "To A and B and the survivor of them, his or her heirs and assigns." (This language approved in Ross vs. Bowman, hereinafter referred to.)

The words of survivorship must appear in the operative language of the deed. This requirement is satisfied if such words appear in the granting clause or habendum clause, or in both clauses. It may not be satisfied if the survivorshop words appear only in the consideration clause (the clause which merely recites the consideration paid by the grantees.)

It is to be seriously doubted whether a conveyance of real estate to "A **or** B" followed by words of survivorship vests any estate in either A or B.

Use of the disjunctive "or" in this instance probably results from the use of the word "or" on government bonds and in joint bank accounts. But its use in deeds overlooks the fact that while either A or B, during the lifetime of both, is intended to be the owner of such bonds and bank accounts (and the alternative "or" is properly used in such instances) there is no such intention or result in the case of a conveyance of land.

Even though such intention did exist, it could not be accomplished, because under a deed, title must vest specifically in some one and not in someone or someone else. (See Waltenberger vs. Pearson 81 O. A. 51 re joint accounts and g o v e r n m e n t bonds.)

It is elementary that the survivorship estate requires at least two natural persons as grantees or devisees. More than two natural persons can be grantees. I recently saw five persons named as grantees in a deed with survivorship features, each grantee having a different undivided interest. There are interesting future possibilities in that particular situation.

It should be obvious that a deed to a corporation and a natural person could not contain valid survivorship provisions, nor a deed to two corporations. What is required is the participation or presence of two or more natural persons.

The Cases

In Lewis vs. Baldwin, 11 Ohio 352 (1842) the Court decided

"A conveyance to A and B, and their heirs, and to the survivor of them, and to the heirs of such survivor, vests in the survivor an estate in fee."

The action was in chancery to set aside a deed to Charles R. Baldwin and Mary Jane Baldwin (husband and wife) to them jointly, their heirs and assigns, and to the survivor of them, his or her separate heirs and assigns.

The wife, Mary Jane Baldwin, died and the surviving husband, Charles R. Baldwin, claimed the estate in fee. The Court said "He holds title, not upon the principle of survivorship, as an incident to a joint tenancy, but as grantee in fee, as survivor, by the operative words of the deed. The entire estate, by the death of his wife, is vested in him and his heirs. This is the effect of the words of grant, contained in the instrument of conveyance."

Note that in this early case decided in 1842, the Supreme Court recognized the principle of survivorship and in effect held that joint tenancy as at common law did not exist in Ohio.

In the case of In re Estate of Hutchinson, 120 O. S. 542 (1929) the Court decided

"While joint tenancy with the incidental right of survivorship does not exist in Ohio, parties may nevertheless contract for a joint ownership with the right of survivorship and at the death of one of the joint owners the survivor suceeds to the title to the entire estate, not upon the principle of survivorship as an incident to the joint tenancy but by the operative provisions of the contract."

"Where two persons purchase property, to be owned by them in common during their joint lives and at the death of either to become the property of the other, each party has an undivided one-half interest during their joint lives and each has a vested estate in remainder in the one-half interest of the other."

This leading case involved ownership of shares of stock held by husband and wife as tenants in common for their respective lives, remainder to the survivor. The Court stated that while common law joint tenancy does not exist in Ohio, parties may

contract for a joint ownership, including the right of survivorship.

In the case of Ross vs. Bowman the Common Pleas Court of Hamilton County (32 O. O. 27) on November 8th, 1945, decided

"A survivorship deed is a valid and effective means of transferring the full fee simple title to the surviving grantee, provided the language used is sufficiently clear to indicate the intention of the grantor and grantees."

This case involved the construction of a deed conveying certain real estate to Helen Ross and Lonsy Ross and the survivor of them, her or his heirs and assigns. Helen Ross died. In Probate Court, administration upon her estate was dispensed with and that Court found the surviving husband, Lonsy Ross, was the sole owner of the real estate and that her estate was not subject to inheritance taxes.

The Common Pleas Court found that Lonsy Ross, the survivor, became the sole owner of the real estate and that the heirs and creditors of Helen Ross had no claim thereto.

Mention should also be made of the case of In Re Dennis 30 O. N. P. (N. S.) 118 in which a survivorship estate was approved.

Reference to one more case will complete the court decisions on survivorship.

In the case of Abrams vs. Nickel 50 O. A. 500, the Court decided

"The adjudication of lunasy and appointment of a guardian of one of the two parties to a joint and survivorship account terminates the agreement, and as each had a complete interest in the entire account, equity requires, in the absence of extraordinary circumstances, an equal division of the account between the parties involved as of the time the guardian was appointed."

This case involved a joint and survivorship **bank account** between an elderly landlady and one of her boarders. She became incompetent and her guardian sued for an accounting. The Court held as above set forth.

If one owner of a survivorship estate in land becomes incompetent, or a bankrupt or some other change in his legal status occurs, such change does not ipso facto destroy the survivorship incident, but such change in status can result in a proceeding which will destroy the survivorship, by uniting in one person all interests in the property. Such person may be the other survivorship owner or a stranger.

For example—one of two survivorship grantees becomes incompetent and a guardian is appointed. The guardian can file a petition to sell his ward's interest in the land and, he may use Section 10510-10 G. C. (the sale of fractional interests statute) to bring about a sale of all interests in the land.

If either a stranger or the other survivorship owner buys the land at guardian's sale, the result will be ownership in one person and consequently a destruction of the survivorship estate.

As to Tax Liability

The succession of each survivor upon the death of any grantee in a survivorship estate may be subject to **Ohio Inheritance Tax.**

See Section 5332 G. C. Paragraph 5. This tax is generally computed upon a basis of one-half of the value of the property in case of the death of one of two owners in a survivorship estaate. Tax liability must be determined before a good title vests in the survivor.

Liability for **Federal Estate Tax** should also be mentioned.

The value of the entire property held jointly should be included in the gross estate of the deceased joint tenant unless the survivor is able to prove contribution, in which case the portion representing the contribution is excluded from the gross estate.

(See Revenue Act 1948 Section 351 [e] Joint Interests).

As you know, there is a present specific exemption of $60,000.00 from Federal Estate Tax.

Other Considerations

We should now consider the advantages to be gained by the creation of a survivorship deed and any possible disadvantages in so holding title.

When one of two survivorship owners dies, leaving no other estate, formal administration is not necessary and when death is established and inheritance tax liability is determined and paid, the title of the survivor is good I have observed that the usual method of establishing death is rather informal, the only record being a death certificate and recitals in the tax determination proceedings. I suggest that our Determination of Heirship Statute (Section 10509-95 G. C.) could be amended to permit a Court finding (a Survivorship Determination) that the death of an owner in a survivorship estate resulted in the survivor acquiring full title. Other states have such procedure.

This would also clear the record if administration is otherwise required and by mistake the property in question is included in the inventory.

The detail of securing a proper transfer of title in the name of the survivor in the County Auditor's Office should not be overlooked.

We have demonstrated that the survivorship estate in real property can be created in Ohio, how it can be created and the results which will follow, if the parties retain title, when one of the two owners under such an estate, dies. So far we have covered firm ground—ground which has been cultivated by the Legislature and by the Courts.

Let us now consider situations and problems likely to arise from the more common use of survivorship instruments, in the interim between the creation of the estate and the ultimate vesting of title in the last survivor. These problems are more difficult to handle because all of the answers have not been given to us by the Courts.

Assume that A. and B. who are husband and wife, hold title under a survivorship deed. Unfortunately they are both killed in an automobile accident. There is no evidence as to who died first. Who, therefore, was the survivor? There is an interesting article on this question in 24 O. O. 119, Section 10503-18 G. C. is involved. That section provides that when there is no evidence of the order in which the death of two or more persons occurred, no one of such persons shall be presumed to have died first, and the estate of each shall pass and descend as though he had survived the other or others.

In this instance the statute declares that a presumption exists. That presumption can be overcome by proof. If proof or evidence is lacking, my hunch (like that of the writer of the above-mentioned article) is that a Could would have to divide the property up among the heirs of **both** of the grantees in the survivorship deed.

Attention is called to Section 10503-17 G. C. (I call it, the murderer shall not benefit statute) which provides that no person adjudged guilty of murder shall be entitled to inherit or take any part of the estate of the person killed. In Hodapp vs. Oleff 129 O. S. 432 the Court held that a joint and survivorship account in a Savings and Loan Association was a contract inter vivos, carrying a present vested interest which can in no wise be affected by the laws of descent and distribution and the fact that one of the parties to such survivorship contract murders the other does not divest the murderer of his right thereto in the absence of a statute to that effect. The Court said that had Section 10503-17 G. C. abovementioned, been in effect at the time of the murder in question it could in no wise have affected the vested rights of the murderer in the joint account. The Court found itself powerless to prevent the murderer from succeeding to the entire joint account

Let me ask the following questions and then endeavor to answer them.

Assume that title to real estate is in A and B and the survivor of them.

FIRST: Can A and B convey title to C? If so, what interest will C acquire. The complete title?

SECOND: Can A convey title to B? If so, what interest will B acquire? The complete title?

THIRD: Can A have partition against B? If so, and if A buys in at a partition sale, what interest will A acquire? The complete title?

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FOURTH: If A becomes a bankrupt and his interest is sold to C, what interest will B and C then hold in the land? Do B and C become survivorship owners or do the survivorship provisions still pertain solely to A and B?

In order to answer the above questions, which the common use of survivorship deeds will undoubtedly present, we must clearly understand the nature of the estate which survivorship owners acquire.

Our Supreme Court in the Baldwin and Hutchison cases has held that each party to a survivorship estate has an undivided one-half interest during their joint lives and each party has a vested estate in remainder in the one-half interest of the other.

During the lives of A and B no one else has an interest in the property. They are the sole owners of it. During the lives of both of them, neither one has any greater interest than the other.

The answers to our questions must be these—

By reason of the unquestioned power of the joint owners to convey their entire interest in the property, since thereby they include their present interest and all of their possible future interest, the union of all of the interest of one grantee with all of the interest of the other grantee, necessarily results in a complete title in such one person, thus dissolving the only element that distinguishes their former common ownership, namely, the survivorship.

Our first three questions must be answered in the afirmative.

On the other hand, and in answer of our fourth question, whenever the rights of one survivorship owner are divested, **but where the same are not merged with the rights of the other** survivorship owner, the incident of survivorship is not destroyed, and the successor in interest will take subject to the rights of the person whose interest remains unaffected.

Let us digress a moment from survivorship deeds for mention of other kindred instruments. I refer to mortgages and land contracts running to two or more individuals with provisions for survivorship. These instruments are valid and I know of no particular difficulties with regard to them.

Last, but not least, should we in Ohio have a statute defining or providing for a survivorship estate as to real estate?

In addition to Section 5332 G. C. providing for inheritance taxes on joint estates, there are presently three other statutes as to survivorship, all of which pertain to personal property. I refer to Sections 710-120 G. C.; 9648 G. C. and 8623-30 G. C.

The first two sections refer to joint accounts in banks and savings and loan associations and the last section refers to stock certificates of corporations issued in joint names, with provisions for survivorship.

One of our local members of the Legislature asked my help about three months ago to frame a statute defining a survivorship estate in real property.

After considerable thought and effort I submitted to him the following:

"All estates and interests in and to real property held by two or more persons shall be construed to be tenancies in common, except that among natural persons the right of survivorship may be established, by providing or specifying in the instrument creating any estate or interest in real property, that any one person named therein who shall survive the other person or persons named therein shall take the entire estate or interest to the exclusion of the heirs or devisees of the person or persons who shall predecease such survivor.

The right to partion shall not extend to such survivorship estates.

Joint tenancies and tenancies by the entirety as at common law are hereby abolished."

I hold no brief for or against the proposed statute. The bill got as far as the Legislative Committee, where I understand much opposition was encountered and the matter was withdrawn.

Lucas County, Ohio, extends north to the Michigan line. Numerous ownerships of land straddle the line between the two state. Michigan recognizes joint tenancy and tenancy by the entirety between husband and wife. Ohio does not.

There are numerous cases of husband and wife holding title to these properties lying in both states.

Upon the death of the husband intestate, just put yourself in the position of the lawyer who must explain to the widow that she owns the Michigan end of the land as survivor, but that she and her children or she and her husband's parents own the Ohio end of the land.

The person who said that the law of real property was purely a local condition certainly made a true statement.

The foregoing is about all I know about survivorship deeds.

While I hope we have stimulated your interest, I also hope you will not say, like Mark Twain, "The more you explain it, the more I don't understand it."

Ladies and Gentlemen, it is about time for me to say my daily prayer, which prayer is—

"Lord, fill my mouth with worthwhile stuff, but nudge me when I've said enough."

Confidential Nature of Escrows

By GEORGE C. BOND

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Union Title Insurance & Trust Company
San Diego California

Should an escrow holder divulge information about an escrow it is handling to persons who are not parties to the escrow? A look at the consequences of doing so will help to answer this recurrent question.

California law defines the duties of an escrow depositary as those of an agent, and as such, it acts for both parties to the escrow (10 Cal. Juris. 587). In all transactions concerning or affecting the subject matter of his agency, it is the duty of an agent to act with the utmost good faith and loyalty for the furtherance and advancement of the interest of his principal, or principals, as in the case of an escrow. An agent's acts which tend to violate **this** duty are considered as frauds against his principal, because of the confidence which the principal has shown in him by making him his agent. (Sterling v. Smith, 97 Cal. 343).

The **Restatement of the Law of Agency** states that an agent is subject to a duty to the principal not to use or to communicate information confidentially given him by the principal, or acquired by him during the course of his agency, to the injury of the principal. When this rule is applied to escrows, the escrow holder's duty should be clear. The escrow instructions and other information pertaining to the escrow, which the parties give to the escrow depositary, are given during the course of the agency relationship.

What are the consequences when this duty is breached? Cases in which this question has been litigated in California hold that failure to exercise loyalty and good faith, accompanied by acts which operate to the principal's disadvantage or injury, serves to make an agent responsible to his principal for any resultant loss. If information given by an escrow holder caused an attachment to be levied upon funds held in escrow, or if the identity of a purchaser should cause the termination

of other negotiations in which he was engaged, there could conceivably be losses for which the escrow holder would be liable. One can readily think of other examples.

A situation in which the confidential nature of an escrow is likely to be overlooked is that of a "middleman" escrow. This would exist when "A", as seller, and "B", as purchaser, give separate instruction to "X", escrow holder, for the sale and purchase of Blackacre for $10,000. In addition, "B", as seller, and a third party, "C", as purchaser, give separate instructions to "X", escrow holder, for the sale of Blackacre for $15,000, giving "B" a $5,000 profit. There are technically two escrows with the same escrow holder, to be closed together, and the instructions are often kept in the same portfolio.

In this case, it would be a breach of confidence for "X", the escrow holder, to inform "A" or "C" about the terms or existence of the escrow to which either is not a party, assuming that the instructions do not expressly demand such information. (Ogden, **Outline of Land Titles** and Shivers v. Liberty Building-Loan Assn. 16 Cal. (2nd) 296, remarks of J. Carter at p. 308.

The conclusion is, therefore, that an escrow holder should follow a policy of never divulging any information about an escrow which it is handling to persons who are not parties to the escrow. The parties to the escrow appreciate this policy, because they will know that their rights will be safeguarded and protected.

By the President

EARL C. GLASSON, *President*

Blackhawk County Abstract Company
Waterloo, Iowa

Things seem to be moving pretty rapidly these days on this old ball of mud of ours, and as usual, when things are happening, he who is on the spot is the one who sees and learns most about what goes. Have you been on the job recently so that you know how things are shaping up in your business and especially in your locality? I'm sure you have, for by being "on the job" I refer to your being in attendance at your state conventions and at the regional meetings of your state associations. In my experience there is hardly a better way to learn easily how things which personally affect you are progressing. In variably I come away from such meetings with a knowledge of events which I could not have had if I had been absent, and with a much better understanding of the little which I did know before the meeting. As I see it, attendance at state meetings is a MUST for every progressive title man.

Speaking of meetings, as if I did not intend to do so, here is one which is equally important with your state meetings. That is our National Convention to be held in Oklahoma City September 18 to 21st, inclusive, A.D. 1950. That it will be one of the largest conventions we have ever had is now assured, and I want to urge each one of you to be there. The matters which will have our attention are rapidly being arranged into a fine program for our formal sessions, and there promises to be a wealth of shop talk in our private gab-fests, as always. Our business is no exception to the rule that progress means change, and each one of us must know about those changes so as to maintain our position in the procession of progress. And most important of all is the point that your knowledge and counsel is needed by other members for their guidance. Maybe you are the fellow who is leading the parade—I don't know—and if you are there to tell me about it, you will help make me a better title man. Incidentally the social features of the program are in the best hands in the business, those of Bill Gill, and I am sure I will have the time of my life if I can find the time to take advantage of all that he will offer. The ladies will be royally entertained from

EARL C. GLASSON

start to finish and the banquet speaker will, in all probability, be a man of national importance, and his message will be one of much more than passing interest. I hope you will be there.

It won't be too long now until our 1950-51 Directory will be published. I wish I could give you the precise date, but I can't as yet. That depends on many things, among them the alacrity with which we furnish the information to be published. I urge you to respond to our Secretary's request for that information faster than you ever did before. And while you are doing that, place your order for a supply of directories sufficient to pass out to your customers. Personally I would like to see you give one to every customer on your books who handles title business for others, for it every one of us does that we will have substantially complete coverage of the nation for every member of our association. For those to whom will come business forwarded as a result of such distribution there will be a dollars and cents profit, but even if we get little or no such forwarded business, the advertising value to the donor is not small. The popularity of our national directory has been growing steadily, and I hope this year we will distribute enough of the mthat the potential good in the idea can be realized. If each one of us does his part it is easy.

The work of the association goes on apace. The many fine committeemen whom it was my privilege to appoint are doing a fine piece of work in their respective fields. My desk most of the time is heavily laden with copies of letters written one to another concerning their work so that I can truthfully say that I am actually amazed at the amount of time and energy which these fine men and women are giving to their industry. To say that I appreciate such cooperation is but a feeble expression of my gratitude. Do you use our national facilities as much as you could? You know that much of the work of these committees is the assembling of facts and figures and information with respect to many phases of the title business, some of which may be of benefit to you at times. All this is kept in national headquarters and is yours for the asking, and we urge that you make use of it as the need arises. National headquarters is a sort of clearing house for questions about our business and for the answers to

the questions. Maybe you have the question and someone else has found the answer, and maybe the other fellow has the question and you can supply the answer. Either way the result is that your association is instrumental in helping someone in a dilemma. To make this service as complete as possible, and it is of course growing in scope day by day, whenever you get a new idea on anything regarding your business, write it out and send it to Detroit. If there is already a file on the subject you will get whatever information there is available, and if the idea is so new that we have no file, one will be created and we will try to get lots of data into it. The more active you are in your contacts with headquarters, the more information there will be for you and everyone to use.

The other day I heard an address by a professional speaker on the importance of common action in every good cause. It brought back to my mind a point which for about six years I have been making in various talks which, in weak moments, I promise to make. That point is simply this: That in every community the title man is, or should be, one of the leaders, and as such he is, or should be, one of the most active citizens in community affairs. I have made it a point to inquire about this at many state conventions, and I am agreeably surprised at the amount of civic work which is being done by our people. Mayors, city managers, community chest officers and directors, church board members, city planners, Red Cross workers and all sorts of other capacities are amply represented in our association. In fact just plain fund raisers are about a dime a dozen in our circles because there are so many of them. I am convinced that for the most part our people do not need prodding to get them to assume civic responsibilities, but I mention it because of the increasing need for the participation of thinking leaders in public affairs. You have seen the minorities in all walks of life organize strongly and carry their programs with ease, and I believe that this has gotten to the point that the unorganized majority is fast losing its right to a voice in its own affairs by reason of its lack of cohesion. In my books the majority still rightly should rule, and I have no fear as to my own happiness and well being if that continues to be the case. But as it seems to be going nowadays, the vociferous minority makes the most noise and gets most of what's to be had. Is that the way it should be? Or is that the pattern of democracy? I do not think so, and I do not believe it would be so if our community leaders will do more leading than they have ever done before. I think that every employer should, within the limitations of the law, spread knowledge of good government in all circles wherein he can be heard. Some of our large industrial institutions have such programs now and they are bearing fruit. Advertising, public relations programs, individual actions should be pointed toward civic education of the people so that they can for themselves analyze and determine political questions. Out of such a program grows organization of the unorganized, and when that happens the powerful minorities will lose their holds. The title people of the nation can and I hope will, be among the leaders in this movement.

If you start planning now, I'll be sure of seeing you in Oklahoma City in September, won't I?

Title Examiners Requirements in Event of Death of Joint Tenant

By J. ROBERT WILSON

Manhattan, Kansas

The recent popularity of joint tenancy deeds is leading to a new question in the title examiner circles, namely: "What to require in event of death of one of the joint tenants?" To this date the writer's observation of examiners' requirements in such instances has been that the examiners have required the abstracter to show the proof of death of the joint tenant and the clearness as to the State Inheritance Tax and as to the Federal Estate Tax. It is submitted that the examiner should also make inquiry as to the existence of a will of the deceased joint tenant. If there be a will, then the examiner should carefully examine it to determine whether the will attempts to dispose of the jointly owned property, and if it does, require the surviving joint tenant and the devisees of the property in the will to join in the conveyance, unless the surviving joint tenant files a formal election not to take under the will. If no will be found, the examiner of Kansas titles should not approve the surviving joint tenant's deed conveying the formerly jointly owned property until one year after the death of the deceased joint tenant, in order to pass safely the statutory period for a will to be admitted to probate, which could affect the surviving joint tenant's interest in the jointly owned property.

It is true that the general rule is well established to the effect that a joint tenant cannot devise his interest in a jointly owned property. See American Jurisprudence, "Cotenancy," Paragraph 14; also, citations found in 129 A.L.R. 818. In Gould vs. Kime (1834), 2 Myl & K 304, 39 Eng. Reprint 959, the Court stated:

"It is certainly undoubted law that a joint tenant cannot devise even his own share; for as the will cannot take effect until his decease, and at that instant the share vests in his companion, so were he even to devise to his companion, he would take, not by force of the devise, but by the survivorship, and would be in of the original estate."

However, the examiner must always remember the doctrine of election, which arises in the instance of the testator devising the jointly owned property to someone other than the other joint tenant, and then giving to such other joint tenant other property by the will, thereby putting such other joint tenant to an election between retaining his original interest in the jointly owned property or accepting the benefits granted him by the will.

The Kansas Supreme Court has adhered to the doctrine of election. In Aten vs. Tobias, 114 Kansas 646, 220 Pacific 196, it was held that where a testator devises property, the title to which is held by his wife, and she gives her written consent to such testamentary disposition of it, the wife thereby in effect renounces her right of ownership in the devised property and bars all persons whose rights there to must be claimed through her. The Court stated therein on Page 653:

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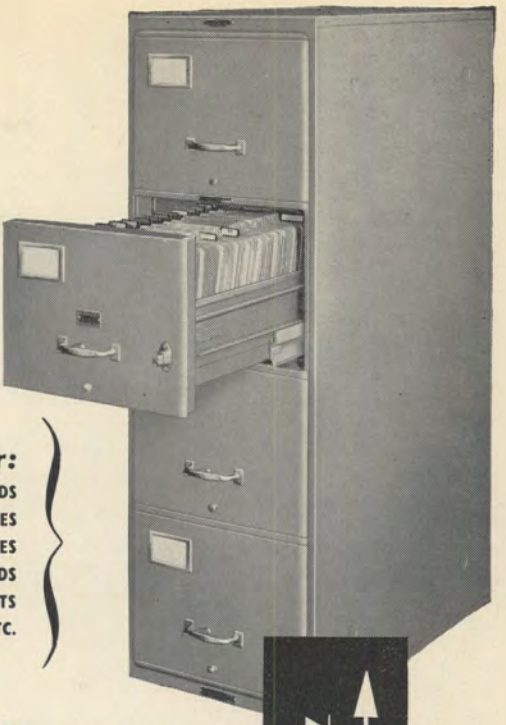

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"The rule is that if a testator devises property not owned by him, but owned by a devisee or legatee under the will of such testator, and such devisee or legatee accepts a devise or legacy bestowed upon him by the will, he thereby in effect renounced his right of ownership in the property which the testator has assumed to make of it, and confirms and ratifies the testamentary disposition made of it by the testator."

Also, see Hughes vs. Hughes, 152 Kansas 720, 107 Pacific (2d), 672, and citations thereunder.

As to the intent of the testator, the majority rule seems to be that the intent must be made clear beyond all reasonable doubt that the testator intentionally assummed to dispose of his devisee's real estate before the devisee (who is also the joint tenant) can be held to an election. Young vs. Biehl, (1906), 166 Ind. 357, 77 N.E. 406; Pomeroy's Equity Jurisprudence, Sec. 472; 2 Underhill on Wills, Sec. 730; 28 R.C.L. 233. In Wilkinson vs. Wilkinson, 130 Kansas 424, 286 Pacific 152, it was held that in the absence of an unequivocal expression in the will of a testator of his intention to dispose of property not his own, it will be presumed that the testator intended to dispose of his own property alone. Also see Page on Wills, Vol. 4, p. 1347; Benton vs. Alexander, 224 N.C. 800; 32 S.E. (2d) 584; 156 A.L.R. 814; Job Haines Home for Aged People vs. Keene, et al, 87 N.J. Eq. 509, 101 Atl. 512.

There are a number of cases which have held that where a surviving joint tenant has accepted provisions for his benefit under a will of the deceased joint tenant, in which will the jointly owned property was disposed of to another, the surviving joint tenant thereby lost his title to the jointly owned property. In re Arp's Estate et al, 83 Ind. App. 371, 147 N.E. 297, it was held that where the husband devised property, including property held by him and wife as tenants by entireties, in trust for wife with provision that, if wife elected to accept provisions made for her by law, provisions of will as to her should be ineffectual, and if she accepted provisions of will, she took by devise and not as survivor by entireties. In Tolley vs. Poteet (1907), 62 W. Va. 231, S.E. 811, it was held that where a testator bequeathed personal property to his wife, and also the life use of a portion of a farm which had been conveyed to them jointly, she was put to her election between her own interest in the farm and the provisions for her benefits in the will. In Young vs. Biehl, 1906, 166 Ind. 357, 77 N.E. 406, it was held that although where a tract of land in question was owned by testator and his wife as tenants by the entirety, such land on testator's death passed to the surviving wife, regardless of any attempt of testator to make a different disposition by will, yet if the wife failed to repudiate the will in the time required by an Indiana Statute, and if the wife received benefits under the will, she was equitably estopped from asserting her title to the land in question as survivor of the entirety. In Job Haines Home for Aged People vs. Keene et al, 87 N.J. Eq. 509, 101 Atl. 512, it was held that where testator devised to his wife for life with remainder to his son property owned by entireties, "The house and premises where I now reside," the specific gift to the son put the widow, who also took a bequest of personal property under the will, to an election, and where the widow in such case elected to take under the will, her interest in the property as a tenant in entireties was lost. In Thurlow vs. Thurlow, 1944, 317 Mass. 126, 56 N.E. (2d) 902, it was held that where widow accepted benefits under will setting up a trust fund for widow with right to use both income and principal thereof during her life, and including therein stock held by husband and wife as joint tenants and therein disposing of remainder interest in said stock held by husband and wife as joint tenants after death of widow, the widow's election to take under the will must after her death be regarded as a finality. In Will of Schaech: Schaech vs. Schaech (two cases) 252 Wis. 299, 31 N.W. (2d) 614 (rehearing denied in 33 N.W. (2d) 319), it was held that where a will bequeathed to the testator's wife all of the testator's personal property, except as otherwise stipulated, and bequeathed to third persons specified sums of money to be paid out of life policies payable to the testator's wife as beneficiary, and devised to a third person the testator's interest in real estate held by the testator and his wife in joint tenancy, the wife was required to elect whether she would take under the will or at law, and her election to take under the will bound her to surrender her property given by the will to third persons (distinction made from ruling in Christman vs. Christman, 163 Wis. 433, where the ex-wife of the testator received no property by the terms of the will that belonged to the deceased and was thus not charged with the duty of election). Also see Page on Wills, Vol. 4, Sec. 1358; Benton vs. Alexander, 224 N.C. 800, 32 S.E. (2d) 584, 156 A.L.R. 814; Marquette Law Review, December, 1948, Page 230.

There are a few cases holding to the contrary, most of which have distinguishing features which take them out of the operation of the general rule, such as in the case of Benton vs. Alexander (supra), where the testator gave his wife nothing in the bequest in lieu of their jointly owned property, except the privilege of paying the deficiency caused by the fact that his assets did not meet his liabilities. Also see Webber vs. Webber, 217 Mich. 178, 185 N.W. 761; York vs. Adams (1939), 277 Ky. 577, 126 S.W. (2d) 1077; Flynn vs. Parker (1917), 256 Pa. 186, 100 Atl. 741. Under a will purporting to give to the testator's widow all of his household goods and effects, and, in lieu of dower and all other rights, the life use of real estate which the husband and wife had owned as joint tenants to which she was entitled as survivor, the Court, in Commissioner of Internal Revenue vs. Kelly (1936) C.C.A. 7th, 84 F (2d) 958 (writ of certiorari denied in Helvering vs. Kelly (1936) 299 U.S. 603, 81 L.Ed. 445, 57 Sup. Ct. 23), while recognizing that if a benefit is conferred upon a person by the provisions of the will of another, and such will assumed to devise or bequeath to such person property already owned by him, such person is put to an election as to whether he will take under the will or assert his legal rights and renounce such benefits, held that, since the record contained no evidence of any household goods or effects owned by the testator at the time of his death, no election was necessary (although the widow could have made an election), the will having given her no benefits for accepting that which she was compelled to renounce— her right to the fee simple in the real estate. Also see Lamb vs. Lamb, 226 N.C. 661, 40 S.E. (2d) 29, 156 A.L.R. 814; Byrd vs. Patterson, 229 N.C. 156, 48 S.E. (2d) 45.

The weight of authority is to the effect that a legate or devisee under a will is not bound to accept a legacy or devise therein provided, but may disclaim or renounce his right under the will, even where the legacy or devise is beneficial to him, provided he has not already accepted it. Strom vs. Wood, 100 Kan. 556, 164 Pac. 1100; 69 C.J. Wills, Sec. 2168, Page 674; 28 R.C.L., Wills, Sec. 351, Page 352; Thompson on Wills, Sec. 479, Page 567; Page on Wills, Vol. 4, Secs. 1402 through 1404, p. 140 et seq., Bacon vs. Barber 110 Vt. 280, 6 Atl. (2d) 9, 123 A.L.R. 253.

In summation, the examiner of titles should determine in event of the death of a joint tenant, whether the deceased joint tenant left a will. If there be no will, the examiner of Kansas titles may safely approve the conveyance by the surviving joint tenant one year after the death of the deceased joint tenant (Sec. 59-617, 1947 Supplement to the General Statutes of Kansas). If, however, there be a will, the examiner should require the abstracter to set out fully the will in the abstract to determine whether the decreased joint tenant attempted to dispose of the jointly owned property therein. If the will does attempt to dispose of the jointly owned property to one other than the surviving joint tenant, then the examiner should require an election to be filed by the surviving joint tenant or require the surviving joint tenant and the devisee under the will to join in the conveyance.

The Development of an Advertising Idea

By HARVEY HUMPHREY

Past Chairman
Committee on Advertising and Publicity

NOTE: Harry W. Bryan, head of the Bryan Abstract Company of Van Buren, Arkansas, conceived an idea of having The American Title Association prepare and issue a series of post cards, graphically picturing title flaws, which might be mailed to people dealing in real estate without proper evidence of title.

Mr. Bryan sent his suggestion to William Gill, Chairman of your Planning Committee, with a copy to us; at the same time asking for comments. As a result, some 23 letters were exchanged and, before the discussion ended, James E. Sheridan, your Executive Secretary; Earl Glasson, President of American Title Association; Floyd B. Cerini, Executive Secretary of the California Land Title Association; H. C. Hickman, proprietor of The Boulder County Abstract of Title Company, of Boulder, Colorado, and Paul Pullen, Advertising Officer of the Chicago Title & Trust Company, had participated.

Thoughts and ideas were expressed which we feel are worthwhile passing on to the membership. Since carbon copies of much of the correspondence went to various members of the above group, many of the answers were made with a knowledge of the others' opinions—almost as if the various correspondents sat in the same room participating in a round table discussion. This prompted the writer to present the report in round table style, with Harry Bryan, originator of the idea, as the imaginary moderator. All statements are lifted bodily from the correspondence—the only changes being to break them up into round table form. H. H.

MR. BRYAN: Gentlemen, while in Kansas City, I visited the Missouri Title Insurance & Abstract Company's new offices. On the walls were two pictures which attracted my attention, where no amount of reading matter would have done so. One of these pictures showed a widow and children consulting their family attorney. He was advising them of the fact that their home had a faulty title. The other picture illustrated the point that we are all monkeys when it comes to title problems in court. I'll venture to say that as each of you drives to his office daily, you pass fine groups of modern buildings. In one or possibly more such instances, you see within these groups an "eyesore," undeveloped for years, which you know is the result of faulty title. In every county seat in America, I know other title men experience the same mental disturbance. Only the property is different. It occurs to me that a picture postal card, simple enough to be understandable even to a 12-year-old, and depicting catastrophe as the result of incompentency or carelessness in title matters, might be of a real advertising value in our business. Let's see if we can start a ball game with this idea.

MR. GILL: Would it be your idea, Harry, to mail these post cards to all persons who have transferred property without benefit of title evidence?

MR. BRYAN: Exactly, Bill. If I understood a convention speaker correctly, even in Los Angeles, some 20% of the conveyances are made without title evidence. Couldn't a

HARVEY HUMPHREY

standard card be designed and directed to this 20%? We know who they are and their names can be picked up from the return addresses on the deeds. What is your idea on the subject, Harvey?

MR. HUMPHREY: First, with reference to the undeveloped properties which are a result of faulty titles. It is true that these "eyesores" probably exist in every county in the country. Pictures could be made of these properties, reproduced as horrible examples, and mailed to a select mailing list of persons transferring property without benefit of title evidence. We might be a little hesitant about reproducing pictures of such properties and circulating them, because the owners could claim that such publicity damaged any value the properties might have. Secondly, as to mailing some such message to those people who transfer property without the benefit of title evidence, think this is a swell idea. We have considered it locally but are not doing it at the present time for two reasons. (1) The volume of recordings is so heavy in Los Angeles County that it would require at least one full-time experienced employee to handle the assignment. For instance, from 1,000 to 1,100 deeds are recorded in Los Angeles County daily. Approximately 700 of those are our own filings. From the balance, it would be necessary to weed out perhaps 100 more, as filings of the other companies, tax deeds, deeds from husband to wife, or other family transfers. This would leave around 300 each day to whom it would be necessary to send picture post cards, such as you suggested. (2) We are so busy keeping abreast of current business that no one wishes to undertake this project.

MR. BRYAN: That **would** be a tremendous job, but I feel it still would be an excellent idea in the rural areas. I personally favor a picture card, illustrating the necessity for title evidence, and feel it would be superior to printed government standard penny cards. As to the messages or slogans on the cards, perhaps some of the larger companies, in Chicago or elsewhere could help us.

MR. GLASSON: The idea seems to have merit, Harry, but not all deeds carry the address of the grantee. What would you do in those cases?

MR. BRYAN: In some states, the laws make it mandatory for deeds to carry this information in order to be eligible for recordation. Perhaps it would be possible to get such a requirement enacted in those states which do not.

MR. SHERIDAN: It seems to me, Harry, that mailing cards to individuals, who deal without benefit of title evidence, soliciting an order for an abstract or title policy is somewhat like locking the barn door after the horse is gone. By the time we pick up the name and address of the grantee from the public records, the deal is all closed.

MR. GILL: This whole thing interests me. I had a similar request from H. C. Hickman of Boulder, Colorado, regarding the same matter. At one meeting he called attention to

figures recently quoted, regarding the number of real estate transactions (I believe in the State of Washington), wherein it was definitely determined that a lot of the transfers were being made without abstract. He suggested that he would like for The American Title Association to prepare a little pamphlet for general distribution to the public, calling attention to the fact that it is dangerous to buy real estate without having title evidence brought to date on the same. Let's hear what he has to say on the subject.

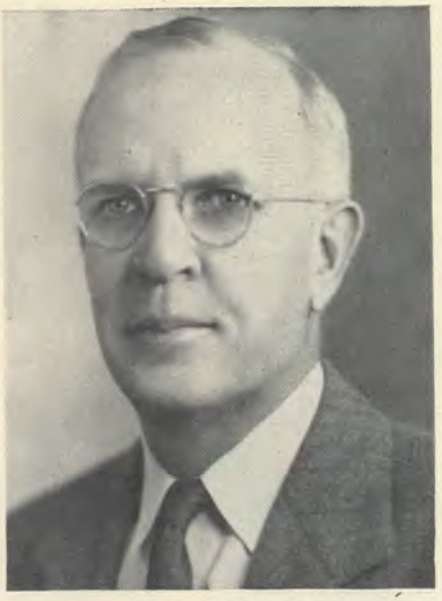
MR. HICKMAN: I feel that a series of post cards, patterned after the comic strip idea and featuring the "I got caught" theme, might make an impression on the particular group of people we are hoping to reach. It would take some thought and an artist to develop this series, but roughly I had in mind a big sucker snagged on a big hook and saying, "I got caught"; or a farmer being chased by a mad bull with the suggestion that he was about to lose his shirt. You could supply numerous variations of the idea. I think if the reading matter is limited and the pictures are lurid enough, it might drive home the point to these careless and uninformed buyers.

MR. BRYAN: It is my belief that those who do not invest in title protection are people who, in the majority of instances would only heed and respond, (if ever) to pictures, which make a simple appeal, such as fear, anxiety, or sound business as a sales talking point. A series of cards, say three, to direct to such grantees in quick succession, might help. The Pacific Mutual Life Insurance Company uses a well known picture in its advertising. It shows two men standing under umbrellas. One is well protected by an umbrella, consisting of five sections, captioned (1) sickness, (2) accident, (3) accidental loss of sight or limb, (4) old age, (5) death. The other is trying to protect himself against the rain with an umbrella, all section of which are missing except one captioned "death." The caption under this picture reads, "Here is a plan that protects you while you **live** as well as when you die. It provides income when other income stops. Get the facts about this Pacific Mutual Plan that **pays 5 ways."**

MR. SHERIDAN: Your suggestion for a standard card or cards, Harry, presents a rather tough problem. Take nomenclature alone. The public official who handles a deed which is to be recorded is known in various sections of the country as the Register of Deeds, the Registrar of Deeds, the Recorder, the County Recorder, the County Clerk, the Public Recorder, the Recorder of Deeds, and the Prothonotary. In the preparation of a standard card suitable for use in all sections of the country, you can see how difficult it would be to overcome this one obstacle.

MR. GLASSON: Jim's point is well taken. Even with the real merit that this proposal has, in my humble opinion, any campaign for small mailing, made up on a national basis, would have to be so skeletonized as to be almost useless to the individual advertiser.

MR. PULLEN. Our company has been sending out blotters carrying an advertising message somewhat similar to Mr. Bryan's suggestion. I sent Jim Sheridan a couple of sets of these blotters recently. On them we feature the slogan "A Title Policy Protects You." One set shows a



WM. GILL, SR.

Exec. Vice-Pres., American First Trust Company, Oklahoma City, Oklahoma

picture of an old couple and their lawyer in a title dispute. This same theme could be adapted to Mr. Bryan's card campaign. Of course, our blotters are for companies issuing title policies. Harry's idea, on the other hand, would feature the advantages of a good abstract. I think this is a good idea for abstract companies. I question whether the cards would be as effective in a large city, if sent out by title companies. In smaller places, it seems to me that a series of cards, mailed regularly to persons in the community who are likely to engage in real estate transactions (in other words, those who have some money), might be very worthwhile.

MR. GILL: That's a thought. I wish it were possible to work out something which we could furnish to the membership at a very nominal cost. It might be that Jim Sheridan could furnish suggested copy or, perhaps our Committee on Advertising and Publicity could furnish suggested copy which could be run in Title News. Then our members could use it in whatever form they desired.

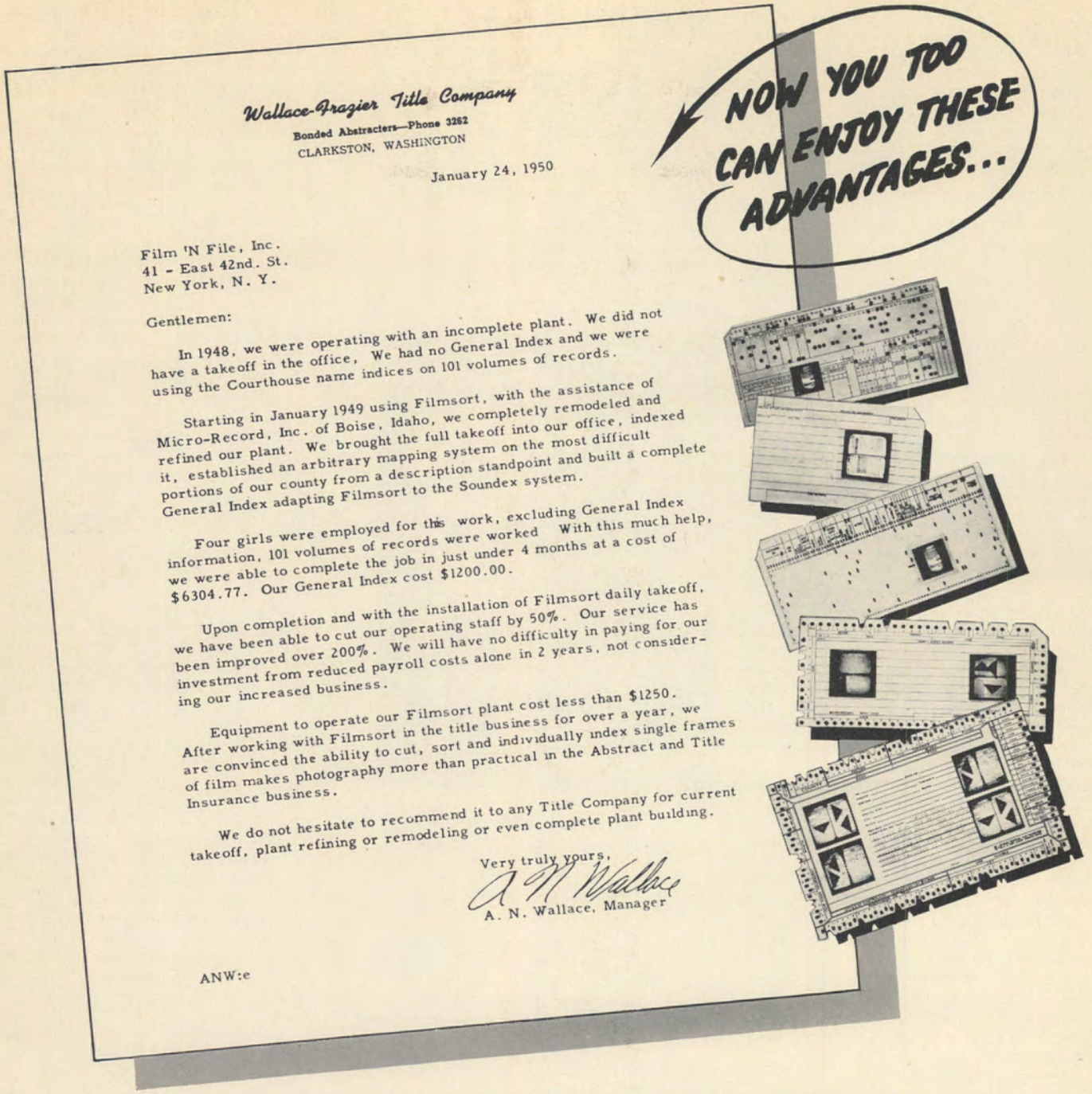
MR. GLASSON: Bill, there is merit in this proposal, not necessarily as to post cards but as to complete advertising campaigns. As you doubtless know, bankers and building and loan leagues have staff advertising men who are continually laying out advertising programs for their members. These campaigns, thus bearing the professional touch, are in my observation, quite effective. I know of no reason why the title men could not do likewise. But I think it would be unfair to ask our Advertising and Publicity Committee, composed of busy men with many duties of their own to perform, to go to the work of laying out such a campaign. I know that our present committee is perfectly capable of doing this job, but I would imagine that it would be more of a chore than we have a right to ask of them.

MR. PULLEN: I don't presume to speak for the Committee on such a campaign as Earl suggests, but I believe a simple card with an advertising slogan would do a job for any abstract company in any part of the country. A pamphlet on the subject, is quite a different matter. You probably will recall that an excellent job was turned out some years ago by Jane Sumner of Austin, Texas. That was fine in Texas, but as I recall, abstracters in other states held that it was not applicable to their conditions without a thorough revamping.

MR. HUMPHREY: It appears that it would be difficult to produce an item which can be standardized on a national basis, due to different practices, nomenclature, etc. Perhaps the idea can be described completely enough in Title News or the A.T.A. Bulletin Service so that it could be adapted by individual companies. Paul, you're probably tops in the field of title advertising copy-writing. Perhaps you could suggest a few messages which would be suitable for such cards.

MR. PULLEN: You woudn't put me on the spot, would you, Harvey? Let's see: "Before you close that real estate deal, it would pay you to use this company in connection with your abstract work. It may save a hitch in an important deal." Or "With an abstract prepared by us and examined by a competent attorney, you may feel safe in purchasing real estate or lending money on real estate security." Again "An abstract of title obtained through us imparts security to any real estate transaction. Be sure to have one of our abstracts of title before buying any real estate." There are just horseback samples and I know we could do much better by giving the idea more time and thought.

MR. SHERIDAN: Let me say right here, Harvey, that if Paul could **not** come up with some good ideas for copy, I would really be surprised. But, gentlemen, in thinking of such a program, I would like to emphasize something which Harvey touched on briefly a while ago. Most of our members are very busy these days. They don't have the staff to dig out, from



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all the recordings of the day, information to determine whether grantees did or did not place an order for title evidence. Where there is local competition, the situation becomes even more difficult. To determine that **no** order had been given to either, or any, of the local title companies, would mean that each such firm would have to check the recordings against their own order book—and then get together with the other companies and the respective lists in some central office. I have some doubt that our members would care to divulge their file of orders to their competitors.

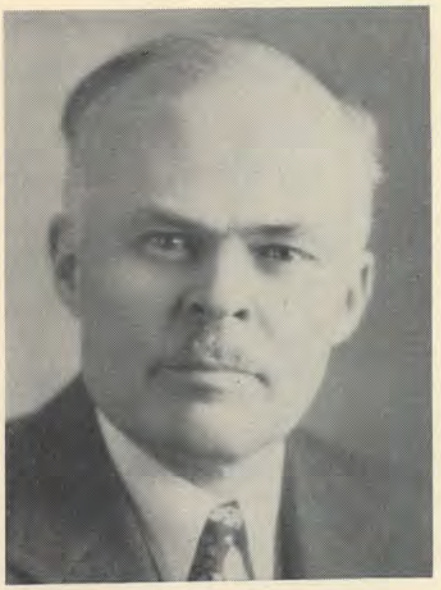
However, let's come back to what appears to me to be one of our biggest problems; namely, the suggestion which has been made regarding legislation requiring the address of the grantee on deeds, in order to make them eligible for recordation. Some time ago I put out a bulletin to state association presidents and secretaries and to key people, in states where we have no affiiliated state associations, asking them to notify us whether they have such a statute in their states. I should like to ask Floyd Cerini, who has some very pertinent ideas on this subject to give us the benefit of his thoughts.

MR. CERINI: O.K., Jim. We have no such statute in California and I believe that we would oppose the passage of any such legislation unless the legislation contained a savings clause to the effect that the deed or other instrument, if accepted for recordation and recorded, would constitute constructive notice notwithstanding that an incorrect address may have been set forth in the deed, or that the address was omitted therefrom. In 1945 we successfully opposed legislation requiring that the address of the grantee be set forth on the deed in order to entitle the instrument to recordation because we were of the opinion that if an incorrect address be given, the instrument might not constitute constructive notice.

We were also fearful that our recorders might accept a deed for recordation which omitted the address. If we failed to notice the omission, we might be behind the eight-ball since the instrument would probably not constitute constructive notice. As a matter of principle, I would personally dislike to see such a requirement in our recording statutes. I believe a private citizen acquiring property should not be required to make his address available to anyone who may want to look at the records because it exposes him to being included on various "sucker lists" and to personal solicitations from real estate agents, brokers, and others.

Insofar as the title companies are concerned, we in Calofirnia find that in the majority of cases, we are able to at least obtain the mailing address of the grantee, since each instrument presented for recordation is generally accompanied by a request that it be mailed to the grantee at a specified address after recordation. This request and the address given does not, of course, become a matter of public record.

MR. SHERIDAN: I believe Floyd's points are well taken. Many people, representing important money, just don't want addresses made known, in cases where they may be trying to assemble a block of land. There is also the question of our liability under a title policy, by reason of an address incorrectly shown. I will quickly admit that there isn't a great chance



H. C. HICKMAN
The Boulder County Abstract of Title Co.
Boulder, Colorado

of loss for any of us on this point, but I will also claim that anything and everything which adds an additional step to procedure opens the door to greater liability and thus the possibility of loss.

However, I want all of you to know that I have no absolutely fixed notions on this subject and, certainly, I have no thought of wishing to block an advertising campaign of any kind. To my way of thinking, our situation is somewhat like a man whose eyesight is half gone. He should have started using glasses back in the days when he started slipping from 20-20 vision. All of us know that, taking our profession by and large throughout the country, insofar as advertising and public relations work are concerned, we are doing little, very little.

MR. GILL: After hearing all of this discussion, it seems to me that as far as we should go would be to put some pertinent suggestions in a future issue of the Title News, calling to the attention of abstracters and title insurance companies the fact that business is being lost, where title is acquired by those who do not secure proper title evidence. The best way of reaching that class of people is problematical. I might prefer to write a letter or send a post card to each person acquiring a property, as reflected by our County Clerk's "Reception Record" which gives the name and address of each party filing the conveyance. I might want to try and educate the banker and the real estate dealer on the danger of not acquiring proper title evidence for his client.

I might even want to secure a list of property owners in my County from our Tax Assessor and mail them a card or letter warning them of the danger, etc., hoping thus to pick up a few orders from parties who have purchased without proper title evidence. **You** might have other ideas as to a better approach. Take cities like Los Angeles, Chicago, Philadelphia, etc., it appears the cost of either a card or a letter or the use of mailing list would be prohibitive. Their approach to this problem could well be newspaper advertising, billboards, radio, etc.

About all we can do, keeping in mind different conditions and size of localities, etc., would be to present the general idea to our membership and let each individual member use his own ingenuity in handling the problem in his community. Sheridan could ask also what our members have done in an effort to secure this type of "lost business" and again, at a future date, carry those ideas in the Title News. He probably would get only a few, if any, suggestions, but at least we would have demonstrated our desire to be of help.

MR. SHERIDAN: That sounds logical to me, Bill. As a result of the inquiry to the representative state associations, which I mentioned earlier, we are getting some material which is proving useful. When we have enough, I can probably issue a bulletin on the subject.

MR. HUMPHREY: I feel that Bill Gill, in expressing his opinion, probably has pretty well summed up the thinking of the Planning Committee. Speaking for the Committee on Advertising and Publicity, the thoughts expressed in this discussion should be of value to the members from an advertising standpoint. Have you any further thoughts, Harry?

MR. BRYAN: Yes, I wish to express by appreciation for the helpful ideas from all corners of the country which have been expressed here. Through the presentation of such experience by members of The American Title Association we are thus educated on the various problems in our business and the solutions which others have worked out. The Board of Governors deserve praise for their foresight in stimulating the assembling of advertising and publicity material and ideas, developed to meet the numerous problems of our companies in the nation's 3,100 counties.

OUTLINE

"Title Standards for Attorneys and Abstracters"

JESSE E. MARSHALL

Attorney
Sioux City, Iowa

I. INTRODUCTION. History, Social and Economic importance of real property.

1. Meaning of "Title." (1) Ownership, (2) Means of proof, or evidence of ownership.
2. Before art of writing became common, proof was by a symbolic or physical act; "Livery of Seisen" in "freehold" estates; "Entry" for estates for years. No writing necessary until Statute of Fraunds (29 Charles II, 1677).
3. Recording. In spite of many efforts by Parliament, recording is not essential in England today, and title is proved by inspection of the original instruments. Universal practice in America is registration or recording.

II. ABSTRACTS

1. Definition. "A summary of the most important parts of instruments composing evidence of title." (Stevenson v. Polk, 71 Ia. 278, 32 N.W. 340).
2. Purpose. To furnish a prospective purchaser or encumbrancer with the necessary information upon which to base his decision.
3. Scope. Depends upon "Caption" and "Certificate."
4. Liability of Abstracters. Contractual. Liable to person for whom it was made, for failure to use ordinary skill (Russell v. Polk County Abstract Co., 87 Ia. 233, 54 N.W. 212). But may be liable also to a purchaser where prepared for his use, even though paid by seller. (Thomas v. Schee, 80 Ia. 237, 45 N.W. 539).

III. Matter on which Abstracter and Examining Attorneys should have common standards.

1. History of Attorneys' "Title Standards" (1944—Annual Revisions).
2. "Marketability"—what it is; to be determined by attorney and not abstracter.
   "So free from doubt that a court of Equity would compel a purchaser to accept it in a suit for specific performance." (Patton, Sec. 30).
3. Nature of Recording Acts.
   (1) "Race for the Record" rule —at common law, and in most states.
   (2). "Subsequent Purchaser" rule — Iowa rule; based on equity. (Sec. 558.41, Code '46. "No validity against subsequent purchaser.")
4. Indices. Alphabetical or Numerical. In most states indexes are alphabetical. Instruments outside "Chain of Title" do not impart notice. (Gardner v. Jaques, 42 Ia. 577. Patton, Iowa Title Examinations. Sec. 49.)
5. Is an Index a part of the record? Not unless made so by statute, and in general it is not. But in Iowa and some few states it is. Sec. 558.55, Code 1946). An instrument does not impart notice even though recorded, if not properly indexed. (Thompson "Titles to Real Property." Sec. 132; Whalley v. Small, 25 Ia. 184; Barney v. McCarty, 15 Ia. 510; Howe v. Thayer, 49 Ia. 154.)
6. Should an instrument be shown on abstract, if recorded but not entitled to record, or which does not impart notice? Only instruments executed and acknowledged as provided by statute are entitled to recording (Secs. 558.39, 558.41, 558.42, Code 1946). "Most Recorders would record a restaurant menu, if offered and fee paid."
7. Safe rule is to show on the abstract any instrument that is indexed and reasonably describes the land, even though (1) not entitled to record, or (2) is outside the chain of title ("wild deed.")
8. Doctrine of "Inurement." An after-acquired title by the grantor "inures" to the grantee where the grantor purported to convey the particular interest. The doctrine rests on "estoppel." It does not apply where the grantor conveys only "all my right, title and interest," or quit claims. Sometimes said to depend on warranties. (Patton, pp. 232-240.)
9. Necessity for showing Patent from United States. Source of title from the Government is necessary even though the statutes of limitations have run as against all other owners, because such statutes do not run against sovereignties, unless expressly stated. (Thompson, Sec. 752.)
10. City and Town Plats. Is an abstract beginning with a plat sufficient? "Title Standards" accept such abstracts if the Plat is of record since January 1, 1920, in accordance with Sec. 592.3, Code '46, which is a valid limitation act.
11. Articles of Incorporation. Should they be shown? Notunless there is some limitation in the Articles as to the right of the corporation to deal in real estate. If they are recorded and there is any reasonable question, they should be shown on the abstract. If not recorded, one dealing with the corporation may presume its officers acted within their authority. In the case of municipal corporations and non-business companies, specific authority should be shown of record. (Title Standards.)
12. "Curative Acts," and "Statutes of Limitations." These are are widely misunderstood, both by attorneys and Abstracters. A "Curative Act" may cure past irregularities which the Legislature could have waived, but cannot impair "vested" rights. A "Limitation Statute" bars any rights which are not asserted within a limited time. Such acts are valid if not unreasonable. (See discussion. Swanson v. Pontralo (1947) 238 Ia. 693, 27 N.W. (2d) 21.)

13. Lis Pendens. Any action "affecting" real estate is required to be indexed, and such indexing constitutes constructive notice. (Secs. 617.10, 617.15, Code, '46). It is important to identify descriptions on account of carelessness of plaintiffs' attorneys — house numbers — legal descriptions.

14. Deeds and Conveyances containing easements and restrictive covenants. Should be set out carefully, since these "run with the land."

15. Zoning and Restrictive Ordinances, regulating use, occupancy and improvements; should be set out. (Iowa Title Standards.)

16. Should attention be called to payment of a judgment or taxes by a stranger be noted? Ordinarily, no.

17. What about instruments filed with the deliberate attempt to cloud titles, such as affidavits asserting an adverse claim? Unless authorized to be recorded, may well be ignored by Abstracters. (Secs. 558.8, 614.17, Code, '46.) In some jurisdictions known as "caveat." If in doubt, show them.

IV. CONCLUSION

1. Examining Attorneys and Abstracters have much in common, but must keep their functions separate.

2. Abstracter must know enough about titles to recognize the "danger signals." Reasonable doubts should be passed to the examiner.

3. Continuous and close cooperation will be of mutual benefit to both professions.

Wage and Hour Law

By GEORGE A. FISHER

Vice-President
American-First Trust Co.
Oklahoma City

George A. Fisher, American-First Trust Company, Oklahoma City, has answered our request for an article regarding the Fair Labor Standards Act of 1949 as it affects abstracters, with the following:

"I have been watching the Act since the time when it was first under consideration by the Houses of Congress and while I do not pretend to be an authority on the subject, I have formed some opinions on certain portions of the Act which I will be pleased to submit to the Titlegram for consideration and perhaps publication.

"I fully recognize the fact that abstracters in our small communities prepare abstracts which often pass through the United States mails and end their interstate journeys in the files of lending institutions in other states. I am also cognizant of the fact that there has been a ruling by a lower Federal Court that insurance policies, lawyers' briefs, stocks and bonds, and accountants' reports and accounts furnished by their originators to customers or clients in states other than the state of origin, are goods produced for interstate commerce and thus that the businesses of the originators are subject to the provisions of the Act. Abstract companies in small cities, however, ordinarily do by far the greater portion of their work in response to local orders. It seems to me, therefore, that such institutions should within all reason come under the exemption of 'service trade' classification within the definition of the act 'more than 50 per cent of whose annual dollar volume of services are made within the same state' and '75 per cent of whose annual dollar volume of sales is not for resale.' It would, in my judgment, require a very strained construction of the law to hold that an abstract passing in a real estate transaction, from one owner to the other, was being 'resold'. The abstract ordinarily is furnished by the seller of real estate to the buyer as a part of the administration incidental to the transaction and no charge for the abstract is ordinarily added to the sale price.

"The above conclusions are based mainly upon mere logic and legal reasoning both of which have frequently, during the past several years, failed to enter into many Federal interpretations and rulings. In their attempt to expand the ever-growing power of the Federal Government, the Department of Labor and other Federal instrumentalities have strained the definition of interstate commerce in their favor to the point of absurdity. In the year 1932, for example, my professor of Constitutional Law at the University of Oklahoma solemnly expounded the principle that the power to legislate could not be delegated by Congress. Since then we have seen practically all of the constitutional law which was then taught fade away to be replaced principally by the orders and decrees of bureaus, commissions and individuals. I am, therefore, forced to qualify my remarks as to whether or not the local abstracter is covered by the Act with the uncertainties and vagaries which all too often characterize the opinions of members of my profession.

"With the approval of the Fair Labor Standards Administrator, a company subject to the act, may obtain certificates from the Administrator authorizing them to employ apprentices, learners and handicapped persons at a beginning wage of not less than three-fourths of the basic starting wage paid other employees in the company concerned. Of course, the least that basic starting wage could be is 75 cents per hour as provided by the act. Therefore, 56¼ cents an hour, being three-fourths of 75 cents per hour, would be the minimum starting wage on an employee of whom a certificate of handicap or apprenticeship could be obtained. It is considered very doubtful that the Administrator would permit these certificates to run for a period of more than six months. It is considered almost a certainty that the obtaining of such certificates would involve inspections by the Wage and Hour Division of the Department of Labor and that the incidental reports and administrative costs would far outweight any savings realized by the classification of a new employee as 'handicapped', 'a learner' or 'apprentice'. My only suggestion is that if a prospective employee isn't worth 75 cents an hour, he or she not be hired.

"Under the new law minor messengers whose primary duty is that of delivering letters and messages are exempt. I have been unable to find any cases, either at law or by the decree of the Wage and Hour Authorities, which state that an abstract or a title guaranty are 'letters'."

Report of Judiciary Committee

RALPH H. FOSTER, *Chairman*

Vice-President
Washington Title Insurance Co.
Seattle, Wash.

RACIAL RESTRICTIONS

McCUNE GILL, Vice-President, Title Insurance Corporation of St. Louis, reports a decision by the Supreme Court of Missouri of interest to title men generally. All title men will recall recent decisions by the Supreme Court of the United States precluding the enforcement of racial restrictions by the federal or state courts, but holding the enforcement of such restrictions by other means as not prohibited by the federal constitution. After those decisions were handed down a question as to whether an owner of real property under a deed containing covenants against sale to, or occupancy by, persons other than of the White race could recover damages against the owner of another parcel of land, under deed containing the same covenants, for breach of the covenants by sale to a person other than of the White race. The Supreme Court of Missouri answered the question in the affirmative in Weiss v. Leaon, 225 SW 2nd 127.

Mr. Gill has reported also the following cases:

DEED RECORDED AFTER DEATH

Deed of gift delivered to grantee by grantor reserving life estate in grantor is valid and is not a testamentary deed even though it says that it shall be effective from and after the decease of grantor and even though it was recorded after grantor's death. This is contrary to previous decisions. (Barker v. Barker, 219 SW 2nd 391.)

Where two reasons are given for a court decision, both are precedents and neither is obiter dictum. (Woods v. Interstate, 69 S. Ct. 1235.)

DECISIONS OF COURT, PRECEDENT

Separate apartments can be conveyed in fee to different persons and public portions of building in common. House can be conveyed separately or as personal property. Woods v. Petchell, 175 Fed. 2nd 202.)

RENT CONTROL, MISSOURI

The State of Missouri can pass a rent control statute under its police power and can delegate its power to a city, but a city cannot pass such an ordinance without such delegation. Tietjens v. City, 222 SW 2nd 70.)

RENT CONTROL, DELEGATION

The Congress of the United States can pass a rent control statute under its police power and can delegate its power to a state or city. (Tietjens v. City, 222 SW 2nd 70.)

DEED AS MORTGAGE

An absolute deed can be decreed by court to be a mortgage or conditional sales between parties to be satisfied by payment and conveyance back. (Stafford v. McDonnell, 224 SW 2nd 951.)

Title men interested in United States judgments and liens will find it worth their while to read an address on that subject made by Mr. Gill on September 5, 1949, before the Real Property, Probate and Trust Law Section of the American Bar Association and printed in the St. Louis Daily Record of September 6, 1949.

HERMAN BERNIKER, Vice-President, Title Guarantee and Trust Company of New York, reports the following decisions:

PARTNERSHIP

It is well settled that real estate which has become partnership property becomes converted into personalty to the extent necessary at least to satisfy partnership debts and for the purposes of partnership equities. As to such property interests the parties become tenants in partnership and not tenants in common and an action for partition will not lie. (Kamphausen v. Townsend, N.Y. Law Journal, June 14, 1949, Page 2120, Column 6.)

WILL

A residuary disposition of personal estate will not operate upon real property not disposed of by the will. (Estate of Jane A. Hennessy. N.Y. Law Journal, June 29, 1949, Page 2289, Column 6.)

MAIL ORDER DIVORCE

A mail order divorce which is wholly void on its face, and without legal effect, could not be made the basis of estoppel even against the spouse who obtained such a divorce during the lifetime of the parties. (Matter of Ratschek, N.Y. Law Journal, July 8, 1949, Front Page.)

ADOPTION

Ordinarily an adopted child is not deemed the issue of a testatrix. (Matter of Semon, NY. Law Journal, August 9, 1949, Page 229, Column 6.)

CONDEMNATION

Condemnation of real property specifically devised works an ademption and precludes the specific devisee from taking the condemnation award. (Matter of Mary K. Seaver, dec'd, N.Y. Law Journal, July 27, 1949, Page 158, Column 2.)

LANDLORD AND TENANT, AERIAL

A tenant has no legal right, without the landlord's permission, to erect or attach a television aerial to the outside frame of a window of his apartment. 5701 Fifteenth Ave. Realty Corp'n v. Rosenberg, N.Y. Law Journal, October 24, 1949, Page 963, Column 1.)

GEORGE A. FISHER, Vice-President, American-First Trust Company, Oklahoma City, reports the following cases:

HOMESTEAD

The homestead right, with its exemptions from forced sale, cannot originate without the existence of a family consisting of more than one person; yet when the homestead character has once attached, it may continue for the benefit of a single individual who is the sole surviving member of the family. Filtsch v. Curtis, Oklahoma Bar Journal, April 15, 1950, Vol 21, No. 14—530.)

SERVICE OF SUMMONS

Where a judgment recites valid service of summons, same cannot be held void on its face for failure of process unless such recital is positively contradicted by, and in irreconcilable conflict with, the judgment roll. McGee v. Campbell et al, Oklahoma Bar Journal, April 15, 1950, Vol. 21, No. 14—533.)

REMAINDERMEN

Tit. 60 O.S. 1941, Paragraph 41, provides that "when a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the re-

mainder so limited to them, and not as mere successors of the owner for life." Held, where deed conveyed land to C "for her lifetime with remainder over to the heirs of her body," and C at the execution of the deed had living child or children, that such child or children took a contingent remainder. (Whitten et al v. Whitten;—Morris v. Morris, Oklahoma Bar Journal, April 15, 1950, Vol. 21, No. 14,—536.

JOHN T. HON, Vice-President and Counsel, Southern Title & Trust Company, San Diego, reports the following cases:

DEED, VOID

A deed is void if executed in violation of a city ordinance prohibiting the division of land into areas less than that prescribed by such ordinance even though the ordinance does not make the deed void for such violation. (Clemons v. City of Los Angeles, 35 A.C. (No. 2), 37.)

PROBATE

A probate sale of real property is not a judicial one unless it is made on an express order of the court. Where the notice of sale stated that the property would be sold subject to taxes and assessments the purchaser was entitled to receive the property free from **any other** encumbrances. In this case the decision of the court required the payment of a deed of trust on the property. (Mains v. City Title Insurance Company, 34 A.C. (No. 30), 657.)

FEDERAL TAX LIEN

A federal tax lien is inferior to the lien of an attachment previously levied by a creditor of the taxpayer. The notice of the federal tax lien was recorded in the County Recorder's office subsequent to the levy of the attachment. (Winther v. Morrison, 93 A.C.A. (No. 9), 751.)

JOINT TENANCY

Property held in joint tenancy by husband and wife was effectively transmitted into community property upon the execution of a joint will in which the parties agreed to such conversion and where the will showed that such was the intent of both spouses. This decision illustrates the necessity of ascertaining the existence of a joint will upon the death of a joint tenant. (Chase v. Leiter, 96 A.C.A. (No. 5) 468.)

TENANCY IN COMMON

An agreement between husband and wife executed by the spouses prior to their divorce which gave one party the sole right to sell the property, held by the parties in joint tenancy, for a specified sum, and which also gave the other party the exclusive right of possession in the interim, converted the joint tenancy of such spouses in the property into a tenancy in common. The court held that these provisions of the agreement destroyed two of the unities essential to the existence of a joint tenancy—to-wit, unity of interest and unity of possession. Pike v. Pike, 93 A.C.A. (No. 3), 319.)

W. E. ATWELL of the law firm of Atwell & Atwell, Stevens Point, Wisconsin, reports the following case:

JOINT TENANCY

A testator may not dispose of his interest in the homestead of himself and his wife held by them as joint tenants, and life insurance policies payable to the wife cannot be charged with bequests, but if the widow is put to an election under the will and elects to take under the will, she is barred from claiming title as a surviving tenant in the real estate and from claiming absolute ownership of the funds derived from the policies assigned to her. Under this decision an abstractor will often be called upon to show probate proceedings in an abstract covering real property held in joint tenancy. (In Re: Schaech's Will, 252 Wis. 299; 21 N.W. (2nd) 614; 33 N.W. (2nd), 319.)

RUSSELL A. CLARK, Executive Vice-President, Title Guaranty Company of Wisconsin, reports the following case:

REVERTER

Plaintiff in the lower court had conveyed about an acre of land to the school district by deed containing provision for reversion in the event the school district should cease to use the land for school purposes. The son of the plaintiff, who had purchased the farm out of which the acre had been taken, signed statements that he would not take recourse to recover the property on which the building was located. Thereafter the school district was consolidated with another district and the consolidated district passed a motion authorizing the school board to remove or dispose of the school house. Thereafter plaintiff wrote a letter to officers of the school district claiming the property, and the school board then passed a motion that the property be retained for a district park and playground. There having been no re-entry or some unequivocal act of the grantor to indicate his claim to the property by virtue of his rights as a result of a breach of condition subsequent, it was held that the action of the school board in dedicating the land for park and playground purposes showed an intention to use the property for school purposes. (Koonz, Appellant, v. Joint School District No. 4, Village of Gresham, Respondent, 256 Wis. 456.)

C. O HON, President, Title Guaranty & Trust Co., Chattanooga, reports the following case:

ESTATE OF ENTIRELY

Where husband and wife owned property as an estate by the entirety. a sale made to satisfy drainage assessments in which the wife was not served with process was void even though she may have had knowledge of the proceedings. (Johnson et ux v. McKinney et al, 222 S.W. Second Number Six (6), page 879.)

LAURENCE M. TRUITT of Ottumwa, Iowa, reports the following cases:

NOTARY CERTIFICATE

A notary's certificate is not conclusive. Where an instrument bears a notarial certificate of acknowledgment, burden is upon persons challenging statements contained in certificate to prove his contention by clear, satisfactory and convincing evidence. (Nissen v. Nissen Thampolline Co., Iowa, 39 N.W. 2d 92.)

DOWER

Where wife's dower interest in realty had been terminated by divorce, she was not entitled to cancellation of a deed which husband had previously fraudulently procured from her. Divorce decree terminated wife's dower interest. (Nissen v. Nissen Trampoline Co., Iowa, 39 N.W. 2d 92.)

WILL, STATUTORY TAKING

Rejection by widow of income from testamentary trust and election to take statutory share instead did not work an acceleration of the remainder or termination of the trust. Loss by reason of said election is spread ratably over each gift of income and remainder. Bening v. Erscheid, Iowa, 39 N.W. 2d 299.)

LAWRENCE L. OTIS, Vice-President and Chief Counsel, Title Insurance and Trust Company, Los Angeles, reports the following federal court case:

TENANTS IN COMMON

H & W, respecting old and new community real and personal property (i.e., some acquired before 7-29-27 when wife's interest was mere expectancy, and some after that date, when wife's interest was by statute declared to be a present, equal and existing interest (C.C. 161a)), in writing agreed that thereafter they should hold same as tenants in common, each owning an undivided half interest as separate property. On husband's death, Comm'r claimed that entire property was subject to the federal estate tax (26 U.S.C.A. secs. 811 (c) and 811 (d) (5). As to new community, the court held that said agreement did **not** constitute a transfer in contemplation of death for less than an adequate and full consideration, but in effect merely a release by him of his "agency," as the manager of the community, over her interest,

such agency **not** being an **interest** in the property; and that said sections require more than the termination of decedent's power of management and control. As to old community, the court upheld the tax on the theory that, in changing the interest of the wife in the property from a mere expectancy (70 L. Ed. 285; 80 F. (2d) 165) to a present interest as tenant in common, there **was** a transfer of an interest by the decedent (sec. 812 (b) (5); and that, under the evidence, the agreement was made solely to minimize estate taxes if the husband died first. "The motive to avoid estate taxes is obviously one that contemplates death." (Petition for certiorari filed December 20, 1949 by solicitor-general; No. 491 on docket of U.S. Supreme Court.)

(Rickenberg v. Comm'r, (9 Circ. Cal.) 177 F. (2d) 114.)

R. W. JORDAN, JR., Vice-President and Title Officer, Lawyers Title Insurance Corporation, Richmond, reports the following cases:

BUILDING RESTRICTIONS

Privately imposed building restrictions limiting the use of property to residential purposes are not superceded by a zoning ordinance designating an area for a neighborhood shopping center. (Ault et al. v. Shipley et al., 189 Va. 69; 52 S.E. (2d) 56.)

BUILDING RESTRICTIONS

Plaintiffs conveyed lots to defendants by deeds containing covenants by the grantees against the use of the lots for mercantile purposes without written consent of the grantors, or their heirs. Plaintiffs at that time conducted a mercantile business on a lot across a highway from the lots sold to defendants. Plaintiffs subsequently sold this business but sought to enjoin defendants from conducting a mercantile business on one of the lots bought from plaintiffs. It was held that the restriction was not a covenant running with the land, but one which could be released and that it terminated when grantors sold their business. (Allison, et al. v. Greear, et al., 188 Va. 64, 49 S.E. (2d) 279.)

ENCROACHMENT, EASEMENT

All the lots in Block 6 were conveyed to defendants by reference, without reservation, to the duly recorded plat of subdivision, "Ubermeer," Virginia Beach, Virginia, which plat showed a twenty-foot way dissecting, among others, Blocks 5, 6 and 7. Several of the buildings erected by defendants extended across this way. Plaintiff, who owned in Block 7 a lot abutting on the twenty-foot way, sought a decree compelling the removal of the buildings blocking the way. It was held that defendant's "right to the twenty-foot way was subject to an easement appurtenant to the lots bounded by the way." Plaintiff's "right to use the twenty-foot way is necessary to the enjoyment and value of her lots." (Lindsay, et al. v. James, 188 Va. 646, 51 S.E. (2d) 326.)

RESTRICTIONS, RACIAL

Plaintiffs and defendants were the owners of all property within Skyland, a Winston-Salem, North Carolina, residential section. The uniform plan of development included restrictive covenants, inserted in all deeds, expressly prohibiting sale or lease to Negroes for fity years. The area surrounding Skyland, all white at the time Skyland was first developed, is now owned and occupied by Negroes. The covenant in question had never been breached in Skyland. The plaintiff prayed relief in equity on the grounds that the covenants were burdersome, caused irreparable damage, and constituted a cloud on title. It was held "The changed conditions outside the development afford no grounds for relief. Those who purchase property subject to restrictive covenants must assume the burdens as well as enjoy the benefits, . . ." A radical change in the ownership, use, and occupancy of the property immediately surrounding and adjacent to the restricted development affords no grounds for equitable relief against the pleaded covenant when there has been no breach thereof within the covenanted area. (Vernon et al. v. R. J. Reynolds Realty Co. et al., 226 N.C. 58, 36 S.E. (2d) 710.)

BUILDING RESTRICTIONS

A one-story four-family apartment building permitted by zoning regulations is not violative of a privately imposed restriction, providing that only one residential building shall be erected on any lot. (Jernigan v. Capps et al., 187 Va. 73, 45 S.E. (2d) 886.)

CONDENMATION, PARKING LOT

Acquisition of land for a parking area "to relieve congestion in the use of streets and to reduce hazards incident to such use" constitutes a public use and private property may be condemned for such purposes. (City of Richmond et al. v. Dervishian et al., Va. ..... ; 57 S.E. (2d) 129.)

TAX FORFEITURE, MARKETABILITY

CLINTON I. EVANS, Manager, Camden Branch, Lawyers Title Insurance Corporation, Camden, New Jersey, reports an interesting case involving marketability of title claimed under deed pursuant to sale under the In Rem Tax Foreclosure Act of New Jersey. The defendant refused to complete his purchase on the ground that title was not marketable and the City of Newark sued for specific performance of the defendant's contract of purchase. It was conceded that the proceedings were regular under the Act. The court held the title to be marketable. The decision is too long to do it justice in this report, but is well worth reading by any title man interested in the questions involved. (City of Newark v. William Yeskel, (69 Atl. 2nd 355.)

O. B. TAYLOR, President, Mississippi Title Insurance Company, reports the following:

DEED OF TRUST, FUTURE ADVANCES

A deed of trust to secure future advances and materialmen's liens on the building arising during the course of construction thereof is entitled to priority only to the extent that the money secured thereby was actually used in paying for the construction of the building. (First National Bank of Greenville v. Virden, et al., Mississippi Supreme Court, March 27, 1950.)

For another case to the same effect, see North v. McClintock, Inc., 44 So. 2nd—412.

THOS. J. McDEMOTT, Secretary, Guarantee Title Co., Mansfield, Ohio, reports the following:

ADVERSE POSSESSION

Claimant of an easement by the doctrine of tacking can add the number of years of use by his grantor to that of his own in order to establish twenty-one or more years adverse use. Grace v. Fuller Auto Co., 37 O.O. 511 (C.P.)

CONTRACTS

Time is not of the essence of a contract for the sale of real estate unless made so by the contract of the parties. O'Brien v. Bradulov, 51 O.L.A. 343 (App.).

COVENANTS

Equity will grant injunctive relief in violation of restrictions in the chain of title of a property owner where it is shown that the property was purchased with knowledge of a general building plan or scheme for the improvement of the subdivision in its entirety designed to make such subdivision more attractive for residential purposes. Smith v. Volk, 53 Abs. 432 (App.).

DEATH

Unexplained absence for seven years raises a presumption of the fact of death but not as to the precise time of death; in the absence of definite evidence to the contrary the presumption is that such person is dead

at the end of seven years. Thompson v. Parrett, 82 App. 366, 38 O.O. 42.

DEDICATION

Resort may be had to a declaratory judgment by a spouse when it will serve some practical end in quieting or stabilizing an uncertain or disputed jural relation, growing out of a ceremonial marriage, when the competency of one of the parties to enter into such relationship is in dispute. Seabold v. Seabold, 84 App. 83, 39 O.O. 112.

DECLARATORY JUDGMENTS

A dedication and acceptance of private property for a public use may result from the use of such property by the public, with the silent acquiescence of the owner, for a period of time sufficient to warrant an inference of an intention to make such dedication and to constitute such acceptance. Doud v. Cincinnati, 152 O.S. 132, 39 O.O. 441.

DEEDS

A deed executed by an insane person is not void unless the person is so bereft of reason as to make him incapable of giving even an imperfect assent to the transaction. Fissel v. Gordon, 54 Abs. 223 (App.).

DESCENTS AND DISTRIBUTION

To legitimatize an illegitimate child it is necessary that the natural father marry the mother and acknowledge the child to be his, and a mere acknowledgment by the natural father, without marriage to the mother, does not enable the child, under the statutes of descent and distribution, to inherit either from or through the natural father. Blackwell v. Bowman, 150 O.S. 34, 37 O.O. 323.

DIVORCE

A court has no jurisdiction to reopen a divorce case allowing alimony and modify its former decree approving and confirming a separation agreement where the judgment awarding the orignal alimony is a final determination of the rights of the wife and there is nothing within the judgment entry to indicate any purpose of the court to maintain a continuing jurisdiction. Joshua v. Joshua, 53 Abs. 561 (App.).

The estate of the husband is not liable for installment payments of alimony and support for the period after the death of the husband, unless the parties have so agreed and the agreement is approved by the court and is incorporated in the decree. Platt v. Davies, 82 App. 182, 37 O.O. 533.

A divorce decree, incorporating a separation agreement of the parties, which agreement provides for the payment of weekly support money for their children until they reach the age of eighteen years, constitutes such a judgment that execution may be levied thereon for past due installments without first carrying into separate formal legal judgment the total amount of the installments then due under the terms of the decree. Bush v. Bush, 82 App. 255, 37 O.O. 564.

DOWER

Under the law of Ohio, the surviving spouse of a tenant in tail has no dower interest in the entailed premises. Miller v. Miller, 52 O.L.A. 121 (C.P.).

EASEMENTS

The continued and uninterrupted use of a tract of land of another for twenty-one years, or more, by the owner of the adjoining land, for driveway purposes and a more convenient ingress and egress to his own land, not having been authorized by express permission or license by the owner of the servient estate but merely acquiesced in by him, ripens into a prescriptive right to its use as an easement in favor of the owner of the dominant estate. Sting v. Rothacker, 82 App. 107, 37 O.O. 454.

ESTATES

Where, under the provisions of her will, a testatrix gives all of her property to her husband for life with an absolute power of sale and power to consume the proceeds, the remaindermen take a vested remainder subject to the life estate and subject to being divested under the power of sale. Rippel v. Rippel, 38 O.O. 501 (Prob.).

Where testator left certain real property, the income from which was to be shared by his widow, son, and daughter during his widow's lifetime, providing that the same could be sold in case of an emergency upon the united agreement of the beneficiaries with the son and daughter, or their heirs, to take share and share alike upon his widow's death, there is thereby created an executory devise as to the son and daughter with their respective interest to vest upon death of the widow. Smith v. Rees, 52 Abs. 417 (Prob.).

In a fee tail estate, the issue of the tenant in tail take forman doni from the person who first created the estate and not from their ancestor. Miller v. Miller, 52 O.L.A. 121 (C.P.).

EXECUTORS AND ADMINISTRATORS

Where a life tenant, with an absolute power of sale, enters into a contract for the sale of a part of the estate thereunder, but dies before its completion, his personal representative may exercise such power to complete the contract (G.C. §10509-224.) Rippel v. Rippel, 52 O.L.A. 33 (P.C.).

GAMBLING

Under the provisions of G.C. §5972, when premises are occupied for gaming or lottery purposes, the lease under which such premises are so occupied is void at the option of the lessor. Bredwell v. Carter, 52 O.L.A. 138 (App.).

HOMESTEAD

A homestead exemption set off to a debtor by metes and bounds under the provisions of G.C. §§11730 and 11736, is neither an assignable nor an inheritable estate, and the heirs of a deceased husband and wife, to whom such homestead was set off during their lifetime, have no legal title to the premises. Such homestead is a mere possessory right, personal to the debtor and his family and not a right running with the land. Morgridge v. Converse, 150 O.S. 239, 37 O.O. 486.

JUDGMENT

Both at common law and under the Ohio statutes the clerk of courts has no authority to receive money from the judgment debtor in satisfaction of a judgment. Schofield v. Cleveland Trust, 38 O.O. 392 (C.P.).

A court is without power to vacate a judgment after term, unless there is a strict compliance with the controlling (section 11631 et seq., General Code) statutory provisions. Grelle v. Humbel, 84 App. 277, 39 O.O. 411.

When a decree in a tax foreclosure suit is based on residence service alone and a deed is executed pursuant thereto, the decree and the deed may be set aside in a subsequent action in which it is alleged and proved that the decree is void for want of jurisdiction over the defendant's person because the summons was left at a place not in fact the defendant's "usual place of residence." Such a challenge is a direct attack on the decree and is not within the rule which forbids the collateral impeachment of judgments. Lenz v. Frank, 152 O.S. 153, 39 O.O. 451.

Material facts or questions which were in issue in a former suit and were there judicially determined by a court of competent jurisdiction are conclusively settled by the judgment therein so far as concerns the parties to that action and persons in privity with them and can not be again litigated in any future action between the same parties or privies. Murnane v. Spellman, 52 Abs. 569 (App.).

A court is without power to vacate a judgment after term unless there is a strict compliance with the controlling statutory provisions. (Sec. 11631 et seq. G.C.). Grelle v. Humbel, 53 Abs. 159 (App.).

The office of a nunc pro tunc order is to correct the record so as to cause it to show an act of the court which, though actually done at a former term, was not entered upon the jour-

nal. Squire v. Guardian Trust Co., 52 O.L.A. 218 (C.P.).

MECHANICS LIENS

In bankruptcy proceedings a mechanic's lien which became effective as of the date of the performance of the first labor and delivery of material, which was prior to the date of which the government acquired its lien for taxes by demand for payment, was prior to the lien of the government. In re Taylorcraft, 39 O.O. 132 (Fed.).

PROCESS

A misnomer in a service of summons, by the use of the word "company" in naming a corporate defendant, in place of the word "corporation" which is a part of the correct name of the defendant, may be cured by amendment, where there is no confusion as to the identity of the defendant and the party intended to be sued is served. Taylor v. Victor, 84 App. 236, 39 O.O. 292.

The seizure or sequestration of the property of a nonresident defendant which is required as the basis of jurisdiction through constructive service may be accomplished by any authorized act by which the court in proper time takes charge of the property or assets or asserts control over it. Francis v. Allen, 37 O.O. 362 (C.P.).

SPECIFIC PERFORMANCE

The seller under an executory real estate contract cannot be excused from specifically performing the terms of such contract because he is unable to furnish a clear title to the land described therein, for while the purchaser will not be compelled to complete the contract, unless the title is free from any reasonable doubt, yet he may elect to take a defective and partial title and be entitled to a specific performance of the contract so far as it can be enforced. Whitacre v. Hoffman, 50 O.L.A. 493 (App.).

SUBROGATION

A stranger or volunteer is not entiled to the benefit of subrogation and one who, in no event resulting from the existing state of affairs could become liable for a debt and whose property is not charged with the payment thereof and cannot be sold therefor, pays such debt is a mere volunteer. Reed v. Ramey, 82 App. 171, 37 O.O. 529.

TAXATION

Transfers of property without a valuable consideration substantially equivalent in money or money's worth to the full value of such property made within two years of death are deemed presumptively in contemplation of death and the burden is cast upon the transferee to prove to the contrary. In re Hildebrandt, 54 Abs. 142 (App.).

89X SALES

Where a mortgagee had undertaken to foreclose his lien upon premises which were sold at a tax forfeiture sale during the pendency of his foreclosure action, the doctrine of lis pendens is inapplicable and the purchaser obtains title free and clear of the mortgage lien. State ex rel. Squire v. Knapp, 53 Abs. 457 (C.P.).

VENDOR AND PURCHASER

Where a tenant is in open, notorious, unequivocal and exclusive possession of real property, under an apparent claim of interest therein, notice is thereby given to a purchaser of such property of any equitable right of the tenant in possession. Kemp v. Fedlman, 84 App. 154, 39 O.O. 173.

Where plaintiff agreed to transfer certain property to defendant in performance of his part of a real estate contract without specifying the character of the title to be conveyed, the law presumes that a marketable title free of all incumbrance was intended. Bagnoli v. Cleveland Trust, 84 App. 170, 39 O.O. 202.

Where plaintiff agreed to transfer certain property to defendant in performance of his part of a real estate contract without specifying the character of the title to be conveyed, the law presumes that a marketable title free of all incumbrances was intended. Bagnoli v. Cleveland Trust Co., 50 O.L.A. 558 (App.).

The purchaser of real estate under an executory contract becomes the equitable owner thereof and is entiled to all the benefits and assumes all the risks of ownership. Whitacre v. Hoffman, 50 O.L.A. 493 (Apps.).

The recording of a contract for the sale of real estate does not constitute notice thereof to a subsequent purchaser of the land covered thereby. Clotfelter v. Telker, 52 O.L.A. 268 (App.).

WATER AND WATERCOURSES

Subject to the paramount control by the United States of navigable waters and its power to establish harbor lines and regulations therein and subject to the title of the state, as trustee for the people, to the land under the waters of Lake Erie within the limits of the state of Ohio, and subject also to the control by the state of harbor lines, a littoral proprietor has an incorporeal property right to wharf out to navigable water for purposes of navigation. State ex rel. Squire v. Cleveland, 150 O.S. 303, 38 O.O. 161.

WILLS

Where, under the provisions of two testamentary trusts the corpus was to be paid to the "issue" or "children" of the life tenant, a person who claimed to be an adopted child of the life tenant by virtue of adoption proceedings instituted twenty years after the testators' deaths was not entitled to the trust funds because he did not come within the testamentary intent of either testator. Central Trust Co. v. Hart, 82 App. 450, 38 O.O. 88.

A will which uses the words "or her heirs" following a devise or bequest to a named devisee or legatee, contemplates a substitutive or alternative beneficiary, thereby preventing a lapse in case such named devisee or legatee predeceases the testatrix. Hewes v. Mead, 81 App. 489, 37 O.O. 328.

When, under the provisions of a will, an estate in fee is given the first taker in unequivocal terms, an attempt to give to others "all * * that shall remain unused" at the time of the death of the first taker, does not cut down, to a life estate, the fee first given. Gill v. Leach, 81 App. 480, 37 O.O. 311.

Where testatrix gave all of her property to her husband for life with an absolute power of sale together with the power to consume the proceeds, the remaindermen take a vested remainder subject to the life estate of the husband, and also subject to being divested to such an extent as it might be properly divested under the power of sale therein contained. Rippel v. Rippel, 52 O.L.A. 33 (P.C.).

Where a testamentary trust is created for a certain duration, the trust terminates at the end of such period although the trustee has such power remaining as is necessary to complete and wind up the affairs of the trust estate. Third Nat. Bank & T. Co. v. Reibold, 51 O.L.A. 513 (P.C.).

Section 10504-60, General Code, providing for a conclusive presumption of election, is not violative of due process, where the surviving spouse fails to elect by reason of continued insanity and his guardian fails to make application for a commission to elect, within the time provided by Section 10504-55, General Code. In re Iwinski, 83 App. 463, 38 O.O. 491.

Code of Ethics

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

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

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

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

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

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

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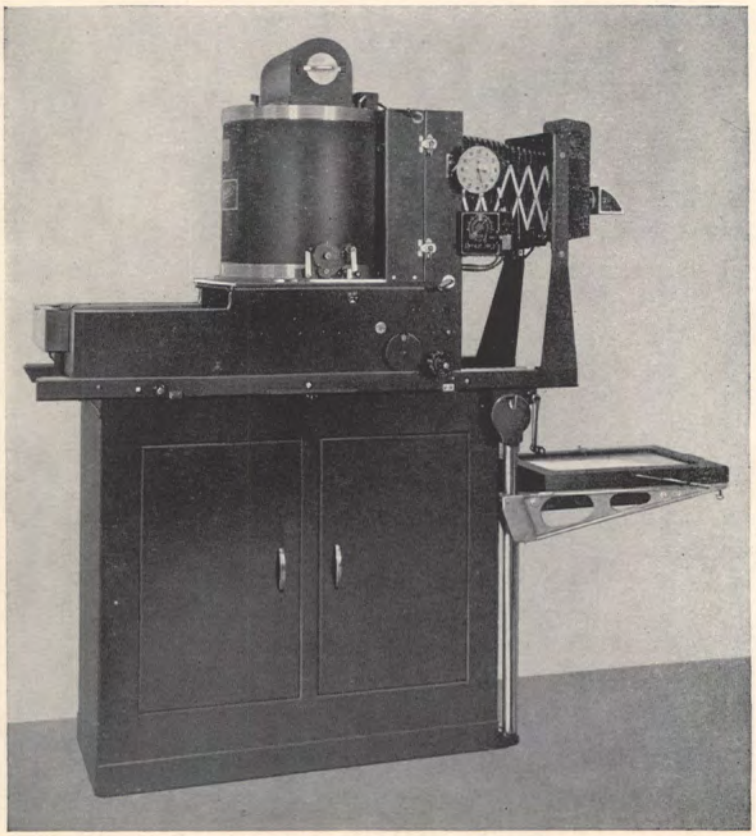

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