TITLE NEWS

Official Publication

THE AMERICAN TITLE ASSOCIATION

DO NOT REMOVE

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VOLUME XXX MAY, 1951 NUMBER 5

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We regret the delay in delivery of this issue of Title News, largely occasioned by circumstances beyond our control.—Ed.

TITLE NEWS

Official Publication of

THE AMERICAN TITLE ASSOCIATION

3608 Guardian Building — Detroit 26, Michigan

VOLUME XXX MAY, 1951 NUMBER 5

Under All the Land Is the Title

Address Delivered Before Portland, Oregon Real Estate Board

By EDWARD T. DWYER

Chairman, Title Insurance Section
American Title Association
Executive Vice President, Title & Trust Co.
Portland, Oregon

"Qui facit per alium, facit per se" is a maxim of the law of agency. This high sounding phrase reduced to plain English means "He who acts through another, acts through himself."

You gentlemen have, by appointing Ben Fleischman a member of your Program Committee, vested in him the power and authority to bring a speaker before you. If, by chance, what I should say to you today should prove uninteresting or not worthwhile, there are, as I see it, but two remedies at your disposal; the first, to fail to ask me to appear before you on another occasion; and the other, which in my opinion is a far better one—to fire Ben off your Program Committee.

I have known Ben for fifteen years. During the period of our acquaintanceship he has been engaged in the mortgage loan field and in the practice of law. In both capacities he has had much to do with checking records, both at the Court House and in the several title plants in the city. When an avowed expert such as he believes it possible to sit through twenty or thirty minutes of this, it might be that those of you who have never given this matter much thought can be sufficiently interested to justify my appearance and likewise Ben's optimism.

It is my purpose today to attempt to show you how the records that mean deals and commissions to you realtors are compiled.

"Under all the Land is the Title" is a phrase adopted by the American Title Association. Think that over for a minute—"Under all the Land is the Title." Realtors would starve to death attempting to make a livelihood selling land, the title to which was unmarketable.

About 25 years ago when I first started in the title business, I had occasion to deliver an Abstract to John Cronin, then one of Portland's big brokers. The Abstract was an Abstract on an industrial site up around Montgomery Ward's. My guess would be that it contained well over 300 pages. When I handed him the Abstract, he sat back in his chair and

EDWARD T. DWYER

whistled. This loud whistle was followed by this statement:

"By Gad, I will have no trouble selling this tract of land! Look at the size of that Abstract." John was too good a salesman for me to figure out whether he was serious or jesting. His statement, however, reminds me of a story I once heard about a Swede builder. This Swede was very successful. He had made a great deal of money. The only flaw in his system was that he estimated his jobs by the feel of the roll of blue prints. A man, who was familiar with this system and who had occasion to call for bids on a project of his own, was foxy enough to have his blue prints run on a lightweight paper. Needless to say, the Swede got the job and went broke trying to complete it.

Business men who are on their toes, I have noticed, are curious. They want to know how things are done. This is particularly true when the thing done concerns them. It is possible that many of you have wondered just how a title company goes about collecting the data contained in the Abstract you order for your client. Some of your customers seem to think that we are psychic, when we bring to light some skeleton they thought safely laid away and forgotten. We claim no superior intelligence. We do the things we do solely because it is necessary to do them. Even the best of us make silly mistakes that are both costly and embarrassing.

You no doubt are aware that the only method of tracing a chain of or history of title at the Court House is by running the indexes. For instances, in the title to this part of the City of Portland, we would look for encumbrances created by Lounsdale, the patentee under the Donation Act; judgments against him, and a deed out of him. This same process would be repeated as to his grantee. As I said before, this system may be all right in theory, but it doesn't work so well in practice.

For instance, Nellie Jones may be John Smith's grantee; Nellie marries Bob White. She may mortgage the property, go into bankruptcy, and thereafter obtain a divorce, in which decree of divorce her maiden name

was restored. Judgments may have gone against her married name but in conveying she might convey as Nellie Jones, a single woman. Unless, of course, the searcher had personal knowledge of these facts, he couldn't find this information which should be shown in a complete chain of title. Then, too, those making searches by this method have no means of finding curative matter. For once, they find their grantor, he is no longer run through the indexes.

A case came to my personal attention some years ago. Title came to Mrs. John A. Smith, let's say. Several years later John A. Smith and Mrs. John A. Smith conveyed out. An affidavit was called for by some cautious examiner to the effect that Mrs. John A. Smith, the grantor in the Deed out, was Mrs. John A. Smith the grantee, and that her true name was Lola; but in an old mechanic's lien recorded years before, Maurine claimed to be Mrs. John A. Smith, agreeing to pay a roofing bill and did not; hence the mechanic's lien against Maurine. It so developed in the investigation that Lola was the second wife. Maurine died several years previous in Hennepin County, Minnesota, leaving surviving her nine children, all fighting tooth and nail and all bitterly opposed to their father and foster mother. It will be seen that no device except a title plant would enable a searcher to catch items such as these.

To do away with this uncertainty some record searcher, because of laziness, no doubt, conceived the idea of making ledger entries against the land descriptions. From this beginning has been evolved the modern title plants, such as one sees in Chicago, Los Angeles, Philadelphia, and New York. I mention these cities, not because their plants are better than ours, but because they index hundreds of instruments affecting real property to our one. While in Philadelphia last July, I dropped into a title plant there, and on one judgment run they had picked up 83 judgments against one name. Don't misunderstand me, all these judgments weren't necessarily against the same person, nor against the owner, but the searcher through necessity had to take into consideration the initials and different spelling of that name. More about this later.

Now to get down to cases, I am going to take as an example an addition with which you are all familiar. Who among you hasn't sold a house or lot in Piedmont? This tract was patented to George Smith, which patent was recorded June 22, 1870. By mesne conveyances, the title came into the ownership of the Investment Company, which company on October 15, 1889, platted a subdivision known as Piedmont; this subdivision covers sixty blocks, aggregating some ..... lots. Unlike many of the platted tracts in this county this tract is platted out of a legal subdivision; and may I say that one of the reasons why plant building in the Willamette Valley Counties is so costly and difficult lays in the great number of Donation Land Claims in this vicinity. You know, of course, that the great difficulty in checking descriptions out of Donation Land Claims is that these descriptions are all metes and bounds descriptions, and in a great many cases the descriptions are not too accurate.

When we built our title plant in Clackamas County, despite the fact that we had all the recorded plats, we found it necessary to spend nearly $9,000.00 in making a set of accurate maps. While I have never personally had to begin running a description, the beginning point of which was on the west bank of the Willamette River where the steamer Hassalo whistles for the draw of the Steel Bridge, I have seen some nearly as indefinite.

At this point I would like to exhibit something which to you might appear to be the forerunner of a jigsaw puzzle, but it isn't. This map represents a tract of land in Marion County known as French Prairie. These outlines that you see are the outside boundaries of the Donation Land Claims. It will be noticed that these claims sometimes run through several sections. To keep an accurate record of all recorded documents affecting title to real estate, plant title companies must set up a ledger account for each tract whether designated by Lot and Block; Legal Subdivision, or Metes and Bounds.

Referring back to the plat of Piedmont, may I say that before this plat was filed the account was carried as a land account being found in the Southeast Quarter, Section 15, Township 1, North Range 1, East. When subdivided, a ledger account was opened up for Piedmont, this particular sheet represented Block .....

In our particular plant set-up all the liens are posted in red ink, all court work is set up in purple ink, deeds and other matters are shown in black. We find that it is a trifle more costly to do this way since it slows up the work of posting, but we feel that the added expense is justified.

It might come as a surprise to you that city liens are no longer posted on our tract books. This was done for years, but due to the variation in the life of the different liens, we found that the expenditure did not justify the result. Taxes are posted only after a delinquency of five years —the same reason is the basis for our action here. Suits affecting an interest in specific real estate are posted to the property, other suits to the name index. Divorces are posted to the name and also to the property, when shown. Affidavits likewise are carried in both accounts whenever they refer to real property. Estates are first posted to the general account; that is, the name index and to the property after the inventory is filed, if the inventory discloses real estate.

Omnibus deeds and mortgage are carried to the name accounts; as are, of course, articles of incorporation. Ordinances are in most cases posted directly to the property except in the case of a general ordinance such as the case of a set back line, and a zoning ordinance when these matters are shown in the initial or general page of the property account. Judgments, of course, are always posted against the name.

That word "Judgments," ladies and gentlemen, is one common enemy about which I would like to say a word—Section 2-1601 Oregon Laws 1930 reads as follows:

"Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket. At any time thereafter, while an execution might issue upon such judgment, and the same remains unsatisfied in whole or in part, the plaintiff, or in the case of his death, his representative, may file a certified transcript of the original docket in the office of the county clerk of any county in this state. Upon the filing of such transcript the clerk shall docket the same in the judgment docket of his office. From the date of docketing a judgment, such judgment shall be a lien upon all the real property of the defendant within the county or counties where the same is docketed, or which he may afterwards acquire therein, during the time an execution may issue thereon."

A doctrine of law which like Banquo's ghost comes back to haunt us is Idem Sonans. In short, this doctrine lays down the proposition that names spelled differently but sounding alike are for all practical purposes the same name. Thus we find in reported cases that the courts have held that Forris and Farris were Idem Sonans, so also Blunt and Blount. Others I might mention are

Maier	Meyer
Belton	Beton
Hudson	Hutson
Corn	Conn
Pillsbury	Pillsby
Tilter	Tiller

I could continue this for another fifteen minutes, but I think that the recital of these few names will give you the idea.

Now I ask you in view of Section 2-1601 Oregon Laws 1930 and the Doctrine of Idem Sonans, do you blame us for showing judgments against Hans Pederson when the grantee in the deed is H. Pederson, or for showing a judgment against Helen Bayer when the grantee is Helen Baer; and by the way, there are only 26 different ways of spelling this name Bayer.

This without question is the curse of the title business, and any legislator who really wants to do something constructive should work toward righting this evil. No person should be compelled to pay several dollars for showing judgments against someone else and under the present law the poor abstracter is, of course, compelled to show these judgments and the land owner not only pays for abstracting them but pays good time and money trying to get rid of them.

In Connecticut judgments are not general liens as in this State. In order for a judgment to become a lien against real property it must be filed against specific property. The statute provides that a judgment creditor may file the certificate of his judgment in the recording office in which the land upon which the lien is placed in specifically described and the judgment is a lien from the date of filing such certificate.

We like to poke fun at California, but let me say here that that State, through the efforts of the late Senator Thompson and some of the title lawyers of that State, has on its statute books far more common sense legislation in the field of real property law than we will ever see unless the real property lawyers take a hand and do some constructive work on their own behalf.

California, too, has a statute similar to Connecticut. The lien period in California as in Washington is six years, and judgments in both of these States cannot be renewed. In addition, California has a priority statute that is both comprehensive and equitable. If we are going to do any work along this line, however, let us start to work on our lopsided and antiquated mechanic's lien law first. In attending the National Convention of the American Title Association in Philadelphia last June, I was known as the delegate from the State with the screwy Mechanic's Lien Law. Nice advertising for Oregan, isn't it?

It is no secret that some realtors patronize the curbstone abstracter and by the term "curbstone" I mean abstracters operating without plant facilities. In other words, index checkers they are called, or as they call them in San Francisco "Hat Checkers." That sort of thing is all right if you don't get hurt. The curbstoners have been borrowing title information from the plant title companies so long that they succeed in showing a chain of title after a fashion. The examining attorneys have called for so many missing deeds, estates, general instruments and ordinances that most of them can turn out an article that faintly resembles the real McCoy.

An ex-judge came to me some years ago with an abstract prepared by a curbstone abstracter. He wanted very much to know if a certain power of attorney was on record in this county. The particular power of attorney was on record since we had used it a number of times—the donor was one of the Scotch mortgage companies which used to operate here. I well remember the land covered by the abstract. It was in Tibbett's Addition, one of the nastiest titles in the City of Portland. He had examined this title and based his opinion thereon. A glance at the abstract convinced me that the abstract he had in his possession didn't contain the whole title so I made a deal with him. I told him that I would supply him the power of attorney gratis if he would permit me to check his chain of title with the chain of title we had covering that particular property.

I found at once that the curbstoner had shown the patent but for the next fifteen or twenty pages I found no corresponding entries in our base title. I went back and traced the descriptions contained in these deeds we had evidently missed and found they affected land a mile away from the property covered by the abstract, and despite this padding, the abstract contained less than forty pages needed to complete our base title. Need I say more?

Woodlawn, you all know the tract, was platted in April of 1889. The center line of Union Avenue is the Section line. The plat of Woodlawn was filed showing the West tier of lots running to the Section line. Union Avenue was established and the lots were sold running back 100 feet from the east line of Union Avenue. Thus it will be seen that the plat of Woodlawn is actually thirty feet short and Blocks 37, 38 and 39 of that addition on the ground are thirty feet East of where they should be. This objection was passed generally as far as I have been able to gather until the school district traded the old Woodlawn School to the city a few years ago. I think that you will agree with me that the plat of Woodlawn as far as the paper title is concerned is in a "mell of a hess."

You all remember the Home Owner's Loan days. You might remember that during that period the daily papers carried an account of certain irregularities concerning properties on Montgomery Drive. Surveys caused to be made by the Home Owner's Loan Corporation brought to light that many of the fine homes on Montgomery Drive were built on the street area. This case really presents a problem; for the only way to keep these houses level with the street, if moved back on the land they should occupy is by means of powerful sky hooks.

Not boasting, but we of the title fraternity who maintain title plants have often said that we could copy the Constitution of the United States into our abstracts and that this document would thereafter become part and parcel of every curbstone abstract thereafter made. Every ordinance, affidavit, certificate, or statement the plant companies decide should be shown in an abstract is copied religiously by the curbstoner even to the point of copying our poor grammar, atrocious punctuation, and on one occasion by omitting a whole paragraph that rendered the instrument shown, a thing of mystery.

The meat of any title plant in my opinion is the name or general index. In this index as I have tried to point out before, all instruments which might affect the title to real property but do not mention any specific land, are grouped. Our firm is particularly fond of a new index adopted about two years ago. By this system all names that sound the same are automatically grouped and by this method we hope to be able to hold our own with old man Idem Sonans. This system is built upon a code. The letters "b f p v" are known as One; Number Two includes "c g j k q s y z"; Number Three takes care of the letters "d t"; "l" stands alone as Number 4"; "m and n" as Number Five, and the last, Number Six, is "r". The initial letter of a name is always disregarded because to that extent the index is alphabetical. All vowels are disregarded in finding your code. In addition to the vowels, "w, h and y" are disregarded, double letters and equivalents are considered as single letters.

As an example, we will take the name Earhart. A few variations of this name are Earhard, Ehrard, Ehrhart, Ehrheart, Erehart, Ehart, and Erhart. All these names regardless of the different spelling are carried in E 6 6 3. The numerous judgments against Herman Parrott are carried under Account P 6 3 0.

Before I leave the floor, I take it upon myself to extend an invitation to every realtor present to visit our plant or the plant of our competitors and browse around for half an hour. I feel sure that a qualified person will be able to show you in a very short time many of the things that I have been unable to explain clearly to you. I would like you to see for yourselves how good title plants are equipped to give you speedy, accurate service at a reasonable price.

Common Problems of the Mortgage and Title Man

Delivered at 1950 Annual Convention of the Florida Title Association

By WILLIAM G. JENNINGS
Resident Attorney, Prudential Insurance Company of America, Jacksonville, Florida

It has been said that giving a speech is like child birth. The conception is usually easy and frequently pleasant but the delivery is sometimes difficult.

I have had difficulty in conceiving what a mortgage man, particularly one from the legal department, could say of interest to Abstracters and Title men, and I feel like the loser at a poker game who cries "deal" while the winners tell jokes.

Actually, the Abstract and the Title Insurance industries have more in common with mortgage lenders than the fere fact that both are concerned with titles to real estate and with the closing and financing of real estate transactions. To a large extend the major stock in trade that both of us have is Service.

Those of you (and of the lenders) who give the best service are likely to get the most and the best business. Just as one lender's money is no better than another's, it can be said that one company's abstract or title policy is as good as another's. Of course, that statement is not entirely true, as there are occasionally poorly and inadequately prepared abstracts. Also some title companies are not as sound financially as others or do not exercise the same selectivity in the appointment of approved attorneys as others. There are other distinguishing factors well known to you.

If, however, you will accept for the moment that your abstract or title policy is as good as your competitor's or conversely that his is as good as yours, you do not have much left but service. So it is with the lender, and as competition becomes more keen, the greater is the hue and cry for service.

Service is not merely speed in closing a loan or other real estate transactions. It is partially the furnishing of sufficient information to enable parties dealing at some distance to understand the problems and have a meeting of the minds resulting in the consummation of a contract. It is that which partially enables parties dealing for the first time in real estate to do so in an intelligent and business-like manner. It is the difference, when the chips are down, between your getting the business or losing it to your competitor.

Most of you are wondering what possible further service could you render to lenders. Relax, gentlemen, I do not have any diabolical scheme for getting more service out of you. In fact, I am particularly pleased to be able to appear before you because of the opportunity it gives me to express my appreciation for the excellent job you are doing and the unsurpassed services you are rendering under most adverse conditions.

I know that it seems to you that the more you do, the more you are asked and expected to do. I suspect that you have more than once thought of me (and other representatives of lending institutions) either as an "occasional, intentional, or revolving" you-know-what. In case several of you haven't heard the three definitions of a SOB. The "Occasional" type seems every once in a while to pick out some special subject to dwell upon and as to that particular subject—Brother—he is one. The "Intentional" character is one who goes out of his way to find some subject on which he can be one—and he usually succeeds, all too well. As to the "revolving" type—he's really well named because no matter from what angle you look at him, he's just a SOB.

I'm told that you don't have to be crazy to be in the mortgage loan or the abstract and title business but it certainly does help. I was complaining to a friend the other day that I was scheduled to speak before this group and hadn't the slightest idea what to talk about. His reply was "That should be easy—I don't suppose all of the abstracters and title men are crazy but all of them that I know in the State of Florida are." I forgot to ask him where he sold his abstract supplies.

When you have struggled with all of the special gimicks which infest Florida titles, it is remarkable that even a passable degree of sanity is maintained. A prime example of what I mean exists here in Palm Beach County. It doesn't bother anyone down here—you take it in your stride—but we poor country lawyers who are not privileged to live here are baffled. It is called a Hiatus—and is most aptly named, as dictionaries define a hiatus as something missing. Any mention of such a plat of land to be used in a legal description is certainly missing from the government rules for surveying lands and appears to be unknown among the leading writers on real estate law. But be that as it may, here in Palm Beach County they laid off their township and ranges with buffer strips in between—apparently to insure that the same land would not be placed in two separate townships —and then when they found that such extra land actually existed and was possessed of a salable value, something new was added to the law of real property and was called a Hiatus.

You gentlemen are each of you better acquainted with the quirks which appear in your local titles than I could possibly be, but in doing a statewide business, I am increasingly aware of the idiosyncracies of titles peculiar to a certain county or city. As further example, there are overages in practically all of the blocks of downtown Jacksonville, Fla. The official map of the town of Madison hangs on the fire station wall and is not a matter of actual public record. The official map of the original towns of Fernandina and of St. Augustine are not properly recorded. There are tracts of land in Glades and Hendry Counties not covered by Government surveys. There are townships without established section corners. Attorneys and title companies in Miami assume good title in Julia D. Tuttle as of 1896 as to part of downtown Miami. If, however, you search title prior to that date, you find definitely separate chains of title, one from Spain and two from the United States. With some use of the imagination, these three chains finally merge into Julia D. Tuttle. Part of the proof is in the form of depositions in rei perpetuam. It is interesting to note, however, that there was a period of time during which the possession was constructive rather than actual because the owners had fled to Key West to escape the rampaging Seminoles.

Early Duval County titles give testimony to the activities and sometimes unusual tastes of "retired pirates of the high seas."

I am always intrigued with metes and bounds (sometimes referred to as "leaps and bounds") descriptions which go so many chains and links to a "cyress stump which is no longer there."

The inconsistencies of early title is something that very little can be done about. It is the inconsistencies of abstracting and of title practices which I am concerned about and about which I feel something can be done.

Some asstracters include tax information in their abstracts and some do not. Some limit the tax information to state and county taxes and make no attempt to show city taxes. Some show one or both but deny any responsibility for the accuracy or sufficiency of the information furnished.

Some abstracters always include a federal search. Some will do only if specifically requested.

The only consistency is that all of them charge an extra fee for such search.

The certificates used by some abstracters are so limited that one wonders whether he is justified in placing any reliance upon the abstract. Some certicates are conditioned upon the abstract bill being paid as evidenced by a paid receipt which is never in evidence, or by an official signing a part of the certificate which is never signed.

Some abstracts set out verbatim the entire court file on probate or litigated matters while others merely make reference to such matters or abstract some part irrespective of its importance.

Some title companies will insure tax titles under one set of circumstances while another will not. Some will insure such titles if an extra hazard fee is paid. There are wide differences of opinion with respect to "Murphy Titles," "Holland Titles," "County" and "City in rem Titles."

Some companies will insure "lake bottom" lands if there is a good T.I.F.F. deed, while others refuse to insure it under any circumstances.

Some title companies will assume business risks that verge on placing them in the category of indemnity insurance rather than title insurers. On the other hand, a few companies go so far to the other extreme as to make one wonder why they hold themselves out as insurers at all.

I mention these matters not with the idea of presenting any specific solution to you. The purpose is merely to emphasize the need for uniformity in the industry. The type of uniformity which engenders service consistent with safety and good reason.

I do not think that the abstracter or the Title industry should sit back and wait for the Bar or the Legislature to occasionally cure some of its ills. I refer, of course, to curative statutes and statutes of limitation. No regulatory act, even one written and sponsored by your organization, will be entirely satisfactory, nor can it be as flexible to meet changing conditions as a voluntary effort on the part of title men and abstracters to achieve a greater degree of uniformity within the industry.

In this connection, a suggestion was made at your meeting in Sarasota last year which, in my opinion, has merit and should be followed up. I refer to the Connecticut Plan under which a state-wide committee considers important title problems which have not been passed upon by the Supreme Court and recommends a uniform ruling to be followed. Such a program should probably be initiated by the State Bar Association but would prove most valuable to title men generally.

The main point is that the title and abstract industries should constantly devise ways and means of becoming more uniform in practices and procedures. I recommend to you that you constantly endeavor to adopt new methods and procedures which will result in more uniformity and better service.

I should like to conclude with a serious thought. We are today beset by two enemies. One, Communism, is obvious and well known to us. We are well aware of what is going on in Korea, Indo-China, China and elsewhere. We know of the inroads Communism has made in this country. We are aware of the threat of Soviet Russia and the possibility of world-wide warfare. We can imagine how devastating such general warfare would be.

The other enemy we are not so aware of. While it is just as deadly and just as devastating, it is of an insidious nature. Furthermore, it is present in our every day lives, our every activity. I am speaking of inflation—that invisible octopus that is slowly but surely strangling this country and each of us. Yes, it seems to be a very pleasant death—in fact we victims are hardly aware that we are being strangled but death of whatever form or however pleasant is just as certain. Because of its insidious nature inflation may be a worse threat to the American way of life than Communism.

Gentlemen, I am proud to be a part of the great insurance industry which daily is doing so much to combat both of these foes. This is being done in the issuance of insurance in the payment of insurance claims, in protecting the widows and children and in the investment of insurance premiums in mortgages on homes, commercial and industrial properties, and in ranch, citrus and other farm lands. We are investing in the very areas from which the money originally comes.

You, Gentlemen, have good reason to be proud of the great contribution you are making to this constant fight, not only because of your invaluable assistance in the activities of such companies as Prudential but for many other reasons. Some of these reasons are the fact that you, Gentlemen, make it possible for borrowers and lenders to do business in an orderly American way. Great reliance is placed upon your service and the information and assurances made by you. You are, in the American manner of free enterprise, marching hand in hand against a common foe.

PUBLIC RELATIONS

There are approximately 3,300 licensees under the Oklahoma Real Estate Law. In conjunction with the Oklahoma Real Estate Commission, the Oklahoma Real Estate Association in April of this year held some regional meetings, and in May will hold additional such meetings in the twelve districts into which Oklahoma is divided.

The purposes of these conferences is to discuss the problems of the licensees. As an exhibit made part of this preliminary statement, and the article which follows, there is shown one of the printed programs of these district meetings.

Your attention is directed to one topic "Real Estate Titles." Fifteen minutes at each of these meetings is allotted for this item. The program is a full one, and obviously in that limited time the one talk on titles can only be in generalities.

It is estimated combined attendance at these April and May conferences will total 2,000 licensees.

Our own distinguished William Gill, past President of the American Title Association, is chairman of a committee of five of the Oklahoma Real Estate Association whose job it is to handle these meetings.

Two meetings are scheduled for each week.

The program is the same at all meetings. But

IT DOESN'T MATTER

HOW "Burke" SPELLS HIS NAME

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the topic "Real Estate Titles—Abstracts, Guaranteed Titles, Title Insurance" is presented by different Oklahoma title men, all members of the Oklahoma Title Association. In a general way the subject of title evidencing is covered, limited of course to a fifteen-minute talk.

The address given by Mr. William Gill, one of the speakers, accompanies this statement.

Particular attention is directed to the distribution of material descriptive of our services and products. In Oklahoma this took the form of "Title Course, Revised," edited by Mr. Gill. There are in the files of our affiliated state title associations, and in the advertising portfolio of many member title and abstract companies, worthwhile material which could be distributed at regional meetings of comparable character in the several states.—Ed.

PROGRAM

1:30 p.m. INTRODUCTION
Purpose of the meeting

THE REAL ESTATE BUSINESS
Development of professional ethics; value of organization.

THE REAL ESTATE COMMISSION
Discussion of the License Law. Question and answer period.

GOVERNMENTAL REGULATIONS
Explanation of laws, rules and regulations that affect the real estate business.

10 minute recess

REAL ESTATE TITLES
Abstracts, guaranteed titles, title insurance.

THE ART OF SELLING REAL ESTATE PROFITABLY

10 minute recess

5:00 p.m. OPEM FORUM
Round table discussion. Be prepared to ask questions that you need answered, regarding the license law or any phase of real estate.

Sessions will start promptly at 1:30 and close promptly at 6 p.m.

PURPOSE OF THIS CONFERENCE

1 To better inform those who are licensed to sell real estate, regarding purpose of the license law.
2 To promote the development of professional standards among those engaged in the realty and allied businesses.
3 To develop a spirit of cooperation among those engaged in the business and better relations with the public.
4 Bringing up-to-date information with reference to those things that affect your business.
5 To help all of us to be more efficient in our chosen line of work and to make it more profitable.

—□—

During April and May, twelve similar meetings will be held in twelve cities in Oklahoma.

—□—

Speakers at these conferences will be men well known in the real estate field and will include the following:

Charles E. Young	Eugene Hicks
E. C. Leonard	Robert J. Dwyer
John B. Martin	Morris W. Turner
Jos. T. Frizzell	Carroll Spangler
William Gill	Ben O. Kirkpatrick
J. Wilson Swan	Earl Houston
Guy S. Hensley	T. G. Grant
Emmett L. McKee	Jay J. Dwyer

Real Estate Titles

Type of Address Delivered Before Regional Conferences of Oklahoma Real Estate Board

By WM. GILL
Executive Vice President, American-First Trust Co., Oklahoma City, Okla.

Mr. Chairman and Members of the Real Estate Profession:

It's a pleasure to be with you in a dual capacity—first, as the official representative of the Oklahoma Title Association, and, second, as a member of the Oklahoma City Real Estate Board.

The Oklahoma Title Association asks that I convey to you its best wishes for a very successful regional meeting and to remind you that it has been instrumental in helping organize some of the real estate boards in Oklahoma. It was a pleasure to help secure the passage of the Real Estate Lisense Law two years ago. Our members contacted numerous senators and representatives and urged their support of your law. Four members of the Oklahoma Title Association are members of the Legislature. The Oklahoma Title Association is interested in your problems, and is the trade association of Oklahoma abstracters. We strive to improve our service by the holding of regional meetings similar to this particular meeting, for discussion of our problem. When you are prone to "squawk" about some of the shortcomings of our members, please keep in mind that, being human, all of us make mistakes. It is our desire to give you the best title service possible to expedite the closing of your transactions.

The time allotted permits only a brief mention of the subject of "Real Estate Titles."

Let's start with the first record of a real estate transaction. It is found in the 23rd Chapter of the Book of Genesis. A digest of this interesting record discloses these facts: Sarah lived to be 127 years of age. Abraham sought for her a place of burial. In that land lived a man by the name of Ephron. He owned a field with a cave thereon—in those days it was the custom to bury the dead in a cave.

Abraham asked Ephron to sell him the field with the cave. Ephron refused, saying: "I will give the field to you and you may bury your dead there."

Abraham was a rugged individual —not accustomed to a government which paid Social Security, subsidies or a government which bought potatoes, dried eggs and the like thereof —he refused the offer, saying: "I will give thee money for the field, take it, and I will bury my dead therein."

Then Ephron placed a value of 400 shekels of silver and the record reads: "Abraham weighed the silver which he had named in the audience of the Sons of Heth, 400 shekels of silver, current money with the merchants."

And the first real estate transactions of record was completed.

It is interesting to note that this transaction was witnessed by the Sons of Heth, somewhat similar to our transactions being witnessed by a notary public.

As far as history reveals, no one ever questioned the title of Abraham

to that field and no attorney made any requirements or objections thereto.

Now let's start with the early history of America. At the time of discovery and many years thereafter, there was plenty of land for everyone—you would simply pick out the spot you wanted, take possession and if you were not confronted with the law of the "survival of the fittest"—you lived in peace (if the Indians didn't molest you.)

Later, when land became less plentiful and the population increased and lands were surveyed and townsites came into existence, property was bought and sold by a verbal transaction; still later, in the presence of witnesses. Obviously, this system wouldn't work and a crude memorandum was prepared and executed—it would be torn in half, the buyer and seller keeping a portion as evidence of the sale.

There was then enacted the Statute of Frauds, which, in part, provided that no transaction with reference to real estate shall be binding unless a written memorandum was made thereof. But, a written memorandum was of no value unless it could be placed of record. From that necessity came the present Recording System.

Another problem arose—who could locate from the mass of public records each and every instrument affecting the title to any piece of property no matter how large or how small the tract might be?

What I have just related brought about the birth of a profession—I refer to the abstracter. It is his job to prepare an abstract showing, in chronological order, each and every instrument, court proceeding, probate or guardianship case, judgments, liens, etc., which affect the particular property abstracted. He must correctly certify to taxes and special assessments. If he makes any mistake in preparing the abstract his $5,000.00 bond is liable for any loss

WILLIAM GILL

which anyone suffers by reason of having relied upon the accuracy of the abstract.

The abstracter is about the only professional man who must pay for mistakes which cause losses.

As titles became more and more complicated—and losses were sustained from causes which could not be determined from an examination of the abstract, a still greater protection was offered—and that is a Guaranteed Title or Title Insurance. Briefly, either is a contract between the holder of the guaranty and the issuing company which provides that the company will pay any loss sustained by reason of any attack upon the title, including cost of litigation, in accordance with the provisions of the contract and not exceeding the amount of the contract. A guaranteed title covers such matters as forged instruments, claims of unknown heirs, conveyances by minors or incompetent persons, misinterpretations of the law, reversed court decisions, etc. A Guaranty of Title may be issued to the owner, the mortgagee or to the leaseholder.

The subject of "Real Estate Titles" is too broad a subject to completely discuss in the time allotted. After the adjournment of this meeting, I would like for you who are interested to get one of these "Land Title Course" booklets. It is given you with the compliments of the American-First Trust Company of Oklahoma City.

In it you will find the answer to most any problem concerning abstracts or guaranteed titles. It explains surveys, land descriptions, government lots, metes and bounds descriptions, land areas and, in fact, is chucked full of information which any one dealing in real estate should know. At the open forum when questions will be permitted, I will try and answer any question you care to ask.

Mr. Chairman and Gentlemen, my time is up.

MORE ON ADVERTISING AND PUBLIC RELATIONS

Real Estate License Law—Licensed Brokers and Salesmen (Oklahoma)

We are privileged to report on still another public relations activity or two of the American-First Trust Company of Oklahoma City in the field of improving their public relations picture throughout Oklahoma.

Oklahoma has a real estate license law—(Chapter 18, Title 59, Page 406, Session Laws, 1949.)

Being reasonably assured the bill would pass the legislature and signed by the Governor, the Company had this printed in pamphlet form awaiting final action. Within twenty-four hours after it became law, more than 3,000 copies were in the mail to real estate dealers, mortgage companies, banks, building and loan associations, and others.

For many days thereafter the Company had numerous requests for copies and an additional 1,500 copies were printed.

These were printed as a pamphlet 3¾ inches by 8 inches in size. We reproduce the front and back cover page of this pamphlet. It is a two-color, red and black job on white paper. Further to assure it would be kept readily available on the desks of licensees the Company carried on two pages of the pamphlet information relating to documentary stamps.

In late 1950, with permission of the Real Estate Commission of Oklahoma, the Company printed 5,000 copies of the roster of licensees, the entire expense of this printing job being assumed by the American-First Trust Company.

This contained not only the directory of licensees and their addresses, but also carried a photograph or picture of the governor and a letter in which he referred to the roster as official.

Page four of the pamphlet contains a foreword from the Commission and a list of the names and addresses of the Commissioners.

Page five carries the rules and regulations of the Commission.

The front cover (inside) and the back cover (outside) carry advertisements of the American-First Trust Company. We reproduce these as an exhibit next following this report. This is a two-color job, red and black on white paper.

We also reproduce one page of the pamphlet itself, which pamphlet is 7¾ inches by 8 inches in size.

The total cost of these two publications was approximately $2,000, money apparently well spent. Both these pamphlets have become "working tools" of the real estate operator in Oklahoma and undoubtedly will be kept readily available for future references. The Company believes it has already recovered its original investment plus intangible benefits that will accrue to it in the months to come. Everyone of the more than 3,000 licensees, by retaining this book, has "opened the front door" to the American-First Trust Company.—Ed.

A TITLE OFFICER

. . . of this Company is always glad to discuss with you any question or detail in connection with any title problem. With titles as short and simple as they were a few years back in Oklahoma, danger was remote. Rapid growth in Oklahoma has made titles more complicated by numerous transfers, foreclosures, probate proceedings, tax titles, etc.

★

Demand a Guaranteed Title—
Only one small premium to pay

★

THIS COMPANY'S SERVICE INCLUDES

ABSTRACTS
GUARANTEED TITLES
ESCROWS
TRUSTS
PHOTOSTATS
LAMINATIONS

THE AMERICAN-FIRST TRUST CO.
CAPITAL AND SURPLUS $1,000,000.00
101 First National Building
OKLAHOMA CITY, OKLAHOMA
(A permanent Oklahoma Corporation with a business reputation to sustain and a name to protect)

PAMPHLET—BACK COVER

OKLAHOMA REAL ESTATE LICENSE LAW

Original Act—Effective Jan. 1, 1950
Chapter 19, Title 59, Page 406
Oklahoma Session Laws, 1949

Courtesy of:

ABSTRACT,

TITLE GUARANTY,

ESCROW AND

REPRODUCTION

DEPARTMENTS

★

American-First Trust Company

(Capital & Surplus $1,000,000.00)

101 First National Building
Oklahoma City, Oklahoma

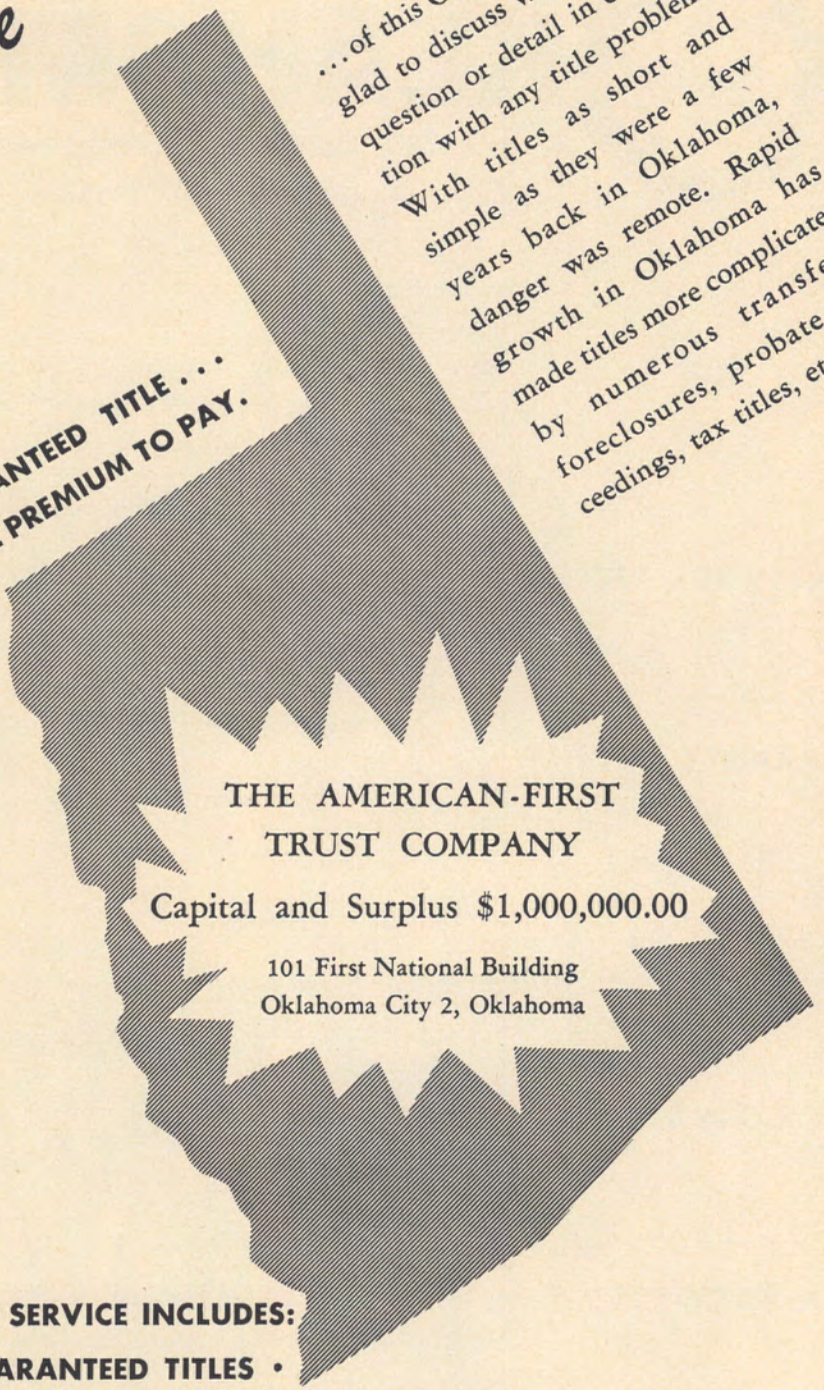
"Title Hedquarters for Oklahoma"

PAMPHLET—FRONT COVER

A Title Officer

. . . of this Company is always glad to discuss with you any question or detail in connection with any title problem. With titles as short and simple as they were a few years back in Oklahoma, danger was remote. Rapid growth in Oklahoma has made titles more complicated by numerous transfers, foreclosures, probate proceedings, tax titles, etc.

DEMAND A GUARANTEED TITLE . . .
ONLY ONE SMALL PREMIUM TO PAY.



THE AMERICAN-FIRST
TRUST COMPANY

Capital and Surplus $1,000,000.00

101 First National Building
Oklahoma City 2, Oklahoma

THIS COMPANY'S SERVICE INCLUDES:
ABSTRACTS • GUARANTEED TITLES •
ESCROWS • TRUSTS • PHOTOSTATS • MICROFILMING

"Title Headquarters for Oklahoma"

(Advertisement in Roster, inside front cover)

OKLAHOMA'S

Largest Title Company . . . has been a constructive factor in the swift growth of Oklahoma.

Your realty transactions, handled through THE AMERICAN-FIRST TRUST COMPANY, command added prestige.

More than $1,000,000 capital, surplus and reserve provide unusual financial assurance.

You will receive prompt, courteous, confidential service from experienced and efficient personnel when you deal with this organization and its numerous local representatives throughout Oklahoma.

STATEWIDE TITLE

GUARANTY SERVICE

ABSTRACTS

ESCROWS

PHOTOCOPIES

MICROFILMING

(Advertisement in Roster, back cover)

MEMBERSHIP ROSTER

T. H. Denyer, First National Bldg.—B
W. V. Earp, General Delivery—B

MEEKER

J. M. Curtis, Main St.—B
T. F. Green—S
J. H. Herrington—B

PRAGUE

Doyal Greer, Greer Office Bldg.—B
L. E. Humphrey, N. Broadway—S
R. L. Humphrey, 821 Broadway—B
E. E. Long, 1011 N. Broadway—B

STROUD

M. J. Carlson, 109 E. Third St.—B
Russell E. Putnam—B
Claude Smith—B

LOGAN

CRESCENT

Charles Graff, N. Grand—B
D. E. Richards—B
C. A. Sanderson, Hickory & Jackson Sts.—B
J. R. Wilson, 117 S. Main St.—B

MULHALL

C. M. Acton, Route 1—B
E. W. Diehl, Oklahoma State Bank—B

GUTHRIE

B. H. Adams, 106 S. Broad—B
Oma Adams, 106 S. Broad—S
Alice M. Armstrong, 106 N .Division—B
F. E. Cullison, 102½ W. Oklahoma—B
Mary E. Fuhring, 105½ W. Oklahoma—B
John E. Gaffney, 212 W. Oklahoma—B
John B. Cathchell, 102½ E. Oklahoma—B
Brice E. Hammers, Dale Building—S
Esta Hammers, Dale Building—B
Bruce E. Honeycutt, 301 E. Oklahoma—S
B. L. Ireland, 221 N. First St.—B
Roy Kneeland, 101½ W. Okla. Ave.—B
Frank W. Luczynski, 101½ W. Okla. Ave.—B
L. B. McKean, 102½ E. Oklahoma—S
W. E. McKean, 102½ E. Okla.—B
Donald L. Melton, 110 N. Broad St.—B
C. A. Parker, 110 N. Division—S
Ellis Roberts, 524 E. Springs—B
C. F. Rush, 115 Division—B
C. G. Sherer, 110 N. Division—B
Ernie Simpson, 115 E. Division—S
Tom Walker, 301 E. Oklahoma—B
Mildreth Weldon, 119½ E. Oklahoma—B
Ralph Williams, 106 S. Broad—B

LOVE

MARIETTA

W. M. Balthrop, 509 E. Oak St.—B
Clotilde B. Haynes, 103 NW 2nd—B
K. L. McKinney, 316 Main St.—B
John R. Martin, 306 E. Main—B

McCLAIN

BLANCHARD

Sinnette Lowe Barefoot—B
T. J. Laws, Highway 62 & Main—B

PURCELL

Cy Ellinger, First State Bank Bldg.—B
Maxey Harrell, 202 First St. Bk. Buldg.—B
F. W. Pendleton, 117 N. Second St.—B

WAYNE

C. H. Jones—B

McCURTAIN

IDABEL

J. P. Harkey, 7½ Main St.—B
E. S. Howard, 8½ N. Central Ave.—S
E. H. King, 10 N. Central Ave.—B
I. W. Lacy, 8½ N. Central Ave.—B
Delbert S. Randolph, 121 S. Central—B
Joe Sessions, 7½ E. Main St.—B

VALLIANT

John W. Teters—B
G. E. Woodall—B

McINTOSH

CHECOTAH

W. K. Brice—B
C. P. Futrell—B
J. H. Newcomer—B

EUFAULA

W. C. Metcalfe—B

MAJOR

CLEO SPRINGS

Joe Story—B
O. B. Weaver—B

FAIRVIEW

M. L. Dague, 136 E. Broadway—B
Fred E. Davis, East Broadway—B
A. H. Firebaugh, 102½ S. Main—B
John W. McCue, 114 E. Broadway—B
William L. Stewart, 118 E. Broadway—B

MARSHALL

KINGSTON

Gene W. Flynt—B

MADILL

Earl E. Ayres, First National Bulg.—B
Ernest E. Ayres, First National Bldg.—B
R. A. Barker, 708 W. Drew—B
Milam E. Ewing, First National Bldg.—B
Ed Holland, 207 E. Taliafero—B
Effie Butler Jones, 205½ Plaza—B
Frank Landram, First National Bldg.—B
M. G. Mitchell, 205½ Plaza—S
Cecil H. Rinehart, 207 W. Lillie—B
Winston Smith, 106 S. First St.—B

MAYES

CHOUTEAU

Percy Butler, Route 2, Box 129—B
John P. Crockett—B
H. J. Patterson—B

DISNEY

A. E. Burris, Main Street—B

LOCUST GROVE

Henry L. Burris—B
Gillis Cox—B
L. M. Lay, Main & Bdwy. Sts.—B

PRYOR

Mrs. R. E. Billington, 402 Fourth St. S.—B
T. C. Bowling, 215 E. Main—B
L. W. Bradley, 230 E. Main St.—S
J. E. Byrd, 203 E. Main—B
Edgar W. Fisher, 230 E. Main—S
Omer L. Hardy, 201 E. Main St.—B
Clyde E. Hunter, 219 E. Main St.—B
Bob Ivey, 230 East Main St.—S
Mrs. Carrie M. Kehn, 230 E. Main St.—S
John W. Weeks, Sr., 219 E. Main St.—S
J. C. Wilkerson, 230 E. Main—B

SPAVINAW

Earl Carey—B
Virgil I. Fowler—B

MURRAY

DAVIS

T. E. Davis, Box 207—B

SULPHUR

Wm. David Biggerstaff, Farmers Natl. Bldg.—B
Elmer Cleveland, 811 West 11th St.—B
R. C. (Bob) Green, Sr., 1002 W. 2nd St.—B
D. A. Hoover, Artesian Hotel—B
Boyd B. Horsman, 815 W. 11th St.—B
Leo B. Horsman, 815 W. 11th St.—S
Fred Hunt, 1701 W. Broadway—B
M. L. Lambert, 9th & W. Vinita—B
Earle Masters, 105 W. Muskogee Ave.—B
Mrs. Essie L. Shelly, 1024 W. Broadway—S
Herndon J. Thompson, 228 Farmers Natl Bl—B
R. F. Turner, 408 W. 12th St.—B
C. L. Whiteley, 22 W. Wynnewood—B
C. P. Williams, Muskogee Ave.—B
John W. Williams, 1005 W. 2nd St.—B
Ross B. Wommack, 1024 W. Broadway—B

MUSKOGEE

BOYNTON

C. L. Nichols, Route No. 1—B

FORT GIBSON

C. B. Kagy, Ragsdale Bldg.—B

MUSKOGEE

Dorothy E. Albright, 809 Barnes Bldg.—B
Joe N. Allen, 405 Equity Bldg.—B
Clarence T. Anderson, 400 Wall St.—S
Earl G. Anthis, Metropolitan Bldg.—B
A. E. Berry, 612-13 Commercial Natl Bldg—S
Larry M. Bishop, 226 Wall Street—S
Phillip Bohnert, 3809 W. Okmulgee Ave.—B
L. Imogene Bragg, 400 Wall St.—B
R. P. Brooks, 522 Equity Bldg.—B
L. W. Brophy, 405-6 Metropolitan Bldg.—B
E. B. Bryant—B
Mrs. E. R. Bryant, 628 Equity Bldg.—B
Paul Buddy Burris, 214 Barnes Bldg.—S
Frank L. Carpenter, 513 Denison—B
George William Carter,
1008 E. Aberdeen Drive—S
Elver George Clingenpeel
1008 E. Aberdeen Drive—B
Addie Cobb, 1315 Live Oak St.—B
Ruby E. Cole, 2802 Carland—B
L. B. Creekmore, 208 Surety Bldg.—B
Gordon L. Denton, 1503 E. Okmulgee—S
W. T. Denton, 1503 E. Okmulgee—B
E. P. Dillon, 518-19 Equity Bldg.—B
S. E. Edwards, Jr., 228½ N. Second St.—B
S. L. Ferguson, 407 Surety Bldg.—S
John B. Fink, 211½ W. Broadway—B
James A. Fuller, Jr., 310 Surety Bldg.—S
Howard L. Garrett, Surety Bldg.—B
E. G. Gilmore, 322 Equity Bldg.—B
C. O. Grimes, 211½ N. Third St.—B
Gordon Harper, 420 W. Broadway—B
Fred R. Harris, 603 Barnes Bldg.—B
O. R. Hisel, 212 N. Fourth St.—B
J. F. Hudson, 1503 E. Okmulgee St.—S
J. A. Hurt, 226 Wall St.—B
Zeb P. Jackson, Sr., 119 N. Third St.—B
Zeb P. Jackson, Jr., 119 N. Third St.—S
Sherrod Hillman Keaton, 502 Barnes Bldg.—B
John W. King, 602 Manhattan Bldg.—B
Ralph E. King, 602 Manhattan Bldg.—B
H. B. Lambert, 205 Manhattan Bldg.—B
Joseph C. Lewis, 214 Barnes Bldg.—S
Patrick H. McCaffrey, ...
303 Commercial Natl. Bldg.—B
Hubert H. McDonald, 2312 W. Okmulgee—B
R. M. McGown, 513 Commercial Natl Bl—B
Jack Mann, 214 Equity Bldg.—B
Lloyd G. Martin, 905 N. "K" St.—B
Walter V. Martin, Jr., 420 W. Bdwy.—S
Albert H. Maytubby, 402 Wall St.—S
E. B. Maytubby, 402 Wall St.—B
N. M. Mears, 323 N. "K" St.—B
Ruth S. Meyer, 402 Wall St.—S
Sam H. Mitchell, 407 Surety Bldg.—B
Mrs. Sam H. Mitchell, 407 Surety Bldg.—S
Lake Moore, Jr., 506 N. 12th St.—B
William Nichols, 211-15 Surety Bldg.—B
Lynn W. Osborn, 515 Equity Bldg.—B
Elmer B. Parks, 301 Commercial Nat'l Bl—B
M. B. Parks, 301 Commercial Nat'l Bldg.—B
Vincent J. Perrot, 303 Commercial Natl Bl—B
Milo T. Pfrimmer, 214 Denison—B
Paul Philpin, 615 Commercial Natl Bldg.—B
Claude J. Pierce, 310 Surety Bldg.—B
E. M. Rector, 519 Commercial Natl Bldg.—S
C. L. Rice, 221 Metropolitan Bldg.—B
Raymond W. Richardson, 407 Surety Bldg.—S
Montie Sampson, 115 N. Third St.—B
S. O. Schofield,
517-18 Commercial Natl. Bldg.—B
Alex Scott, 525-6-7 Commercial Natl Bl—S
Charles W. Seibold, 208½ W. Broadway—B
George W. Seibold, Jr., 208½ W. Bdwy.—B
Ted E. Seibold, 208½ W. Broadway—B
William E. Sellers, 2813 W. Broadway—B
R. D. Shearer, 1180 Walnut St.—B

Scare-dy-Cat

By J. D. G. HILL

Vice President,
Logan County Title Co.,
Lincoln, Ill.

Member Illinois Bar Association

No one, except a bashful, ill at ease, scare-dy-cat abstracter or examiner of title would take pen or typewriter in hand and pour out his frightened fluttering heart in lines like these to follow. Whistle as he may he is still afraid of the tombstones representing the dead issues, the cemetery, wherein are buried the mistakes of his clan, the ghosts of old law and decisions and the living extroverts, who make life uncomfortable. In other words, there is a fear in some of us as to what other of us may say about our product or examination of abstracts.

There are some of us who are so-called "paranoiacs." The courts have taken notice of such tendency for in the case of Bateman v. Ryder 106 Tenn 712, 64 S. W. Rep. 48, it said substantially: A paranoiac is one who has a mania for litigation and an ungovernable desire and anxiety to be successful. This species of lunacy or mania is more common among attorneys than litigants.

Interstate or intercounty examiners complain about the make up of an abstract, the size of the sheets used, the contents of the certificate and so on. If a special out of the ordinary certificate be demanded it would appear that an abstracter who furnished such a certificate, was, to the extent of changes therein from the usual certificate, under a special contract with the demanding customer and perhaps undertaking to accomplish something in the way of contracts different from and beyond the guides or admonitions given abstracters by court decisions concerning their liabilities.

Of course the customer asking for a special certificate is moved to do so on advice of some one trained in law and contractual liabilities, on experience of other customers failing in recoveries against abstracters by reason of the courts' interpretation of the ordinary certificate, to keep up with the Jones' or because many years prior thereto some event took place requiring something special or for reasons unsupported by present law and long before such time corrected by proper legislation or court decisions.

The forms, contents, plate certificates, etc., used in an abstract should be those generally accepted by both lawyers and men engaged in real estate business throughout the State wherein the abstracter practices his profession. What is trying to the abstracter is the one or very few who wants more or different abstracting and certificates.

It is not so much the fact the abstracter cannot charge for these extras, but rather the fact that such demands upset the production line and a more or less expert must take over and make such an abstract himself, paying greater attention to the liability undertaken and the contents and arrangements in and of the abstract requested than is ordinarily required of him or other employees.

A special certificate creates a new liability in itself but what is more requires a study of its terms and provisions and the application thereof to each plat and entry so that the abstracter may know that each plat and entry is so worded, so complete and so distinctive as not to violate any of such terms and provisions and that the search of records and the actual search required are done in accordance with such terms and conditions.

The title examiners are likewise beset by the special one or a special few. If the examiner declares his opinion of a title as marketable, waiving this or that irregularity and holding certain clouds immaterial, he is in danger of having a subsequent examiner for a buyer give an opinion that the title is not marketable and the irregularities and the same clouds material, with a result that the person, for whom the title was first examined, loses a profitable sale.

But, as nearly everyone knows, if the second examiner had the money, generally he would be glad to take such title if he actually wanted the real estate, even though his examination and opinion would remain the same. The better practice ought to be constructive and based upon a service for the movement in real estate rather than against it.

There are many a motto, saying or maxim which will commend the conservative. It is just as impractical to pass titles as marketable without a serious study as it is to refuse to pass titles without an application of the rule to find the title good if possible. An examiner must recognize his pitfalls. In general they may be classified as those concerning service or publication of summons or notices, tax deeds, incompetents, minors and the action or omission to act on the part of the many kinds of trustees, personal representatives, guardians and conservators.

Herein also are the nuisances to the abstracter. Many a conscientious examiner has asked an abstracter for enlightment upon an entry having to do with one of these pitfalls. Oftentimes abstracters enlarge the entry with notes or references to other records which do not pertain to the title in question but may concern the persons, who have or have had a share in the real estate in question. It is quite doubtful if such notes and references are really a part of an abstract. Their use is, of course, appreciated by the examiner to quell a fear, confirm a doubt or remove a cloud or objection. Yet the profession of both the abstracter and examiner should frown on surplusage and dicta. They should continually insist upon the briefest abstract possible to show the true state of the title and an examination just as brief.

A person in each profession is confronted by court decisions, wherein the Courts believe they have found a certain state of facts and have given an opinion in their minds holding such and such but wherein, unfortunately the facts were contrary to the findings and the decision entirely different. Then, too, one finds the sentimental court who finds the rule against perpetuities does not apply to the case before it because the testator had good grounds to hate his son-in-law and fear his influence over the testator's daughter; also the political court such as that in California saying the United Nations say no law shall be passed or held valid if it refuses to any one any rights because of race, creed, color, etc.; and also the court whose decisions are based solely upon humanities.

Certainly it would seem that the Courts could safely leave to the legislatures all questions of sentiment, politics, and humanities and not gum up the job of the abstracter or examiner. However, if this comment may be unostensibly made, the cheapest Court is the one to hold up to ridicule a lower court on any question it may decide. Perhaps there are examiners who indulge in the same habits, and hold up to ridicule the lawyer who first examined the title and sometimes the abstracter. There are, of course, differences of opinions as to the effect upon title as shown by the several entries and as to the contents of the entires, too many and not enough.

There is no doubt but what the law progresses and changes both as to the interpretation of fundamental and old law and as to new laws in the legislature or in the decisions of courts. Abstracters and examiners must move and progress with the law. Let up hope the progress will be natural and logical and never forced. If a result could be obtained whereby progress was had and yet the old worn-out stuff was discarded, then wonders would be accomplished.

Only by constant meetings, exchange of views, the relation of experience, suggestions as to profes-

sional behavior may worthwhile and natural progress be made.

No examiner wants to remain fearful of his colleagues and to have to tell his clients that, when the real estate in question comes under a contract for sale, it is best for the seller to covenant only that he will furnish an abstract as is but brought down to date or an abstract which does not show a perfect title but only a marketable title or some other abstract so described as will relieve the seller from the suspicion that at some future time somebody might make an adverse claim and the buyer be subjected to a hazard of ligtigation. If an examiner is forced so to act, the client or customer, due to his ignorance, may believe and oftentimes does believe the abstracter could have but did not make a proper abstract.

The abstracter and the examiner, being so closely knit and bound up together, must work in harmony and must quit this "scare-dy-cat" business between and among themselves.

Soldiers and Sailors Civil Relief Act

of October 17, 1940, as Amended

By LAWRENCE L. OTIS

Vice President and Chief Counsel, Title Insurance and Trust Co., Los Angeles, Calif.

This Act is still in effect and was extended to persons inducted under the Selective Service Act of 1948. There has been an understandable relaxation in recent years under the impression that "the war is over." It now appears that such an attitude is not justified in view of present world conditions, the current rapid expansion of our armed forces, and the probability that the protection of the Act will be necessary and will be accorded, in many cases, for some time to come. A review of its provisions, therefore, would seem to be desirable.

The Act, and valuable annotations, will be found in the Appendix to Title 50, United States Code, Annotated, pages 113 et seq., and the 1950 Supplementary Pamphlet, pages 123 et seq.; also in 147 A.L.R. 1366.

The benefits of the Act extend to the following persons:

(a) Members of the Army of the United States;

(b) Members of the United States Navy;

(c) Members of the United States Air Force;

(d) Members of the Marine Corps;

(e) Members of the Coast Guard;

(f) Members of the Women's Army Corps on active duty;

(g) Members of the Women's Air Force;

(h) Members of the Women's Volunteer Naval Reserve on active duty;

(i) Members of the Women's Marine Corps Reserve on active duty;

(j) Registered nurses serving in the Army or the Navy;

(k) Members of the Women's Coast Guard Reserve on active duty;

(l) Members of the Regular or Reserve Corp of the Public Health Service and Officers of the Public Health Service;

(m) Persons undergoing training or education preliminary to induction into military service;

(n) Persons inducted under the Selective Service Act of 1948 (Sec. 14);

(o) Members of the Enlisted Reserve Corps who have been ordered to report for voluntary service; and

(p) American citizens in the military service of our allies.

Stay of Actions, Sec. 201

Section 201 provides that: "At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service."

Now it is a harsh thing to tell a litigant that he must wait to enforce his cause of action until after the war. Witnesses or parties may die and witnesses may disappear or forget the facts. However, in the national interest, wherever the rights of one in the military service will be adversely affected unless a stay is given, the court must grant a stay. That is one price civilians must pay in aiding the war effort. In any case, however, the trial judge is called upon to determine, in that particular case, which interest is of the greatest importance. Doubtful cases should be resolved in favor of the service man. (Johnson v. Johnson, 59 C.A. (2) 375; 139 P. (2) 33).

Duration of Stay, Sec. 204

The Act also provides (Sec. 204): "Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. Where the person in military service is a codefendant with others the plaintiff may, nevertheless by leave of court proceed against the others."

The burden of proof normally rests upon the person seeking the stay to show that he will be prejudiced by a proceeding against him; and the statute vests discriminatory power in the trial court. It was believed that the rights of those in service would be adequately protected by the trial judges who, in each case, could determine whether the service man's rights would be adversely affected by the fact of his service. Where it has appeared that the service man was insured, would be available at the trial, or his deposition sufficient, or his interest nominal, or that he had no defense or was seeking a stay purely for delay or primarily for the benefit of another party not in service, the denial of any stay has been upheld. Where the service man is a witness only the act has no application. But the discretion of the trial judge means a sound legal discretion, precluding arbitrary action, and in close cases must be weighed in favor of the applicant. The duration of the stay and whether on terms for the protection, meanwhile, of the

other party are likewise in the discretion of the court.

Stay of Attachment, Sec. 203

Under Sec. 203 the court, under like circumstances, may stay the execution of any judgment or order entered against a person in military service, and vacate or stay any attachment or garnishment, whether before or after judgment. And, whenever a stay is accorded a service man or a judgment vacated, this same relief may likewise be granted to sureties, guarantors, endorsers, accommodation makers, and others, whether primarily or secondarily subject to the obligation or liability (Sec. 103).

Waiver, Sec. 103

Such protection may be waived only by a separate writing executed during or after the period of military service. In an action on contract, unsecured, against a member of the armed forces, it was sought to have an attachment discharged, but the court instead ordered all proceedings under the writt stayed, and this was held proper (Halstead v. Halstead, 72 C.A. (2) 832, 165 P. (2) 513).

Services Included, Sec. 101

In extending the protection of the Act to all persons in active service every component of the armed services is included, as well as those under orders to report or in training or being educated under the supervision of the United States preparatory to induction. Accordingly, the fact that a person may still be wearing civilian clothes is not reliable evidence that he is not within the purview of the Act. And, by Sec. 14 of the Selective Service Act of 1948, the provisions of the Soldiers' and Sailors' Civil Relief Act are made applicable to all persons in the armed forces of the United States, including all persons inducted into the armed forces thereunder, the Coast Guard or the Public Health Service.

The Supreme Court of Arizona, in Twitchell v. H.O.L.C., 122 P. (2) 210, approved the following principle:

Interests Protected

"The act . . . applies to equitable as well as legal interests constituting property in real estate and owned by a person in military service, without limitation as to use or amount, whether known to the mortgagee or not, and whether appearing of record or not. The act of Congress in this regard takes no account of our statutes as to registration of deeds."

And held, reversing the judgment denying intervention by the equitable owner then in service: "What form that protection should take is a matter for the sound legal discretion of the (trial) court."

Default Cases

In any action or proceeding where there is a default, of any appearance by the defendant, the plaintiff, before taking judgment, must file an affidavit setting forth facts showing that the defendant is, or is not, in military service or that he cannot determine whether or not defendant is in service.

Sec. 200(1)

In the latter case, no judgment can be entered except by order of court which, if the defendant is in service, the court may not make without first appointing an attorney to represent such defendant and protect his interest. Moreover, the court, unless satisfied the defendant is not in military service, may require the plaintiff to post bond to indemnify the defendant, if in the service, against loss should he later have the judgment set aside.

Sec. 200(3)

If any party to a proceeding is in service and does not appear, in person or by his attorney, the court may appoint an attorney for him and require a like bond. No attorney appointed by the court to represent a service man has the power to waive any right the service man may have or bind him by his acts.

Opening Judgments, Sec. 200(4)

Any judgment rendered under these circumstances may be opened by the court and the service man allowed to defend if he makes application not later than 90 days after termination of his service, provided he establishes prejudice by reason of his service in defending the action and that he has a meritorious defense. Vacating, setting aside or reversing any such judgment will not, however, impair any right or title acquired by a bona fide purchaser for value under such judgment.

Several factors appearing in these provisions respecting default judgments should be noted. Only the person in military service can benefit from any failure to comply therewith; so that, if none be in service, the judgment is not within their terms. And, if the soldier takes no action within the prescribed period, the judgment cannot later be questioned by anyone. The required affidavit must state facts.

An affidavit that the defendant was lately seen in civilian clothes is, as stated before, not persuasive. The mere statement that he is not in military service is but a conclusion and insufficient. The facts must relate to the time of hearing, not some earlier date, and the showing made must clearly indicate that the defendant is not in service.

Sec. 601

Where the plaintiff cannot, with due diligence, ascertain these facts by his own investigation, resort may be had to the certificates authorized by the Act (Sec. 601) but, in practice, these have not proved satisfactory because of inability to furnish sufficient data for a positive identification and because of the time-lag between issuance of such certificates and the action to be taken thereon. A private service is now functioning in Washington whereby request may be made for a search and report as to whether a given individual is in military service, but this is open to similar objections. In any event, during a period of rapid expansion in the armed services, the central records are bound to be incomplete.

These are inherent difficulties which must be taken into consideration in relying upon judgments and orders of court. Wherever possible, a showing and finding should be made that even were an interested party in military service, his substantial interests or ability to defend would not be materially affected thereby. In proceedings affecting real property, this can often be done and will minimize the risk of relying upon such proceedings. In all other situations the practical risks must be evaluated and reliance thereon measured accordingly.

Evictions, Sec. 300

When the dependents of a soldier are tenants of a dwelling for which the agreed rental does not exceed $80 per month, the landlord cannot have eviction or distress except by leave of court, and the court may, and on application and a showing of inability to meet the rent shall, stay proceedings for not longer than three months.

Termination of Leases, Sec. 304

A service man may cancel and eliminate the unexpired term of any lease of premises occupied by him or by him and his dependents for dwelling, professional, business, agricultural or similar purposes by written notice mailed to his lessor at any time after inception of military service and effective 30 days after the next monthly rental is due; otherwise on the last day of the month following that in which the notice is given. Rent is to be paid— and prorated, if necessary— to the date of termination and rent paid in advance refunded. Application may me made by the lessor, prior to termination, to have the court modify or restrict relief as justice and equity may require. It is made unlawful to seize the property or personal effects of any person lawfully terminating such a lease or interfere with the removal thereof from the leased premises.

Instalment Contracts, Sec. 301

A contract of purchase of real or personal property, a deposit on or instalment of which has been paid before entry into military service, cannot be terminated or forfeited or the property repossessed for any breach thereunder except by court proceedings. The court may order repayment of prior instalments or deposits or any part thereof as a condition of termination and repossession or may (and on application must) stay all proceedings or make some other

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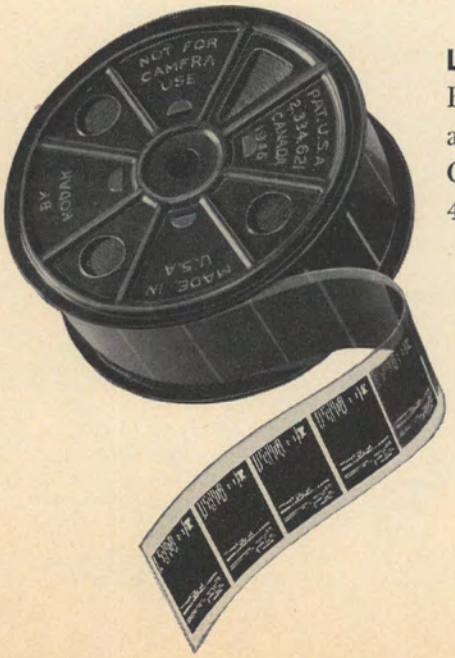

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equitable disposition of the case, unless satisfied that the defendant's ability to comply with the contract is not materially affected.

Appraisers, Sec. 303

Where the proceedings affect personal property and have been stayed the court may, unless undue hardship to dependents would ensue, appoint three appraisers and, based on their report, order a just sum paid to the service man or his dependent as a condition of foreclosure, termination or resumption of possession.

Mortgage Foreclosures, Sec. 302(2)

Judicial foreclosure of a mortgage, deed of trust or like security upon real or personal property of a service man securing an obligation originating prior to the inception of his military service may, and on his application—unless satisfied his ability to perform is not materially affected by reason of his military service—shall, be stayed or otherwise disposed of in the interest of all parties.

Power of Sale, Sec. 302(3)

The exercise of a power of sale under any such security can be made during the period of service or within 3 months thereafter only upon an order of court before sale and approval by it after sale.

Affidavits

Since this provision became effective it has been the practice of trustees, making sales under the power conferred by conventional security deeds of trust, to require the beneficiary to furnish affidavits showing facts establishing that no person having an interest in the property is, or within 3 months prior to sale has been, in military service; and for title insurers to have such affidavits before insuring title in the purchasers at such sales.

Of course no authority for reliance upon affidavits is provided and presumably no sale without order of court would be proof against timely attack by a person prejudiced thereby on account of his military service. Reliance upon affidavits which are as specific as circumstances will permit and the exercise of intelligent discretion in making or deferring sales where the evidence of non-service is equivocal has proved satisfactory in practice; and I have not heard of a case in Southern California where a title founded upon such precautions has later been set aside.

Should it appear that any interested person is or recently was in the service, the practice has been to require the specified orders of court. No difficulty has arisen as to the jurisdiction of the local superior court to make such orders or as to the procedure.

Procedure for Order

The beneficiary files a petition which is set down for hearing upon timely notice in the manner prescribed by the court with due regard to the desirability of getting actual notice to the parties or those interested on their behalf. Wherever it has appeared that a soldier was interested, the court has taken testimony as to his ability or that of his dependents to pay the obligation or something on account and has stayed the sale so long as the prescribed amount, however modest, continues to be paid. Where it has appeared, however, that —because of long default, practical abandonment prior to inception of service, nominal interest, or other lack of prejudice from active service —a stay would not accomplish substantial justice, a sale has been ordered and afterwards approved.

Storage Liens, Sec. 305(2)

No one may enforce a lien for storage of household goods, furniture or personal effects of a person in military service, during the period of such service or for three months thereafter, except upon prior order of court and subsequent approval by the court. The court in its discretion, and upon a proper showing, may stay the proceedings or make such other disposition as may be equitable in the interest of all parties.

Insurance Loans, Sec. 305(1)

And an assignee for security of insurance on the life of a person in military service cannot during the period of such service or within one year thereafter exercise any right or option by virtue of such assignment (except in certain events with the consent of the insured or upon his death) unless by leave of court. This does not, however, apply to a policy loan by the insurer.

Dependents, Sec. 306

Dependents of a person in military service, upon application to court, are entitled to the benefits respecting purchase contracts, mortgages, trust deeds, leases, storage charges, and insurance loans just discussed, unless the court finds that their ability to comply with the terms of the obligation has not been materially impaired by reason of the military service of the person upon whom they are dependent.

Life Insurance, Sec. 400

With respect, generally, to life insurance on lives of persons in military service detailed provisions are made which may be briefly summarized. Protection is afforded on insurance in force upon one life up to $10,000. Application for government protection are made by the insured to the insurer and the Veterans' Administration (Section 401, 402).

Sec. 403

A policy accepted by the Administrator of Veterans' Affairs as being entitled to protection shall not, during the period of military service of the insured or during two years thereafter, lapse or be forfeited for the non-payment of premiums or of any indebtedness or interest (Sec. 403). The United States guarantees the payment of premiums together with interest thereon; and, if the amount so guaranteed is not paid prior to the expiration of the protection period, the amount then due shall be treated as a policy loan; but if at the expiration of such period the cash surrender value is less than the amount then due, the policy shall terminate and the United States is to pay insurer the difference (Sec. 406). No dividend, cash or loan value, or other withdrawal or monetary benefit under a protected policy shall be paid to an insured or used to purchase dividend additions, except with the consent and approval of the Veterans' Administration (Sec. 404). If the policy matures by reason of death or otherwise before the expiration of the period of protection, the insurer in making settlement is to deduct the premiums guaranteed, plus interest (Sec. 405).

Taxes, Sec. 500

Enforcement of property taxes is directly affected by provisions respecting all taxes and assessments, general or special (except income taxes) on personal property, money or credits and on real property owned and occupied for dwelling, professional, business or agricultural purposes by a person in military service or his dependents at the inception of service and still so occupied by his dependents or employees.

Redemption, Sec. 500(3) and Sec. 500(4)

No sale of such property for delinquency or proceeding to enforce collection is permitted without leave of court upon application of the tax collector with the usual provisions for stay unless the court is satisfied ability to pay is not materially affected by reason of such service; and the right to redeem is extended until six months after termination of such service. Unpaid taxes and assessments bear interest at 6 per cent per annum in lieu of all other penalties or interest.

Sec. 205

The enforcement of delinquent taxes without the foregoing limitations also is affected, however, by the provision of Sec. 205 that the period of military service shall not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment. This was held to invalidate a tax deed of property sold for taxes and later deeded by the state even though the sale preceded the inception of military service and thereafter the former owner had but a privilege of redemption until issuance of the deed. (Le Maistre v. Leffers, 92 L. Ed. 429).

When, therefore, title insurers rely upon the validity of tax titles, or the

validation thereof, to insure such titles without first requiring that they be established by judicial proceedings, such insurers must keep in mind the fact that the extinguishment of any interest of a person in military service by such tax sale will render the title vulnerable to attack by him.

Income Taxes, Sec. 513

The collection of income taxes from persons in military service is deferred until six months after termination of service and no interest or penalties accrue during that period.

Domicile, Sec. 514

For purposes of taxation, domicile is not lost or changed by absence from civilian domicile or presence in any other jurisdiction while on active service.

Limitations, Sec. 205

The period of military service is to be excluded in computing any period prescribed by law, regulation or order for bringing an action or proceeding in court or administrative agency by or against any person in military service, whether accruing before or during the period of such service; and no part of such period of service is to be included in computing any period provided by law for the redemption of property sold or forfeited to enforce any obligation, tax or assessment.

Where a period is specified by law as the statutory life of a lien or right, such as the lien created by recording an abstract of judgment or that of a levy of attachment or execution, or the time to file a mechanic's lien, or to serve summons (89 C.A.(2) 662, 201 P. (2) 567), such period is not extended; but where the prescribed period is one of limitation, as the time to file a lien foreclosure, the period within which an action must be brought to trial (76 C.A.(2) 854, 174 P. (2)450), or the four months' period for liens by legal proceedings invalidated by bankruptcy (60 F.S. 69), the period for military service is not counted. The period for adverse possession is tolled by military service. (86 C.A. (2) 803; 196 P. (2) 73). Periods of redemption of course are extended.

Maximum Interest, Sec. 206

Interest-bearing obligations are limited to 6 per cent per annum during the period of military service unless the ability of the service man to pay the higher contract or statutory rate is not materially affected; "interest" being defined to include service charges, renewal charges, and other fees except bon fide insurance. In California, the legal rate of interest on judgments is 7 per cent, and this would be reduced under such circumstances to 6 per cent. Also unpaid interest could not be compounded so as to exceed 6 per cent simple interest during the period of military service.

Waivers, Sec. 107

No waiver of the benefits of the Act made prior to the inception of military service is binding; but broad rights are accorded those entitled to such benefits to agree—by written agreement executed during or after the period of military service—to the modification, termination or cancellation of any contract, lease or bailment, or any secured obligation, or to the possession, repossession, retention, foreclosure, sale or forfeiture of property the subject of or security for any obligation, contract, lease or bailment. This indicates a policy of encouraging mutual arrangements between parties in military service and their creditors whereby extended litigation, which is always productive of loss to all parties, may be avoided; and these provisions have been widely used to make mutual concessions compatable with the service man's ability to pay. The primary object, of course, is a realistic solution pending return to civilian life and should contemplate further revision after the soldier gets out of service and back into gainful employment. However, at the same time, it is the obvious intention to give these persons in military service the full benefit of the provisions of the Act and to leave it to them to waive these benefits or to make any arrangements with their creditors which could be mutually agreed upon.

Sec. 300

When a stay is accorded against eviction or distress (ante p 6), the landlord may have the protection accorded service men as to his obligations with respect to the demised premises.

Sec. 103 (3)

When by reason of military service sureties on a criminal bail bond cannot enforce attendance of the principal, the court is not to enforce—and may exonerate—the bond.

Further Relief, Sec. 700

Section 700 provides that a person at any time during his military service, or within six months thereafter, may apply to a court for relief in respect of any obligation or liability incurred by him prior to his period of military service. He may also apply for relief in respect to any tax or assessment, whether falling due prior to or during his period of military service. In all such cases, unless of the opinion that the ability of the applicant to comply with the terms of the obligation or liability or to pay the tax or assessment has not been materially affected by his military service, the court is given broad authority to prescribe a plan and terms for the liquidation of such obligations. This is accomplished by the court staying the enforcement of the original obligations upon the terms laid down by the court.

If the obligation is an instalment contract for the purchase of real estate, or a mortage on real estate, the court may go so far as to spread the amount due over the remaining period of the obligation plus the period the applicant was in military service. The court may interpose such other terms as it deems just.

In all other types of obligations the court may provide for equal periodic payments over a period equal to that of the military service or any part of such period.

Public Lands, Sec. 501

The Act protects from forfeiture or prejudice rights in public lands initiated or acquired under any laws of the United States, including the mining and mineral leasing laws, by any person prior to entering military service, by reason of his absence from the land or failure to perform work or make improvements, or to do any other required act during the period of such service.

Homesteads, Sec. 502

Military service may be treated as equivalent to residence and cultivation under the homestead laws as will the term of enlistment and period of hospitalization of service men discharged for wounds or disability incurred in line of duty. No patent shall issue, however, to any person who has not resided upon, improved and cultivated his homestead for a period of at least one year.

Sec. 503

Should an entryman die during or as a result of military service, his widow or minor children may make final proof without any further requirements as to residence and cultivation, as may a service man honorably discharged and unable, because of physical incapacities due to such service, to return to the land.

Desert-Land Entries, Sec. 504

Desert-land entries are similiarly protected, subject to the nominal requirements and procedure prescribed in the Act; and the requirement of annual assessment work on unpatented mining claims does not apply during the period of military service and for the six months thereafter, plus any period of hospitalization, subject to the requirement that the claimant shall, before expiration of the assessment year during which he enters military service, record a notice that he has entered the service and desires to hold his mining claim under this provision.

Mining Claims, Sec. 506

Somewhat similar provision is made with respect to persons holding a permit or lease on the public domain under the mineral leasing laws, subject to notifying the General Land Office (now Bureau of Land Management) within six months after his entry into military service.

Reclamation Act, Sec. 508

Sec. 508 provides that "The Secretary of the Interior is hereby authorized, in his discretion, to suspend

as to persons in military service during the period while this Act remains in force and for a period of six months thereafter or during any pediod of hospitalization because of wounds or disability incurred in line of duty that provision of the Act known as the 'Reclamation Act' requiring residence upon lands in private ownership or within the neighborhood for securing water for the irrigation of the same, and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper."

(Published in The Daily Journal January 18, 1951.)

"The Great Hoax"

WILLIAM WOLFMAN
Chief Counsel, Title Guarantee & Trust Co., New York

[Numbers in parentheses refer to footnotes at the end of Mr. Wolfman's address.]

In calling my talk "The Great Hoax" I did not intend to mystify anyone.

My talk is really nothing more than a report on a bill which was introduced in the Assembly during the past session (1).

The bill was never reported out of committee. The bill purports to affect a large tract of land in lower Manhattan in New York City, yet, strangely, it was almost unnoticed there. The bill did, however, excite a great deal of interest upstate and in most of the states of the union and even in Canada and in England.

It is proposed in the bill to create a temporary State Commission of seven members to investigate the title of the so-called "Trinity Church Farm."

If you start at the northwest corner of Broadway and Fulton Street in New York City in front of St. Paul's Chapel and walk west along Fulton Street to the Hudson River and then north along the river for about a mile and one-half to Christopher Street and then east along Christopher Street to a point just east of Hudson Street and then go south and east back to Broadway at a point near Duane Street and then south along Broadway back to where you started, you have walked the boundary of the tract of land once known at various times, as Trinity Church Farm or the King's Farm or the Queen's Farm. On this tract there have been erected a great many very valuable buildings. Among them are the Woolworth Building, the Transportation Building, the Post Office Building, the Western Union Telegraph Building, and many churches and schools. Trinity Church itself does not lie within the boundaries of the Church Farm. The church building is several blocks south on Broadway opposite Wall Street.

The bill calling for the investigation of the title to this tract was introduced by an able Assemblyman from Rockland County. He is not a lawyer. If he were a lawyer, he would have known that under our system titles to lands are investigated by the judicial, not by the legislative, branch of our government. If he were a lawyer, he would have known that the title to Trinity Church Farm has been investigated more than any other title in all the judicial history of the state.

The title of Trinity Church and its grantees to the land within the old Trinity Church Farm is absolutely unimpeachable. No property owner anywhere can boast of a better title because no title anywhere has been subjected to a more thorough test in both state and federal courts.

Trinity Church claimed title to this farm originally under a grant from Queen Anne in 1705. For nearly 250 years the church has devoted the proceeds of sales of parts of the lands and the rents of the remainder to a variety of good works. Trinity has supported many churches besides its own, as well as hospitals and educational institutions. One of the chief prerevolutionary recipients of its bounty was the old Kings College, now the great Columbia University.

Nevertheless, Trinity has been subjected for more than 100 years to unreasonable slander and libel. For more than 100 years thousands of people have been deluded into believing that they have inherited fractions of this valuable tract of land and that only Trinity Church stands between them and their rightful inheritance. Many thousands of dollars have been collected through the years from persons of modest means by misguided or unscrupulous speculators who assure victims that their lands may still be recovered. Money is sometimes taken as a retainer, sometimes as an investigation fee, and sometimes as a fee for checking and certifying their pedigrees or family history.

Trinity's title is criticized on two principal grounds. First, the description in the Queen Anne grant of 1705 was very vague and indefinite, and second, there were various prior grants to other persons of tracts of land within the limits of the church farm.

The grant purports to convey to Trinity the lands "formerly called the Duke's Farm and the King's Farm, now known by the name of the Queen's Farm * * *, now in the occupation of George Ryerse * * *, bounded on the east party by Broadway, partly by the common, and partly by the swamp, and on the west by Hudson's River." It is a very vague description. We know where Broadway is and we know where the river is, but the location of the swamp and the common is very much in doubt. Note also that the grant describes neither the northerly nor southerly boundary. However, the land is described as in the possession of one George Ryerse. Since Trinity under this grant took possession of land between Fulton Street and Christopher Street, it is fair to assume that Ryerse was in possession of all of the land.

It is true, too, that there were some prior grants made by the Dutch governors prior to Queen Anne's grant. The description in these grants are even more vague and more difficult to follow than the description in the Trinity grant. The king can do no wrong, we are told, and, I suppose, that goes for the queen, too. Undoubtedly these grants were surrendered by instruments the record of which has long been lost.

The full and complete answer to these claims is, of course, adverse possession, and adverse possession, continued long enough, gives just as good a title as title by grant.

The most famous of the adverse claims are the claims of the descendants of one Anneke Jans Bogardus. Anneke Jans came to the new world from Holland about 1630. In 1654 Peter Stuyvesant, the last Dutch governor of New York, gave her a grant of land in the southerly portion of the Trinity Church Farm, lying roughly between Canal and Chambers Streets. On the blackboard here I have drawn with a free-hand a map showing the outlines of the Trinity Church Farm. The land granted to Anneke Jans lies here (indicating) in the lower portion of the Trinity tract.

Anneke Jans died in 1663. At the time of her death she resided in a village near Albany. She was survived by eight children. Two of the children died without issue. There is an instrument on file which purports to surrender the grant to the English governor in 1665. The surrender instrument is in the names of only five of the six surviving children.

The descendants of the sixth child still fancy themselves entitled to one-sixth of the Trinity farm.

Early in the nineteenth century one of the descendants brought a suit in equity against the church seeking an accounting of the rents and of the proceeds from the sales of parts of the property. Trinity's answere was adverse possession. The plaintiff demurred to the answer, as the practice was at the time, but the validity of the answer was sustained by the chancellor and later by the Court of Errors, the then highest court of this state (2). The case was finally tried before Chancellor Sandford in 1846 and 1847. The report of the case occupies more than one hundred pages of the fourth volume of Sandford's Chancery Reports (3). The report is a delight to the scholar. It is an object lesson in how to prove adverse possession. Many distinguished gentlemen, the oldest eighty-nine years of age, were paraded to the witness stand, one after another, and testified in turn as to the facts of Trinity's possession of every portion of the area of the tract from Fulton Street to Christopher Street and from Broadway to the river. More than a thousand leases and deeds were offered in evidence. These, too, covered almost every portion of the vast tract. There is no better evidence of possession than leases and deeds. The chancellor had no choice but to decide the case in favor of the church. He overruled the contention of the complainants that Trinity was a tenant in common and could not acquire title by adverse possession, because Trinity had consistently claimed the entire title. Its grant from Queen Anne was a grant of the whole interest and not of an undivided fraction. In concluding his opinion the chancellor said:

> "Indeed, it would be monstrous, if, after a possession such as has been proved in this case, for a period of nearly a century and a half, open, notorious, and within sight of the temple of justice, the successive claimants, save one, being men of full age, and the courts open to them all the time (except for seven years of war and revolution), the title of lands were to be litigated successfully, upon a claim which has been suspended for five generations. Few titles in this country would be secure under such an administration of the law; and its adoption would lead to scenes of fraud, corruption, foul injustice and legal rapine, far worse in their consequences upon the peace, good order, and happiness of society, than external war or domestic insurrection."

Thwarted in a direct suit the Bogardus heirs later induced the sovereign State of New York to bring an action against the church, but the Court of Appeals ruled that even the state was barred by adverse possession (4). That was in 1860.

Still later several enterprising Bogardus heirs tried to get the surrogate of the county where Anneke Jans died to give them letters of administration with the will annexed. Their application was denied and the Court of Appeals affirmed the surrogate's decision. The courts held that after two hundred years they were bound to decide that there was no estate left to be administered (5). That was in 1880.

For many years afterwards the courts were given a respite from these claims. But the hopes of the Bogardus heirs were not allowed to die. Periodically adventurous solicitors went among them and solicited funds for further investigations of their rights. An unfortunate New York lawyer, who participated too vigorously in this work, was hailed before the Appellate Division and disbarred. A long opinion was written by the Appellate Division in the disbarment case (6). The court reviewed in detail the history of the prior litigation over the Trinity Church Farm showing how every technical argument had been raised and disposed of by the courts again and again, and held that a lawyer who would solicit retainers in face of these prior adjudications was no longer fit to be a member of the bar. That was in 1917.

Disbarment failed to curb this man's activities. He went to the middle west and continued to organize the Bogardus heirs. Finally he fell into the clutches of the post office authorities and was indicted and convicted in the Federal District Court of using the mails to defraud. The conviction was affirmed by the Circuit Court of Appeals in 1930, with another long opinion (7), and the United States Supreme Court denied certiorari (8).

The Bogardus heirs have not yet had enough. I have before me a letter dated October 6th, 1947. It comes from Springfield, Ohio. It is addressed to the Title Guarantee and Trust Company. It tells again the story of the supposed defects in Trinity's title. It is documented by maps and diagrams. It has appended a form of proof of claim which the writer says was signed by 2,458 Bogardus heirs who have constituted the writer and several other trustees to prosecute their claims. The letter concludes: "We desire to discuss further with you the possibility of settlement." What a sad commentary we have here on the gullibility of the average human being! In the year 1947, the year of the one hundredth anniversary of the final determination by Cancellor Sandford in favor of Trinity, the year of the thirtieth anniversary of the disbarment of a New York lawyer for reviving this stale claim, 2,458 people are induced to sign a new claim and, no doubt, contributed funds for the prosecution of the claim.

Enough of the Bogardus heirs. Please look at the blackboard again. I have labelled the upper portion of the tract "Hall-Edwards Claims." This portion of the farm lies between Charlton Street on the south and Christopher Street on the north. The Edwards claims are not as old as the Bogardus claims. The Edwardses first made themselves heard less than seventy-five years ago. Their first story was that they were descendants of a Thomas Edwards or a Robert Edwards who, they said, obtained a grant of land in this area from King George II or King George III in payment of services he had rendered to the crown. Lest it be urged that Trinity had tiltle by adverse possession the story developed that the land was occupied by Trinity under a lease made by Edwards in 1778 for ninety-nine years. Copies of this lease began to appear in various parts of the country and are still being circulated. Many of the copies contain a reference to a liber and page in the New York County Register's Office. The reference is, of course, a spurious one. There is no such lease at the page given or anywhere else in the Register's Office. When it was demonstrated that there were no patents from King George to any Edwards, a variation of the story became current. There is a Dutch patent, made in 1642, to one Thomas Hall, sometimes spelled Hael, covering a small portion of the area. Hall's only child, a daughter, it is said, married a man named Edwards and his son or grandson executed the lease under which Trinity took possession.

These stories circulated slowly at first but by the early 1920s every man and woman in the country whose surname was Edwards was a potential victim of a great racket. Committees were formed everywhere. Rival associations sprang up. After a while the movement took on the aspect of a national benevolent order. Many of the states had state associations, subdivided into locals, and sent delegates to national conventions. In 1926 there was a great picnic in Kansas City, Missouri, of the "Heart of America Edwards Heirs Association" which was well attended by Edwardses from every point of the compass. For a while a monthly magazine was published called "Edwards Heirs." Songs were composed to celebrated the movement. One of the songs ran:

> "We all have long since wondered,
> If the time would ever come;
> When the Edward Heirs would get
> their shares,
> And the long fought case be done.
> "Oh, We're Edwards Heirs,
> We're Edwards Heirs,
> We're Edwards Heirs, t'is true;
> But how in the world can the
> old folks tell,
> That we won't push this case
> through?"

Many of the meetings were attended by a lawyer from Birmingham, Alabama, who was called the general counsel of the organization. He delivered addresses which aroused great enthusiasm but lacked clarity as to what the basis of the claim was and what was being done about it. Often there were sly hints that the New York title companies were suppressing records and would shortly come forth with an offer of settlement. At one time copies of a bogus telegram were circulated urging the committee to consider immediately the offer that had been made. The telegram purported to be signed by "G.T.&T.Co." obviously a transposition of Title Guarantee and Trust Company.

Finally some of the contributors lost patience and complained to the post office authorities about their general counsel. He was convicted in the Federal District Court in Birmingham in 1928 of using the mails to defraud.

This conviction lead several leaders in the Edwards association to consult a reputable and able firm of lawyers in Cleveland. These lawyers undertook and carried out a thorough investigation. They came to New York and studied the records in the Register's Office there. They visited the Title Guarantee and Trust Company and were given unlimited opportunity to examine the records there. They went to Albany and examined the old colonial grants. One of them even went to England to look for evidence there. They printed a four-page report for distribution to their clients. The concluding sentence in the report is printed in capital letters and reads as follows:

> "OUR CONCLUSION IS THAT THERE IS NOT AND NEVER WAS ANY EDWARDS ESTATE ON MANHATTAN ISLAND AND THAT ANY MONEY TAKEN FROM YOU IN THE FUTURE ON THE PROMISE OF AN INTEREST IN EDWARDS ESTATE ON MANHATTAN ISLAND WOULD AS WELL BE CAST TO THE FOUR WINDS."

The lust for wealth, however, is a disease which cannot be checked by an honest lawyer's opinion. One of the men who sought this advice failed to heed it and was convicted in May, 1930, in the District Court in Cleveland of using the mails to defraud. About the same time a lawyer met a similar fate at the hands of a jury in Indianapolis.

Undismayed,a group of Edwards heirs, headed by one Robert Reed, started an action in ejectment in November, 1930, against the church in the Supreme Court, New York County. The complaint admitted Trinity's long possession but claimed that the possession was under the expired lease. After answering the defendant's attorneys obtained an order requiring the plaintiffs to produce the lease (9). This, of course, they could not do. Instead, they filed an affidavit in which the affiant stated that he had seen a record of the lease in a book in the New York Register's Office one day in 1924 but was unable to make a copy because the office was about to close. He returned the next morning, he said, and the book could no longer be found. A motion was then made by the defendant for judgment on the pleadings. The motion was granted and the complaint dismissed by Mr. Justice Ford at Special Term. The Appellate Division affirmed (10), and the Court of Appeals denied leave to appeal (11).

It was a sad day for the Edwards clan. The Special Term and the Appellate New York Courts had thrown out their case without even giving them an opportunity to go to trial and did not think their cause of sufficient importance or dignity to justify a word of written opinion.

The Edwardses are just as obdurate as the Bogarduses. Within the next several months they regrouped. They started a new action in the United States District Court in the Southern District of New York in 1932. This time only subjects of Great Britain were joined as plaintiffs. They hoped that their alienage would suspend the running of the statute of limitations. They dropped entirely the story of the ninety-nine year lease. They claimed solely as the successors of Thomas Hall. They fared no better in the federal courts except that they coaxed opinions from the district judge (12) and the Circuit Court of Appeals (13). Again the complaint was dismissed without a trial. In the Circuit Court of Appeals the plaintiffs urged that Trinity could not claim title by adverse possession because its charter limited its right to acquire property to land having yearly rental income not exceeding five hundred pounds. The court found no merit in this argument because the annual rental value at the time Trinity first took possession was far less than five hundred pounds. Moreover the same argument was made unsuccessfully in the Bogardus case many years before. The affirmative by the Circuit Court of Appeals was in June, 1935. The United States Supreme Court denied certiorari later the same year (14).

The Edwards heirs won't give up. They still hold meetings on occasion throughout the country. They still make contributions to expense funds. They still write letters to the church, to the Title Guarantee and Trust Company and to New York lawyers whose names appear in the Martindate-Hubbell and other national law lists. The recent bill introduced by the Assemblyman from Rockland County has, no doubt, given a new impetus to the movement. As a result the frequency of the letters has increased sharply during the past year.

During the past week I was shown a letter from an elderly lawyer in Atlanta to an old-time downtown New York lawyer, in which the writer asked the New York lawyer whether he would undertake an investigation on a contingent basis, and offered to come to New York to discuss the matter further. The New York lawyer answered very briefly as follows:

> "As one grandfather to another, I suggest that you stay in Atlanta and look after your clients there. Don't come to New York to look for any castle in Spain."

From a decision of the Supreme Court of the United States there lies no appeal. The constitution has endowed that court with the power to terminate the most protracted and troublesome lawsuit. This is as it should be. There is an old Latin maxim which says, in free translation: "The welfare of the state requires that a lawsuit must some day come to an end (15). But no maxim, no court, no constitution has yet been devised which can extinguish in the hearts of men and women the spark of the hope of attaining great wealth. Therefore, the legends of the missing Bogardus heir and of the lost Edwards leave will never die. These legends will be handed down from generation to generation. Until the end of our time proud parents will pass the spark to their progeny. Some day, the children will be told, justice will prevail and they will inherit the earth—the earth under the old Trinity Farm, together with the skyscrapers and other buildings and improvements erected thereon.

VOICE IN THE REAR: Wasn't there something in the newspapers about this lately?

MR. WOLFMAN: Possibly you are thinking of an article that appeared in the "American Weekly." The Trinity story has been a favorite subject for the editors of the Sunday supplements for fifty years. The authors of these articles know, of course, that there is nothing to the claims, but they write up the story in such sensational fashion that they stimulate the hopes of the Edwards and Bogardus heirs, rather than discourage them. It is time that someone took the pains to write a sober article reviewing all the facts and the cases for one of the law reviews.

ANOTHER VOICE: Have you any special reserve on your books for these claims?

MR. WOLFMAN: We set aside the reserve required by statute every time we insure a title. We have no special reserve for titles coming through Trinity.

ANOTHER VOICE: While these cases were pending, did you ever reject a title because of these cases?

MR. WOLFMAN: No, never.

ANOTHER VOICE: Where is Trinity Church located?

MR. WOLFMAN: Trinity Church is not within the so-called "Trinity

Church Farm." I think I mentioned that before. It is about five blocks south of Fulton Street, opposite Wall Street, on land acquired by Trinity under an earlier grant. In variations of the story Trinity Church is often placed within the farm. So also are City Hall which is on the other side of Broadway, the Customs House which is nearly a mile to the south, and Grand Central Station which is about two miles to the north.

ANOTHER VOICE: Your office, the main office of the Title Guarantee and Trust Company, is at 176 Broadway—is that within the Trinity Church Farm?

MR. WOLFMAN: No. We are on the right side of the street. (Laughter and applause).

FOOTNOTES

(1) Assembly Int. No. 2045, Print No. 2146 (1950).
(2) Bogardus v. Trinity Church, 4 Paige 178, Aff'd 15 Dend. 111.
(3) Bogardus v. Trinity Church, 4 Sand. Ch. 633.
(4) People v. Rector of Trinity Church, 22 N.Y. 44.
(5) Van Giessen v. Bridgford, 83 N.Y. 348.
(6) Matter of Gridley, 179 App. Div. 621; 167 N.Y. Supp. 107.
(7) Gridley v. United States, 44 F. (2d) 716.
(8) Gridley v. United States, 283 U.S. 827.
(9) Read v. Rector of Trinity Church, 232 App. Div. 745; 248 N.Y. Supp. 822.
(10) Read v. Rector of Trinity Church, 234 App. Div. 840; 253 N.Y. Supp. 1071.
(11) New York Law Journal, March 23, 1932, page 1596, column 5. (Not elsewhere reported.)
(12) Edwards v. Rector of Trinity Church, 5 F. Supp. 335.
(13) Edwards v. Rector of Trinity Church, 77 F. (2d) 884.
(14) Edwards v. Rector of Trinity Church, 296 U.S. 628.
(15) Interest reipublicae ut sit finis litium.

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1,000	1,500	1.65
1,500	2,000	2.20
2,000	2,500	2.75
2,500	3,000	3.30
3,000	3,500	3.85
3,500	4,000	4.40
4,000	4,500	4.95
4,500	5,000	5.50
5,000	5,500	6.05
5,500	6,000	6.60
6,000	6,500	7.15
6,500	7,000	7.70
7,000	7,500	8.25
8,000	8,500	9.35
7,500	8,000	8.80
8,500	9,000	9.90
9,000	9,500	10.45
9,500	10,000	11.00
10,000	10,500	11.55
10,500	11,000	12.10
11,000	11,500	12.65
11,500	12,000	13.20
12,000	12,500	13.75
12,500	13,000	14.30
13,000	13,500	14.85
13,500	14,000	15.40
14,000	14,500	15.95
14,500	15,000	16.50
15,000	15,500	17.05
15,500	16,000	17.60
16,000	16,500	18.15
16,500	17,000	18.70
17,000	17,500	19.25
17,500	18,000	19.80
18,000	18,500	20.35
18,500	19,000	20.90
19,000	19,500	21.45
19,500	20,000	22.00
20,000	20,500	22.55
20,500	21,000	23.10
21,000	21,500	23.65
21,500	22,000	24.20
22,000	22,500	24.75
22,500	23,000	25.30
23,000	23,500	25.85
23,500	24,000	26.40
24,000	24,500	26.95
24,500	25,000	27.50

Consideration	Stamps
30,000	$ 33.00
35,000	38.50
40,000	44.00
45,000	49.50
50,000	55.00
100,000	110.00

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