TITLE NEWS

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THE AMERICAN TITLE ASSOCIATION

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TITLES AND LEGAL ASPECTS

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I think I shall make this a question and answer period. Now the trouble with questions and answers is that they don't have any self-starter, and when a speaker gets up and says, "Please ask me some questions," and nobody does, he just feels terrible. So the speaker has to ask himself some questions, and after he does, the members of the audience begin to ask questions. So I believe I will ask myself some questions as a starter.

Closing

So the first question I shall ask myself is about the closing of a real estate transaction. The contract of sale has been entered into, which describes the property only by its legal description—the southwest quarter of the northwest quarter of Section Thirteen, Township Forty-eight, Range Thirteen. Then the sale is ready to be closed, and then the first commences. There's always a fight at the closing of every real estate transaction. I have known sales of $20,000 to blow up in my face when the seller and the buyer get to arguing about a $3.50 mirror attached to a door.

There is the argument about a field of oats growing on a farm. The farm is about to be sold, and the oats are ready to harvest. The buyer says the oats belong to him, since they are a part of the land, and the seller says the oats are his, because he planted them and they are ready to harvest. The buyer says, "Everything attached to the land goes with the land, and whether they are ready to harvest makes no difference to me."

Having in mind that that is a legal principle, that everything goes with the land that is attached to the land, how many of you would say that the purchaser gets the oats? How many would say that the seller could keep the oats?

Well, the answer is that the purchaser gets the oats. The oats are certainly attached to the soil, a part of the land. They are real property and pass with the land.

Attached or Adapted To

Then there is another little item, that is a bridge over a little rivulet—not a big concrete bridge, just a little wooden affair. The seller says, "Well, that bridge, those planks and beams, belong to me, and I can take them away. They're not attached at all." The purchaser says, "That's true. They're not attached to the soil, but they are intended to be used with the farm." How many of you say that the purchaser gets the bridge? How many say the seller?

Even though the object is not attached to the land, even though it is just lying there by its own weight, it is adopted for use with the land and is part of the land. As a matter of fact, houses are not attached to the

land—they are just held there by the force of gravity.

Well, the purchaser, thus encouraged, says, "Well, there's a house that has a pump in it. I guess I get the pump, don't I?" So he gets the pump, and then he says, "Well, now, how about this tractor? That is used on the land and is a part of the land." Well, I think he's going a little too far. I don't think he gets the tractor.

Goes with the Land

The principle is that anything used on the land, not attached to the land but used solely on the land, goes with the land. Those things that are mere chattels, like tractors, farm machinery, only those things are personal property and can be taken away by the seller.

So, getting back to the mirror on the bedroom door, if it is just hung there like any other mirror, it can be taken away by the seller. But if, by any chance, it is built into the wall and it is distinctively, peculiarly built into the building, it is a part of the building.

Screens

Screens are a good example of this sort of thing. The old-fashioned kind, the kind that you slide in the bottom part of the window, they are not part of the window, but the modern screens that are numbered and go into certain windows are part of the building. They are distinctively destined to be used with the building as a part of it.

Refrigerators

In think the most extreme decision of the Missouri Supreme Court came about in a case about General Electric refrigerators. Refrigerators, as you know, are not attached to a building. They just set on four legs and have a plug that goes into the wall. That is the only connection with the land. Well, this case involved an apartment house. A mortgage was put on the apartment, and later the apartment was equipped with the refrigerators. The mortgagor was perfectly satisfied that they became a part of the building, and that the mortgage would attach to the refrigerators. Well, hard times came on and the mortgage was foreclosed. The mortgage man saw the owner taking the refrigerators away from the building, so he said, "Where are you going with the refrigerators?"

The owner said, "I am taking **my** refrigerators out." So the question is, which is mine and which is thine? The case went to the Supreme Court, and they said that those refrigerators, while they were very insecurely attached to the building, were part of the equipment that was leased to the tenants. They were destined for use with the land, hence they were land and the mortgage attached to them, even though they were bought later, hence they went to the mortgagor and the owner had no refrigerators.

Leading Case

There is a leading case on this issue. A leading case is one which is referred to many times afterward as authority. The leading case on fixtures becoming part of the land or not becoming part of the land is a case in New York that concerned a statue in a formal garden. In the good old days of New York, if you really wanted to amount to anything, you had to have a brownstone house. So a gentleman in New York decided he would build a brownstone building, and built it around a formal garden. In the garden he would have a pedestal, and on the pedestal he would put a statue. So he built his home. Then, running short of cash, he put two mortgages on the property. One was a real estate mortgage, and one was on the personal property. He had carriages, equipment and all sorts of things, so when he went broke, he had a real estate mortgage and a personal property mortgage. Each of these mortgages was foreclosed, and the mortgagees got into an argument about the statue. On behalf of the real property mortgage purchaser, it was pointed out that the statue was peculiarly adapted for use in that particular house—it was made of brownstone, matching the rest of the house. The chattel mortgage man said that it was just setting there and wasn't built to anything, and was purely personal property. The New

York high court wrote a very illuminating discussion on the case. It was held that the statue was real property because it was adapted, it was destined to be used as part of that real estate. So there, as simply stated, is the law of what is real estate and what is personal property.

Clear Terms in Contract

There is no more fertile field of argument between seller and buyer. The obvious way to avoid these arguments is to put down in the contract of sale what goes with the land. Of course you can never think of everything, but that is the guiding principle as between seller and buyer. Practically everything except your furniture is part of the land because it is fixed to the land or adapted to the use on the land.

Landlord and Tenant

Now, there is another group of people between whom great arguments arise, and that is landlords and tenants. The rule here is exactly the opposite. Almost anything the tenant puts on the property can be taken away. He can even take away houses. We have ground leases, where the ground is leased, and somebody puts a house on it. When the lease has expired, the tenant may move the house away.

Take these electric light fixtures. If they were put on by the landlord, they would go with the land, but if they were put in by a tenant and he could get them out and stop up the holes so the building would be as good as it was when he moved in, he could take them away.

Doors

Our company once rented an office in a large building. We put in revolving doors instead of the old doors which had been there. We decided we wanted to move, and we just left the doors there. In a couple of years we moved back, the building still being vacant, and stayed there a while, then we found another building and decided to move again. Somebody mentioned taking the revolving door. I said, "You can't take it. If you had taken it when you moved the first time, you could have done it, but now they have become part of the land."

* * *

Wills

Now let us talk about another question. A man has a farm in Missouri, a well-equipped farm. It has all sorts of things on it. It has farm implements and wagons, and the man buys a tract of land down in Texas. So he goes down to Texas, and some years later he dies, and he gives his son something and all the rest and residue he gives to a hospital. While he was in Texas, he wrote a will, and in Texas a man can write a will and sign it without witnesses, and it is perfectly valid. In Missouri, however, there must be two witnesses to a will. Well, the will came up here, and the usual fight broke out between the son, who was the heir, and the hospital, which was the legatee to the residue of the estate. Of course, each claimed the farm and each claimed all the equipment on the farm. The will, which was valid under Texas law, was not valid under Missouri law. Did the hospital get the farm, or did the son get the farm on the theory that there was no will?

The farm went to the heir, because Missouri laws govern Missouri real estate, and whether a man lives in Texas and makes a will in Texas, it isn't good in Missouri unless it is good under Missouri law. The man didn't leave any will in Missouri, and the farm went to the son as the only heir.

Now, did the wagons and farm equipment go under the will or did they go to the heir? Well, the personal property went under the will, because that property, although physically located in Missouri, was legally located in Texas.

The Law of the State

Real property is located in the state where it is located, and it is governed by the laws of the state where it is located. Personal property, though, is not located in the state where it is located. It is located where the man lives. Ownership travels around—that's why it is so necessary in executing a will here in Missouri that

you execute it according to all the laws of all the states, because no sooner does the man make his will than he goes to California or Michigan, and his will must be good in those states. When he moves to some other state, his personal property moves with him, and the chance is that the will which is good in Missouri may not be good in some other state. So much for the so-called doctrine of conflict of laws.

Now, suppose a woman comes to you, and she has a grown son, and she says, "I want to buy this property." She wants to buy this house, and she wants to live in it, but she has a husband, and the husband is just a so-and-so, and she doesn't want him to have any interest in the property. She wants to take the property so that he will never get any interest in it, and so that when she dies the property will go to her son. Now, if you convey to her, the husband would have a dower interest in the property. She might leave a will, but he has the right to renounce the will. Well, what can you do? You can deed it to her for life, giving her a right to live in it, occupy it and collect rents from it, and after her death it shall go to her son. When she dies, the husband can't possibly get any interest, because her interest terminated at her death. So there is the plan of doing what the people want, by using these numerous tools that have been left to us by our predecessors in ways to handle property.

Lease

Well, here's a man who comes to you saying, "I have a lease on that property, and the landlord wants to raise my rent, and I don't want the rent raised. Can he raise that rent before the lease expires? No, if there is a lease there for certain rent, that's all there is to it. But suppose you say, "Where's the lease?" and he says, "Oh, we just made a verbal arrangement, a five-year lease."

"Well, way back a statute was passsed against frauds, and it said no lease for more than three years shall be valid unless it is in writing."

"Well, what do I have then?"

"You have a month to month tenancy if you live in town. If you live in the country you have a year to year tenancy. If you want to quit, you have to give notice, and if he wants you out, he has to give notice."

Fraud and Perjury

This statute against frauds and perjury has a very interesting history. It was found several hundreds years ago that people got on the stand and lied. There were punishments for perjury, but that didn't deter people. So a group of very learned lawyers sat down in England and said, "How will we annihilate these zones of prevarication? What will we do to keep these people from lying so much?" One bright chap said, "Let's don't let them testify to those things on the stand." The sort of things people were prevaricating so much about were leases, rents of land, promises to pay the debts of other people, sales of goods, wares and merchandise over a certain amount, and wills. "Well," they said, "We'll have to have some kind of testimony." "All right," they said, "written testimony. Unless a man can produce a written lease, a written guarantee on merchandise, a written will, he can't get anywhere with it." This is a beneficial statute because it does eliminate the other person's imagination about what was said.

Orders of Vacation

Suppose a man sells a lot fronting on a street right here in Columbia, and this is sort of a dead-end street, and years later the city council or aldermen decide to vacate the street. Who gets the street—the city, the original owner, or the abutting property owners? Of course, if the city owned the street, it still belongs to the city, but streets don't belong to the city. The city has only an easement. They have a right to use that street for all purposes of public traffic, but they don't own the street. The street continues to be owned by the person who laid out the street. If you laid out the street on your land, you continue to own the street. When the lot is sold, the street goes with the lot. If, on the other hand, the man across the street had dedi-

cated the street, then he owns the street, and when it is vacated, the street passes to his land. When you own a lot, you own either all the street or none of the street, or if both sides gave equally to the street right-of-way, then you own it equally.

Easement

A case went to the Supreme Court where a man had a farm, and the railroad ran a strip through it. The farm ran down to a rivulet, and the railroad put in a little trestle over the rivuet on its right-of-way. The farmer had cows that had to go back and forth under the trestle, to get water. One hot afternoon the cows were under the trestle in the shade, and a switch engine stopped on the trestle, and the fireman dropped a firebox full of hot coals down on the cows and injured them. So the owner sued the railroad—of course they were all thoroughbred cows, you know. It's just remarkable how many cows have long pedigrees when they are invoved in lawsuits. Well, the man sued the railroad. The railroad said the cows were trespassing on its right-of-way. The lawyer for the farmer said, "They weren't on your right-of-way. They were under your right-of-way. It certainly was negligent to dump those hot ashes on the cows." The court decided that the railroad had only an easement, and the farmer was awarded damages.

Over-burdening

Years ago in St. Louis, the building where Famous-Barr is now located was occupied by a dry goods company, at the time when telephones were just beginning to be used. First they put poles and wires in the street, and as more people got to using telephones, more and more wires were added. The wires finally got so numerous that they voluntarily put them underground. Before that, though, the Barr Dry Goods Company sued the telephone company, saying they were overburdening the easement, and the owner of an easement can only use it for the purpose for which it was intended. If the city had an easement for certain streets, they couldn't build on the easement, they could just build a street. The dry goods company said, "You don't have any right to use this easement for a multiplicity of wires." The telephone company wanted to know what their cause of complaint was. The dry goods company said, 'For one thing, they collect a lot of dirt, and in the summer the dirt is blown into the building. You have no right to collect dirt on wires and have it blow into our nice dress department. Worse than anything, though, we have windows down on the first floor along the sidewalk, and you know there are a great many sparrows in St. Louis, and the sparrows sit on those wires, and the ladies go along looking in our windows, and you can imagine what happens."

Underground

The Supreme Court got to arguing about that—whether the telephone company was overburdening the easement, whether they were reasonably using the street easement or not. The verdict was four to three—seven judges. The court said, "That is right." I suppose some declaration of rights for the sparrows was entered —I don't know. The company had a right to use the easement for the wires. Three said, however, "No, that is not intended for that use, shown by its deleterious effect, and they should be enjoined from using it." At about that time, however, the telephone company saw that it couldn't continue to use the streets for wires, and decided to put them underground.

Right to Use

A man came to me just the day before I left, and said, "I want to sell a cemetery lot, and the man buying it wants to have title to the lot examined." I said, "You can't examine title to a cemetery lot." "No?" "No," I said, "because you don't own it. You own an easement, a license, a right to use that lot, subject to the regulations of the cemetery company. You will have to go to the cemetery company and see if you can sell that lot, and if they say so, you can. If you buy a membership in the Country Club, you can't sell it. If you

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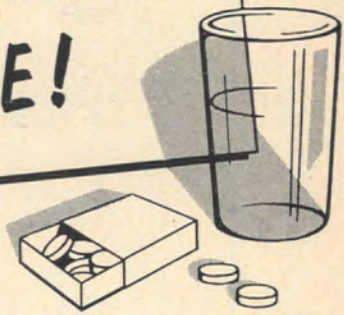

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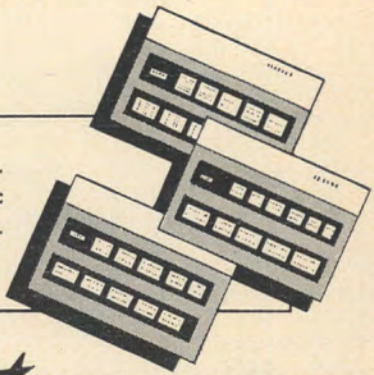

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buy a ticket to the picture show, you have no interest in that picture show." He said, "You mean that the right of burial in a cemetery is like a ticket to the picture show?" "Exactly, only you stay longer in the cemetery."

"Well, I think it's time you ask me some questions. There ought to be some questions about something.

Negligence

QUESTION: What about a fiixture that becomes attached by mistake, such as a pair of awnings or some screens, put up on the wrong building?

ANSWER: If somebody comes along and buys the building and doesn't know the awnings don't belong to the building, that is an act of negligence on the part of the attacher, or the person who has put it into the power of somebody else to something about the property. He loses his awnings because of the fact that he has put the awnings into a condition whereby somebody will think they are his when he purchases the building. That is based on a principle that when one of two innocent people must suffer, the one who made possible the transaction to be effectuated must lose. The fellow who was negligent, let us, say, was the one who was responsible.

LAWYERS VIEW OF THE RECORDING STATUTE

(This address was written for and delivered before the Convention of the Idaho Title Association. Being of general interest, and much of it being usable by members in Public Relations work, we carry it in "Title News"—Ed.)

THOMAS R. WALENTA

Professor of Law, University of Idaho, Moscow, Idaho

The topic chosen for my discussion today is one of great importance to you for it deals with the Recording and Conveying Statutes in Idaho, about which during the past ten to twenty-five years there has developed throughout the United States and in Idaho a belief that our methods of conveying and recording titles to real property are in need of revision. Expressions of dissatisfaction have been made by the Grange, which was then also active in promoting the adoption of a Torrens System of title registration in Idaho. The Idaho State Bar has made extended studies of the problems involved which may be reviewed in its journals entitled **"Proceedings of the Idaho State Bar."** As a result, the Idaho Bar approved **"Standards of Title Examination"** which were supplemented by **"Standards for Abstracters"** all of which were adopted in 1946 by the Idaho State Bar.

In addition, our state legislature has also voiced its concern as to the inadequacy of our recording system, when the Senate, on March 12, 1951, adopted "House Concurrent Resolution No. 9," which bluntly stated our system of recording titles was in need of revision and proposed an extended study of the systems employed in other states.

It will not be long before another session of our state legislature will be convened. Again we shall hear arguments for and in condemnation of abstracters, lawyers, title insurance companies and all other persons interested in or connected with the conveying and recording of titles to realty. It seems most fitting that you, the members of the Idaho Title Association, should take an active part in the legislative program and cooperate with the lawyers and other persons and public institutions desirous of promoting the common good by improving our system of recording titles in Idaho.

My interest in this problem arises out of many years of experience as a practicing attorney in the examination of abstracts of titles, as well as teaching a course in "TITLES" at the University of Idaho. However, I

do not hold myself out to represent the College of Law or the University of Idaho, officially or otherwise and whatever remarks I make here are made solely in my capacity as a citizen of the State of Idaho and a member of its Bar Association, and for which I claim the sole responsibility.

Historical

The system of proving title to realty from the public records has had a long and interesting history. It is thought (Old Testament, Genesis, XXIII, Jeremiah XXXII, 11-14) that the practice of transfering title by written instrument is as old as recorded history. However, the English land law developed around the proposition that possession was ownership and it would supply the only proof of title which would be recognized. At the early common law, title to realty was transferred by an oral ceremony known as livery of seisin. This transfer of title or enfeoffment was accomplished by the parties entering upon the land, and in the presence of witnesses, the owner would hand to the buyer a twig or a clod of earth as symbolic of the transfer of possession, and declare that he gave the land to the buyer and his heirs in fee, forever.

It was not unusual for the parties to strike or cuff some youngster present at the ceremony to imprint upon his mind the occasion and parties present so as to enhance his value as a witness, if ever a dispute should later arise as to the transfer of possession. This method of conveyancing long continued in England and it was not required that the parties use a written deed until the passage of the Statute of Frauds in 1670.

There came into being other modes of conveyancing by virtue of the Statute of Uses, enacted in 1536. This statute did not require livery of seisin. It transferred seisin and possession to the purchaser at once without publicity or the necessity of going upon or near the land.

Statute of Enrollments

This clandestine or secret operation of the Statute of Uses was disliked by Parliament and in the same year the Statute of Enrollments (27 Henry VIII, C, 16), our first recording statute, was enacted in the interests of public policy and in the hope that transfers of land should be kept public. However, the land owners circumvented this statute by first "leasing" for term of one year the land to the intended purchaser and thereafter "releasing" to him the reversion, in fee. This method of conveyance was known as a **"Deed of Lease and Release"** and was not within the strict wording of the Statute of Enrollment and hence not subject to enrollment.

In America, conveying by way of livery of seisin was not common. The Statute of Uses was generally held to be within our common law, but not so with the Statute of Enrollments. Although the Deed of Lease and Release was used it was not long until all the states had adopted a statutory method of conveyancing without the need of livery of seisin or other forms of ceremony.

In Idaho, we have a very simple and direct manner of conveying real estate. Here we are authorized to convey real property by a writing signed by the grantor and evidencing his intent to transfer ownership (Idaho Code, 55-101).

American Innocation

Proof of land ownership based upon a system of public records is essentially an American innovation. Under our system, the title deeds are recorded in full rather than their mere registration as required under the Statute of Enrollments in England.

Common Law

The common law proved title to land by means of the original title deeds and documents by which the land was encumbered or transferred. In the beginning, in America the lawyers examined the public records and thus made his own title search and abstract. This was a slow, difficult and a time consuming task. As a result, abstract companies were formed to make this search and "abstract" the public records for the lawyers. The work of the lawyer was then simplified into rendering an opinion as to the state of the title, based upon

the prepared abstract. Thus was born the conventional "lawyer-abstract" method of investigating the proof of title to realty and determining its marketability.

Attorney Opinion

The opinion rendered by the lawyer, whether based upon his own search of the public records or that of an abstract company could not be guaranteed to be 100% correct. This result was inherent in our system of keeping the public records and was not a reflection upon the ability of the lawyer or the abstracter. The lawyer was unable from his inspection of the public records, or the abstract thereof, to ascertain whether or not the deed had been delivered or stolen, whether the maker thereof had legal capacity to execute such an instrument, or that his signature thereto was genuine and not forged.

Title Insurance

To guard the purchaser against this and other risks, title insurance came into being. Title companies were formed with sufficient capital to give assurance of stability and protection to those who sought their services. The insurance companies thus took over the functions of both the abstracter and the lawyer when it added their opinion to the insurance policy.

Torrens

Another system of proving or evidencing ownership to land was also developed. It was called the Torrens System in honor of its originator who introduced the system into Australia in about the year 1870. Under the Torrens System, ownership itself is registered rather than the recording of the evidence of ownership, as we do under our Idaho practice. It works much after the manner in which one registers title to his automobile.

Needless to say each system has its advocates as well as critics. Before one could honestly arrive at a decision as to the wisdom of adopting one or the other or some combination of such systems, it would require an intensive study of each to determine its weaknesses and points of quality. At study of the experiences and systems used in other states would prove helpful. It would appear to call for a thorough canvass of the abstract and title companies, lawyers, credit and banking institutions as well as the public generally, to determine their views and needs upon this problem.

Need for Refinements

It is my belief that our system of recording and transferring ownership to land, is in need of a thorough and complete revision. There are many who share in the belief, that a simpler more efficient, speedier and economical system of conveying land should be developed. I believe further that this can be accomplished through a careful study and revision of our present laws. This study should include, not only the recording statutes, as such, of this and other states but the entire system of evidencing and conveying title to realty. It should point out the defects in our present system and set up the goals to be achieved: That goal is primarily to work out a system whereby the marketability of land is made more definite and certain.

Divisions

There would seem to be five convenient divisions upon which to center our efforts:

(1) Those transfers which occur between living persons, oftentimes referred to as intervivos transactions, such as deeds, options, mortgages, judgments, mechanics liens, marriages, divorces, decrees, easements, building restrictions, joint tenancy and future interests.

(2) Those tranfers whose legal effect occur after death and included generally probate proceedings. Such problems as conveying title without probate of decedent's estate, the necessity of probating a will, administrator's sales, finality of probate decrees, and the determination of heirship are a few of the problems involved.

(3) A study of the rules of evidence with the thought to make prima facie proof of title less difficult. Affidavits, conversations with the deceased, presumptions, ancient

documents, proof of heirship are all problems there involved.

(4) Revise and rewrite our statutes and laws on disabilities, limitation of actions, quiet title, curative statutes and adverse possession, so as to provide a more efficient method of cutting off stale claims and correcting minor defects.

(5) Establish a legislative definition of marketability that is positive in nature, workable and efficient without the necessity of reviewing the entire abstract of title each time a transfer of the property is made.

Priority Under the Recording Statutes

In the Idaho Code, there is an entire chapter entitled "Recording transfers to Realty." (55-801-55-817). It would be well to know "why" we have this section and "what" does it accomplish.

This chapter deals with the priority of conflicting rights or interests to real estate. At common law, the general rule of conflict is that: The first in time was the first in right. For instance, if the owner of land made a gift thereof to his son and subsequently sold the farm to his neighbor a conflict of interests would arise at once. Now, at the common law, and without the aid of a recording statute, it was decided long ago that the son should prevail over the neighbor. The reason given for this result was that when the father gave the land to his son he had no further interest which he could sell or give to his neighbor. This result is reasonable. The same result would occur at common law if the conflicting interests were both equitable.

Priority

What effect then does our recording statutes have on the same situation? In Idaho, the lawyer would need to know if the subsequent purchaser or neighbor was a person who gave value without notice of the prior deed or gift to the son, and if the neighbor recorded his deed before the son. The rule of priority under the Idaho statute depends on whether or not the junior or subsequent interest was acquired by one who paid value without notice of the senior interest and recorded first. That is our general statutory rule of priority.

Complications

There are complications however with the rules of priority at common law, when one interest is equitable and the other is legal. To illustrate—Suppose the owner of land contracted to sell it to his son. The son is said to have an equitable interest in the farm. The father then sells the land to his neighbor and evidences the transaction by delivery of his warranty deed. The latter has a legal interest. Our problem is to decide as between the son and the neighbor which one shall prevail. At common law the neighbor, with the subsequent legal interest, would prevail over the son, with the prior equitable right, only if the neighbor gave value without notice of the son's contract. In a word the neighbor must be a bona fide purchaser and not the donee of a gift.

Under the recording statute the same result would occur **only** if the neighbor was a bona fide purchaser and if he also recorded first.

Thus we see that by virtue of our recording statutes we change or alter the common law rules of priority only if and when the subsequent interest, whether of purchase or encumbrance, was made for value without notice of the senior interest and recorded first. Restated our recording statute I. C. 55-812 and 55-606 does not base priority solely on the basis of time of recording, but require that the conflicting interest be owned by a purchaser or encumbrancer who gave value without notice of the prior or senior claim and who recorded first.

Defects

A major defect in our statute I. C. Sec. 55-812 lies in the possibility that if the owner of land conveyed to his son, who did not then record the deed and later the father conveyed to his neighbor who paid value without actual notice of the son's deed but failed to record at once. The son could if he recorded before the neighbor prevail over the latter according

to the terms of the statute. This appears most unjust.

Another situation which appears equally as harsh if not more so would occur if in the above problem, the neighbor recorded first and then the son recorded his deed. According to the words of the statute, the neighbor would be unable to ever sell the land or give it away to another who could qualify under the statute as a bona fide purchaser.

These two problems should be clarified or corrected by amendments. It would seem that where one has qualified as a bona fide purchaser he ought to prevail over the prior grantee provided he records within some reasonable period, perhaps 10 days after the conveyance.

Estoppel By Deed and the Recording Act

Prior to the 1941 amendment of I. C. 55-811 there was a question in Idaho as to the relative rights of and under the following situation:

Suppose A conveyed to X by warranty deed at a time when A did not have title to the property. Subsequently A did acquire title and recorded that deed. Y desired to buy the property and upon an examination of the abstract of title found ownership in A. Y completed the transaction and recorded.

As between X and Y a conflict of interest arises for each gave value and was without actual notice of any defect in A's title. Under our Statutes I. C. Secs. 55-605, 55-606 and 55-811, an after acquired title insures to the benefit of the prior grantee by operation of law. In this instance, X would have the benefit of A's title as soon as A acquired it. However, Y is innocent, his search of the record showed a complete chain of title down to and including A. Must Y also search for prior conveyances made by A? A review of the cases where the doctrine of after acquired title and the recording act conflicts may be found in 25 ALR 84. It is my belief that after 1941, if not before, X would prevail over Y if X was the first to record, otherwise Y would prevail if he recorded first. It would seem to me that the recording acts would govern this situation.

The same rules would apply to mortgages under I. C. 45-907, where it is stated that an after acquired title insures to the benefit of the mortgagee.

The time is growing short—let us briefly mention some of the additional forward looking steps taken, in Idaho, toward improving the marketability of land titles.

(1) Curative Statutes

We have a curative statute (I. C. Sec. 55-730) which was successfully enacted in 1907, 1935, 1947. This curative statute like others of this nature cures only those defects or irregularities which are merely technical and not jurisdictional in nature. It makes complete that transaction which was partially or imperfectly performed, and deals with those matters going to its execution and acknowledgment.

Our curative statute contains an **"Ancient Document Provision"** which provides that a certified copy of the instrument to which the curative statute applies may be read in evidence without further proof if it has been recorded for more than five years next preceding its production in Court.

(2) Affidavits

In order to prove a marketable title of record, it is often necessary to resort to matters not contained in the original title deeds of record. Such matters as marital status, date of birth, marriage and death, identity of parties and maps and plots, place of residence and possession of real property under a tax deed may be proven by affidavit and recorded under our statute I. C. Sec. 55-816, passed in 1945.

This statute liberalizes the rules of evidence and its possibilities should be extended to include adverse possession and determination of heirship.

(3) Adverse Possession

Idaho has a five year period of adverse possession by virtue of its I. C. Sec. 5-207, 5-209 and 5-210, although it requires six years to perfect a title acquired under a tax deed, I. C. Sec. 63-1142.

These statutes are admirable in that they operate quickly and efficiently yet requiring good faith of the adverse possessor by requiring him to pay all taxes assessed during a continuous five year period. Of course they do not operate as against a disability in existence when they are invoked.

(4) Notice from Recording Acts

The Idaho Code provides at Section 55-817 for the duration of notice by stating that, "No public record of any mortgage or other lien on real property, given prior to July 1, 1929, shall constitute notice of the existence or contents of such mortgage or lien to subsequent purchasers or encumbrances of the property affected thereby for a longer period than 10 years from date of maturity and if no date of maturity is given then the date of the execution of such mortgage or lien shall be deemed to be the date of maturity of such obligation or indebtedness." (1935—ch. 107).

This section was amended by Chapter 127, Laws of 1951, to extend its coverage of mortgages and liens from July 1, 1929, to include July 1, 1945.

At the same session of the legislature a law was enacted, known as Chapter 117, Laws of 1951, to enable any person to Quiet Title to lands subject to a mortgage or judgment that was barred by the statute of limitations even though the debt was not paid.

There was also passed as Chapter 254, Laws of 1951, a statute which provided that no mortgage foreclosure should be had more than five years after the maturity of the debt, as set forth on the public records unless there was an extension agreement or affidavit of record, and then five years following the extension agreement. There was also provided that if no maturity date was given then five years from the execution date of the mortgage as shown on the public records would be taken as the date of maturity.

This combination of session laws provide a limited method of cutting off stale claims and interests so far as purchasers and encumbrances are concerned. I believe, that the rights as between the original parties is left unaltered by these statutes. This should be made certain.

The chief defect as it appears to me lies in the fact there is still no definite cut-off date back of which one need go in search of mortgages, liens or judgments.

Standards of Examination of Abstract of Title

We should not overlook the significant contribution of the Idaho Bar Association which adopted in 1946 certain Standards of Examinations of Abstract of Title as well as Standards of Preparation of Abstracts. Connecticut in 1936 was perhaps the first state to adopt such rules in an effort to reform and improve its title practices. The movement has been widely adopted by at least fourteen state bar groups.

Such standards are based upon the local law and experience of its lawyers. By laying down uniform and recognized standards of appraisal in advance, it will go a long way toward dispelilng the universal fear, of all lawyers, that the following examiner will set out a defect, which he had waived in the best interests of promoting the transfer of land.

A study of the title standards of other states discloses that Idaho could add many more standards to its list. Perhaps the next step would be to annotate the standards as we now have them and add others as experience dictates. It is quite generally believed that such standards should be adopted by the state legislature to give them the binding effect of law; thus promoting stability and uniformity in title examinations.

Washington and Montana have adopted extensive standards which are well drawn and annotated. This is especially true of the Washington standards.

It would seem much could be done by the Idaho Bar in clarifying the law and its practice by declaring its position on such matters as fee titles, joint tenancy between spouses and the common law rule against perpetuities. Such declarations upon adoption by the legislature would have the force and effect of law.

Statutes of Limitations as Affecting Governmental Units

Generally both the state and federal governments are immune from the operation of the various statutes of limitations. Many states, including Idaho, however, have relaxed this rule of immunity for governmental units in respect to property interests. I. C. 5-225. Smaller governmental units such as counties, cities and towns are often times made amenable to statutes of limitation. However, there has been little relaxation, if any, in respect to the federal government and its agencies.

Disability Statutes

The law has taken an active interest in the protection of the rights of those under disabilities. The Idaho Code, Section 5-213, provides that the adverse possession statutes shall not operate as against infants, insane persons, those imprisoned on criminal convictions and certain married women. The statute will not commence to run against a disability, although, if once set in motion it will not be stopped or tolled by a disability. (Idaho Code Section 5-235). Under this statute the adverse possession is not complete until five years after the disability ends.

Disability statutes exist also in respect to administrator's sale, (Idaho Code Section 15-743) and other matters.

Statutes of Limitation Barring All Claims

Iowa in 1919 was the first state to adopt a comprehensive statute (Iowa Acts [1919] c. 270 No. 1) designed to extinguish and bar all claims of every nature, with but few exceptions that might affect marketability and which do not appear of record within a given period of time. This type of statute would appear to be the answer to most of our problems here under study and should be culmulative in nature. We should not be satisfied to attack our problem piece-meal by statutes dealing with affidavits, duration of notice and others of like nature, this statute makes all interests present and future, possessory and non-possessory, vested or contingent, subject to a conclusive presumption that they have been extinguished unless preserved or extended by recording within a fixed period of years or from some fixed period of time and operates against all disabilities as well.

It makes possible for a purchaser to deal with a record owner in possession knowing that within a certain definite period of time that the record title is complete and marketable.

Such a statute or one of similar import should be enacted in Idaho. The statute should run against all disabilities of the individual, it should apply to the state and all its minor subdivision of government; all present and future interests, both legal and equitable, should be included within its terms.

Personally, I would add an additional clause requiring that adverse possession could not be complete in Idaho until an affidavit or other written memorial was recorded setting forth the facts of adverse possession under oath. A period of 26 years would appear satisfactory to cut off old claims forever which are not renewed by recording which would include contingent and other future interests.

Illinois, Minnesota, Michigan, Nebraska and South Dakota have adopted similar statutes. Perhaps the Michigan statute authored by Professor Ralph W. Aiger of the University of Michigan law faculty is the most popular statute yet enacted.

Most of such statutes embody a statutory definition of marketability. The object of all systems of conveying and recording title to land is to insure and promote its marketability. Idaho has defined marketability by case law in these words:

> "The title shall be a good title, free from reasonable doubt."

Marshall v. **Gilster,** 34 Idaho 420 at 426, and **Bell** v. **Stodler,** 31 Idaho 568 at 572 our court stated:

> "Every title is doubtful which invites or exposes the party to litigation."

In **Boyd** v. **Bailey,** 25 Idaho 584 at 586, the Court quoted with approval,

"Title to be good should be free from litigation, palpable defects and grave doubts; and it should consist of both legal and equitable title, and be fairly deducible from the record."

Such an idea of marketability should be incorporated into the statute. Perhaps the bare statement that he who has been the record title owner of real property for 26 years has a marketable title to such property. This would protect ownership rather than bare possession.

Helpful discussions of these statues may be found in:

30 Minn. L. Rev. 23, (1945)
30 Minn. L. Rev. 32, (1945)
55 Howard L. Rev. 886 (1942)
44 Michigan L. Rev. 45 (1945)
26 Michigan State Bar Journal No. 9 (23) (1947)
47 Michigan L. Rev. 935, 1097, (1949)

A tract index system of recording would be helpful.

This task of revision will not be easy of accomplishment. It will require the best talent that our state affords. Men who are willing to work long hours with little thought of financial gain and whose reward will lie in accomplishing a worthy work for their fellow man. Some will oppose any change in our present system for fear of economic hardship; others, out of pure inertia to change, desire only to leave things as they are. It is apparent, however, that the public will ultimately insist and receive a better system of conveying real property than is offered it today.

Whether one believes in the conventional Abstract-Lawyer system of examining title, Title Insurance, the Torrens System or some combination of these is rather immaterial to this study. All will be benefitted by the changes suggested and a better system lies in the future if we all work together as a team.

"ATTACH A PLAT"

E. A. RANDALL
Fidelity Title Co., Wichita, Kansas

"Plat should be attached, showing location in the quarter section, also size, easements and other pertinent facts." That ever recurring requirement shows that the examiner is on the ball and the abstracter isn't. And in spite of the fact that this magazine and every text on abstracting insists that a plat is a part of every abstract, there are hundreds of abstracts produced each month without one. Most abstracts have some problem for the examiner that could best be delineated on plat; some have easements and building set-back lines on the plat that are not mentioned elsewhere.

Specific Instances

Here on my desk is an order for Lots 54 and 56, Hydraulic Avenue, in Parkview addition. The plat shows those lots to be 139 x 25 ft. each, fronting west, etc., but it shows something more; no alley, and no easement for utilities over the rear 6 and 8 feet. This abstract is completely silent as to any utility easements. Well, maybe they are all in the street. The fact is, utilities were put in that block about 1914, at which time things were handled by the "common consent" method. So while sewer man-holes and electric poles appear on the rear of the lots, there is no recorded easement. Since most additions platted before the turn of the century, contained alleys, the examiner would never ask the question if he had not been confronted with this plat.

And here is an order for eight abstracts on Schrader Bros. Addition. Just a new addition, in our far east end; very modern, up-to-date plat, with 8 foot easements and building set-back lines. In fact, there is about one-fourth of the area on each lot upon which you cannot build perma-

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nent improvements; and nowhere in the abstract, except on the plat, is that information available. Some of our examiners have a copy of the city plat book. That doesn't contain easements and set-back lines either. And neither does an abstract which is traced only from the plat book. Only on the original plat does that information appear, and that is where the abstracter has to get it.

Improvements

Those of us who supplement our income by writing a bit of title insurance on the side have become quite aware of "area and boundry" and easement and set-back; because now we're dealing with improvements for the first time. So we have the surveyor depict the improvements in relation to the tract, and bordering tracts. For the first time the subject property becomes a house with all of its appertenances and all its necessary services. It is no longer just a lot or tract or parcel, surmounted with a formless nebulus. We attach the survey to an abstract, and send it to the attorney for examination, along with a title insurance application. And here is his comment, (we quote) 'Hmmmmmmm". The surveyor showed the outline of the lots, plus the outline of the house, plus the various distances to lines. He doesn't show easements. Someone has to give the attorney something to check with. Guess who!

But you're making an abstract on a plain full quarter section of land. No need for a plat? Maybe not. I'd attach a sketch from the original Government Survey just to show that the only survey in existence didn't show any irregularities. I'll admit that it doesn't show any dimensions.

The More the Better

We like to attach two or more plats, or composite plates when the going is rough and the property has had a varied history. One of our favorites is the birdseye view of the quarter section, showing the several tracts fitted together, and showing the larger tract from which the smaller one was cut. Then we show our detailed plat on a blown up scale. We also like to show as an inset up in the corner of our plat a sketch of the section showing government lots. We try to show every land-mark and impingement mentioned in the title. We like to superimpose in red and green and blue ink any former plats of the present property, but when they don't fit, we prefer to draw each one separately in order to present the problem impartially.

All this for small fees for a simple plat and for one superimposed. The plat was as good a deal for us as it was for the attorney. We got a much better picture of the title ourselves, and we think that we showed the attorney that we really sweated out the whole title—didn't just pick it off the Index and hand it to the girl to type up.

Accuracy

Since it is a matter of pride that the examiner relies on your plat, never mislead him. Where your land is "all that part of the S½ of SE¼ of SE¼ lying east of the center of Chisholm Creek" you can't be very positive of your west line, unless it is established in some recorded plat. I get by with saying "dotted line shows probable course of Chisholm Creek drawn from information on the plat of Kahrs Addition."

What we really try to do on a plat, as on an abstract, is to present a record to the examiner in an abstracted form so he can make his finding with a secure feeling that he has examined all available facts. If there are not sufficient facts of record he can make his requirements on that basis, and it usually sounds like this: "you should have the property surveyed and the exact boundries determined."

You can add interest to a profession that all your friends think is dull if you'll get a good set of professional drawing tools and learn how to use them, make use of all available services like ozalid or blueprinting, and teach the "art to all of your staff. Don't send your work "out." No one but an abstracter can depict a land title on a plat, and draftsmanship cannot take the place of an understanding of a title from patent to

current mortgage. Anyway, you can improve your draftsmanship. I've learned more about plats in the last five years than in the 25 years before that, and most of it was from youngsters to whom I was teaching the art. A lot of these kids have had mechanical drawing in high school. Multigraph mats and stencils both make nice plats. We all like to draw on tracing paper. But when there are too many curves we resort to photostat. If you use transparent film you get a nice tracing to run blue-prints from.

But you'll figure more and better ways to make plats. All you need is a firm conviction that it isn't a workmanlike abstract unless it has a complete examiner's plat drawn by a regular abstracter and signed by him. But never forget for a minute that your liability extends to your plat, regardless of who draws it.

RECENT CASES OF INTEREST

WILLIAM R. KINNEY
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Charitable Purposes—Tax Exemption

Eight cases recently decided by the Ohio Supreme Court, all involving the same legal question, make interesting reading. The cases all originated in Hamilton county and, in each, the point in issue was whether real property owned by the appellant was exempt from taxation on the ground that it was being used exclusively for charitable purposes. Seven of the cases presented similar facts and were heard together.

Integrated Charitable Program

The facts which were common to these seven cases were these: In each instance, the real property consisted of a multiple-story building owned and operated by a charitable institution which, without any view to profits, was devoting itself exclusively to conducting an integrated charitable and welfare program for the benefit of a broad segment of the general public of greater Cincinnati. In each instance, the activities carried on in more than 50% of the cubic areas of the respective buildings were admittedly of a charitable nature but, in each instance, in conjunction with and incidental to such charitable activities, portions of the buildings, ranging from 20 to 45% of the cubic content, were being used for dormitories, restaurants, snack bars and (in one instance) a bowling alley. A charge was made for the use of these incidental facilities and most of them were open to the general public upon payment of such charge.

By a 4 to 1 decision, with two judges either not participating or not "taking sides," the court held the entire property involved in each of these seven cases to be tax exempt, the syllabus being worded as follows:

> "Real property is used exclusively for charitable purposes and is exempt from taxation under Section 5353, General Code, where it is owned and operated without profit by a charitable institution and by it devoted, **as its main objective,** to an overall program of social, religious and educational service to persons in peculiar need thereof, without distinction as to race, color or creed, even though, as incidental to such objective, dormitory, dining room and other like services are furnished and a charge made therefor, the income therefrom being devoted to such program."

Emphasis added. (**Goldman** v. **The Friars Club, Inc.,** etc. 158 O. S. 185. Ohio Bar, July 21, 1952).

In the eighth case (**Goldman** v. **The L. B. Harrison Club,** 158 O. S. 181) the court was of the opinion that the rental of rooms and the operation of a cafeteria in the property involved in the case were not incidental to any overall program of charitable purpose on the part of the appellant club and that the portions of the property so used were not

entitled to tax exemption. The court was also of the opinion that a division of the property on a percentage basis, based upon the cubic areas used respectively for charitable and for noncharitable purposes (a formula which had been employed by the Board of Tax Appeals) did not constitute a division of the property into separate entities and, therefore, did not come within the purview of G. C. Section 5560. Accordingly, the court held the entire property to be subject to taxation.

Residuary

In another recent case, involving an entirely different but equally important question, the Supreme Court held that where a will contains a general residuary clause disposing of all the testator's property not disposed of by other provisions of the will, any portion of the residuary gift which lapses will (except as provided by statute and in the absence of evidence of a contrary intention on the part of the testator) ordinarily pass to the other residuary devisees, if any, instead of passing as intestate property. (**Commerce Natl. Bank of Toledo, Trustee** v. **Browning,** 158 O. S. 54. Ohio Bar, June 23, 1952.)

The legal question presented in the case was one of first impression so far as the Supreme Court was concerned. By its decision, the court not only refused to read into G. C. Section 10504-73 any implication that the common law rule (under which the lapsed portion of a residuary gift would pass as intestate property) must be applied in cases not covered by the statute, but also, in principle, disapproved the rule itself.

A word of caution regarding this decision may not be out of place: The law as pronounced should not be applied automatically as a rule of thumb to other wills. The court itself has recognized that in any given case there may be provisions of the will or surrounding circumstances which justify the conclusion that the testator has evidenced a different intention.

Real v. Chattel

Another interesting decision recently handed down by the Supreme Court holds that a lease of real estate for a term of years constituting an estate less than a freehold estate is a chattel real and cannot be made the subject of a **chattel** mortgage; and that to constitute a valid mortgage upon such a leasehold estate, the mortgage must be executed with all the formality required with respect to a mortgage on real estate and must be recorded as a real estate mortgage. (**Abraham** v. **Fioramonte,** 158 O. S. 213. Ohio Bar, July 21, 1952.)

TITLE INSURANCE IS EXPANDING

PALMER W. EVERTS

Secretary New York State Title Association, New York City

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The increased demand for title insurance among mortgage lenders is stimulating a substantial expansion of title insurance facilities into all parts of the country. Title insurance services rendered by financially responsible companies establishes confidence in the validity of the mortgage loan. A title policy gives assurance to the lender that a thorough search of the title has been made, that authoritative interpretation has been given to the legal problems involved, that title protection is permanent so long as the lender holds an interest in the property and that it contributes a substantial factor in the development of liquidity.

The title insurance idea stemmed from a decision in the case of **Watson** v. **Muirhead,** decided in Pennsylvania in 1868 where a purchaser sought to hold his conveyancer liable for an error in judgment. The court held that the rule of liability in such matters was the same as that regarding

physicians who are liable only for gross negligence. A conveyor might be held liable for missing a lien or a mortgage, but would not be held liable for an opinion that a certain judgment did not constitute a lien, or that a will passed title in a certain manner.

The conveyancers individually could not provide the security needed but concluded it could be provided by a corporation. In 1874 an act was passed in Pennsylvania "To provide for the incorporation and regulation of title insurance companies . . ." and the first title insurance company received its charter in 1876.

In its field title insurance provides a security against loss of merited importance with other protective measures commonly recognized as sound business practice. Insurance companies, banks, and savings and loan associations are in a very real way handling trust funds and avoid taking unnecessary risks. The use of surety bond for company employees is a normal practice. Fire insurance to cover mortgaged property is standard procedure. Title insurance, too, has become standard procedure with many lending institutions and each year their number increases.

The mortgagor, too, should acquire an owner's policy to provide him with permanent protection for his investment. The mortgage policy provides title security for the mortgagee only and dies when the mortgage is discharged. The owner's equity frequently represents his life's savings, and of course increases with each monthly payment. An error affecting the mortgage can develop a primary obligation against the owner to correct the mistake. There is also the possibility of error affecting the fee title which might not adversely affect the mortgage. If the validity of title is ever questioned the owner without title insurance is left to his own resources. Court costs, even to defend a valid title, can be very substantial. A fee policy is as essential for the owner's protection as his fire insurance.

The practice of the title insurance companies of extending the title search well back into the early history of the property is an important factor rarely recognized by those not engaged in title work. A statute of limitations may help in some cases. Such statutes are by no means a cure-all, however, for title problems originating in the early history of the property. A few examples will illustrate this point.

First consider a number of the factors which are generally recognized, mindful that if a defect is not caught in a current transaction it may rise to haunt someone ten or twenty years hence.

Dangers due to undisclosed defects are familiar to many. These include forgeries of deeds, mortgage discharges and other instruments; acts of minors or incompetents, interests of afterborn children, undisclosed marital facts, and many others.

Then there are failures in the take-off of the public records including omission of tax items, prior mortgages, judgment liens, etc. A title insurance company recently paid a loss of over $7,000 to a builder which developed from an inaccurate take-off of the set-back restrictions. This was forty feet instead of the reported twenty-five feet.

The legal interpretation of the record presents many problems and differences of opinion arise between experienced attorneys. Is there a defect in the chain of title which may, in the opinion of someone examining the title for a subsequent purchaser, make justifiable a refusal to purchase? An honest difference of opinion may require determination by the courts. If so, who will pay court costs? Full responsibility will be taken by a title insurance company under the terms of its policy, or an uninsured investor will be obliged to do it himself.

The importance of a survey is generally recognized. This may disclose serious variances affecting party walls, encroachments "on" or "of" adjoining property and street encroachments. Suit was recently brought by a national chain store against a contractor who had just built for them on the Avenue of the

Americas. Street encroachments of from one and one-half inches to two and one-half inches left the title beclouded and the company unable to secure the large mortgage anticipated.

As indicated, the title insurance companies extend their examination of titles well back into their early history. This involves time and money but it is an important factor in preventing unnecessary loss to either the insured or the insurer.

The terms of a deed made in 1882 was recently construed by the Appellate Division of the New York Supreme Court to make the title to property unmarketable and a current contract to sell unenforceable. The deed from one Cologue to Kent Lake Club provided that no hotel or business of buying and selling the usual articles of sale by hotel or restaurant shall be carried on the premises. In case the vendee or successors violate this provision the property should revert to the vendor, his heirs and assigns.

The court held that, although the force of the contract might be wiped out by the vendor's death, the new owner might face the prospect of having to defend an action in equity or law at some future date. "While this may be considered 'improbable' " it held that, "the title may be fairly questioned, and specific performance should be refused." (**McAndrew** v. **Lanphaer,** App. Div. Fourth Dept. March 12, 1952.)

Two mortgages made by a leading New York trust company in 1863 were found to be currently valid liens on the property to be insured in the course of a recent examination of a title in New York City. No assignment, modifications, or extension agreements appeared in the record chain. Both mortgages provided for interest at 6 per cent which had been paid up to the current date. These mortgages were made 89 years ago.

In 1846 the owner of several parcels of land in Manhattan died leaving a will setting up a trust for his granddaughter for life with remainder to her issue. No power of sale being provided for in the will, a special act of the legislature was passed in 1865 to give the Supreme Court authority to direct sales of certain parcels on petition by the granddaughter with notice to the remaindermen. Several sales were made prior to the death of the life tenant in 1917. In 1930 the heirs brought an action in ejectment, claiming that the act of 1865 was unconstitutional. The court sustained their position and held that the legislature has no power to authorize the sale of private property by special act for other than public uses. The parties entitled to future estates were under no disability to act for themselves and the legislature has no power to cause the lands to be sold by a special act. There had been possession for over 60 years but the statute of limitations did not begin to run till the death of the life tenant. A title insurance company had insured title. (**Gedney** v. **Marlton Realty Co.** 258 N. Y. 355.)

In 1911 the owner of business frontage gave a 99-year "lease" of the rear ten feet of his property to the owner of a business block adjoining his rear lot line for the purpose of a driveway for ingress and egress to his building. Though the easement was not used for many years, it was a recorded instrument which could not be disregarded and prevented the erection of any building on the rear ten feet of the property. Fortunately a prospective purchaser had refused to accept a short 35-year search of the title.

An official of a New York title insurance company has reported a mortgage made in 1858 which is a current valid lien on the property "This mortgage was made by David L. Rogers to a New York savings bank to secure payment of the sum of $5,000 dated February 22, 1858, and duly recorded. It affects premises on East 16th Street in New York City. Thereafter an additional mortgage of $6,000 was made to the same bank in 1891, and another additional mortgage to the same bank in the sum of $4,000 in 1907, and another additional mortgage to the same bank in the sum of $500 in 1913. All of these mortgages were consolidated by agreement dated

May 25, 1942, but this consolidation agreement does not appear of record. It is obvious that an ordinary sixty-year title search would not disclose the existence of the mortgage dated February 22, 1858 since the consolidation agreement was not recorded. The title insurance company official said, "This is the oldest unsatisfied mortgage that I have ever run across. The property has been in my wife's family prior to the date of said mortgage in 1858."

A title insurance company paid over $40,000 to a policy holder and took title to a group of business lots it had insured. Many years ago, the owner of a frontage on a main highway adjoining a city, conveyed a 160'x 600' residential lot specifying a substantial setback and other restrictions such as are required in the development of small estates. These restrictions were made applicable to the rest of the frontage similarly situated. A house was built on the lot but the program did not develop further. Years later a purchaser acquired the remaining acreage with a policy of title insurance which showed the title unrestricted. The area had developed substantially and the frontage was now platted as business frontage. The house on the adjoining lot was occupied by the aged widow of the original purchaser. She protested the program, and claimed that the frontage must be sold only as residence lots with restrictions similar to those applicable to her home. The rule of negative reciprocal easements applied, and the property could not be sold as business frontage. Efforts to secure a waiver from the widow failed, and the title company had to purchase those adjoining lots, at a figure in excess of $40,000. It held them for many years and eventually sold them at a figure reported to be less than 5 per cent of the loss sustained.

Peter Giuliani, attorney for the National Life Insurance Company of Montpelier, Vermont, in an address to a meeting of the National Association of Mutual Savings Banks said. "This instrumentality (title insurance) within the past fifteen years literally has annihilated that most formidable barrier to the free flow of mortgage loan investments across state lines—the inescapable fact that the essential ingredient in every mortgage loan transaction is title to land, an element which, as you know, must always be tested by the local law. Land being immovable, to this extent the investment is immobilized."

Title insurance lifts responsibility from the shoulders of the lender, increases the security of the mortgage, and facilitates liquidity in future dealings with secondary lenders, governmental agencies, or other financial institutions.

LOSSES DO OCCUR

Typical cases involving Land Titles wherein Losses were paid to indemnify the policy holder, or to make the Title Good. Cases reported by Chicago Title and Trust Company, Chicago, Illinois.

The protection features of a title guarantee policy issued by CT&T are accented by four entirely different cases culled from company files. In each instance the owner was saved appreciable time and money because he had the foresight to avail himself of the opportunity to insure his title claim.

A Matter of Name

The first case, which occurred in 1936, involved the sale of property in Chicago, on which a $34,000 owner's policy was issued to a purchaser from Andrew Niccols. Subsequently the purchaser's title was attacked on the ground that the former owner was insane at the time he sold the property.

Investigation brought out the fact that Niccols had indeed been declared insane some years before, but under the name of Andrew Nicolaus—quite a different surname. To protect the policyholder, CT&T repurchased An-

drew's interest at a Probate Court sale.

A Matter of Age

A different kind of title trouble arose concerning a residence property in Southern Illinois. A $4,500 owner's policy had been issued by CT&T to Earl H. and Doris E. Bloom in 1947, the title being based in part upon deeds from several devisees of a deceased person who had owned the property at the time of her death. Then, in 1949, a James McDougal of Houston, Texas, one of these devisees, notified the Blooms that he was under 21 years of age when he executed a deed to the property, and since he had now come of age, he was exercising his right of disaffirming the deed and claiming his proportionate interest in the property.

A check for $400 was paid by CT&T to McDougal for a quitclaim deed to the policyholder to protect his title.

Dower Claim Is Settled

Still another form of title trouble presented itself in the case of Mrs. Dorothy Webb, who purchased an apartment building on Chicago's north side from a friend, Mrs. Jessie Appleton, who described herself as a widow. CT&T issued an owner's policy for $50,000 to Mrs. Webb.

Three years later, Lawrence Appleton, Jessie's husband, came to Chicago from California where he had been living for several years. Through his lawyer, Appleton claimed a dower interest in the property.

Informed of the claim against her property, Mrs. Webb, who had known Mrs. Appleton for many years prior to her death and who had always believed Appleton to be dead, notified CT&T immediately. Considerable negotiation with Appleton's attorney ensued, following which the dower claim was settled for $3,500.

Tenant's Right Is Protected

An owner's policy is never issued without close scrutiny by the company of all the records involved. Once CT&T has issued the policy, it goes to great lengths to protect the interest of the holder, as is indicated by the case of a Chicago tenant whose right to a lease was questioned in a court trial that cost the company thousands of dollars, but the policyholder not a cent.

The litigation troubles really began when a tenant under a 99-year lease on a large office building on La Salle street in Chicago's Loop made a deal to transfer his interest in the lease to a purchaser. The lease had a provision requiring the tenant to give written notice to the building owner before transferring the lease. Such a notice was given and the lease transferred to the purchaser. After CT&T officials had examined the records and the notice and decided that the notice was proper, they issued an owner's policy for $180,000 to the purchaser.

Some months later, the owners of the property filed suit for possession of the property, claiming that the written notice was not the kind required by the lease and that the lease had been forfeited for failure to comply with its terms.

CT&T was called upon to defend the tenant and did so successfully, but the trial was long and costly, involving appeals to the Appellate Court of Illinois and the Supreme Court. Defending the case was expensive to the company, but the entire procedure was of course carried out without cost to the policyholder.

A Forgery Backfires

One sweltering day in August, 1930, a resident of Glendale, California, Henry Dalton, came to Chicago for the purpose of selling two vacant lots he owned. When he arrived at the site, he was dumbfounded to discover a large new apartment building occupying the site.

Dalton conferred with officials of the Chicago Title and Trust Company Law Department, who checked into the strange situation. Two years before, according to their records, CT&T had issued an owner's guarantee policy for $10,000, guaranteeing title in a purchaser to the two vacant lots. The deed conveying the property was purportedly signed by one Henry Dalton. The large apartment building was subsequently erected on the lots, and the company increased its title insurance to approximately $100,000.

Company officials quickly verified Dalton's claim that he had not signed the deed to the purchaser and that the signature purported to be his was a forgery. An investigation was immediately launched.

In a matter of slightly more than two months, the company solved the mystery of how the forgery had been perpetrated and by whom. Five men were indicted. Two of the group turned state's evidence, two others went to the penitentiary, and the fifth died before he could be brought to trial.

The company paid Dalton $12,500 for a deed to the two lots, and the policyholder's title was perfected without any expense or annoyance to him.

PICTURE OF AN ABSTRACT

MARIE RECTOR
Fidelity Title Co., Wichita, Kansas

Few people realize the interesting and personal work that goes on behind the scenes of the modern abstract company. Hollywood may be noted for the production of motion pictures, but abstracters produce vital human pictures also.

The Setting

As we begin the production of our picture, we assemble all of our characters who in turn are to play their important roles in our play as the drama unfolds. Our players all start out with but one thought in mind—a home and the future. We see them settling on the place that will be a home to them. Some of them will spend their lives on this one place, raise their families, share their home with all of happiness and tragedies which they will face—and one by one they will drop out of the picture leaving the place to another generation. Others will be here for a while and perhaps go on to larger fields. Still others will be forced to lose their places. Each abstract represents a true life story. We must show each and every act as it is. There can be no "cutting" in our story.

It is more than a business with us where every abstract is concerned. There is a "human interest" to each one. A young husband and wife are just starting out in life. We can always tell when they are signing up their first home. One can almost see the dreams and the plans for the future on their faces. The happiness reflected in their actions when all the papers are signed is one of its own. As they leave their papers in our care we in turn take over and carry on with the story. The abstract will show this transaction and while an abstract may be just a piece of paper to an outsider, we who have produced it know the human side. Perhaps even before this act in our picture is ended there will be deaths, divorce, or other misfortunes. No matter what life has in store for them it will appear on the scene of our story.

Finale

As a finale to an abstract many of us cover the story with Title Insurance. Then the files in our abstracters vaults are a silent sentinel, each one guarding the investment of each individual owner.

Our pictures are interesting, exciting and sometimes fantastic and the modern abstracter must be ready with the prop of the records at his fingertips to extradite the hero no matter what his predicament.

Is it any wonder that the modern abstracter finds the production of these pictures an interesting business well justifying his time and patience?

Table of 1953 Appropriations Bills, Eighty-Second Congress, Second Session

Title	Requested (In Senate)	Amount Finally Approved	% Cut By Congress	Amount Approved Last Year
First Supplemental[1]	$13,867,928,689	$11,793,776,339	15.0%	$11,719,988,919[2]
Treasury-Post Office[3]	3,515,145,000	3,437,895,000	2.2	2,928,398,000
Independent Offices	6,982,787,043	6,272,836,303	10.2	6,162,825,175
Labor-FSA	1,983,610,861	1,787,471,050	9.9	2,512,004,270
Interior	632,151,800	541,729,845	14.3	511,841,816
District of Columbia[4]	(136,528,100)	(133,696,875)	(2.1)	(138,216,150)
Federal Contribution	12,000,000	11,000,000	8.3	11,400,000
Civil Functions	712,627,800	584,061,600	18.0	597,262,713
State-Justice-Commerce	1,243,136,809	1,015,981,710	18.3	1,042,867,887
Legislative	86,172,413	76,849,392	10.8	73,805,507
Agriculture	931,803,078	728,611,970	21.8	802,988,626
Defense	51,390,709,770	46,610,938,912	9.3	56,939,568,030
Totals	$81,358,073,263	$72,861,152,121	10.4%	$83,302,950,943

1 Major items include $6,031,947,750 for foreign aid; $2,288,794,840 for military construction; $2,898,800,000 for an atomic expansion program; $114,290 for various emergency agencies, and $43,000,000 for the Federal Civil Defense Administration.

2 Major items included $7,328,903,976 for foreign aid; $4,146,407,108 for military construction; $169,732,835 for various emergency agencies; and $74,945,000 for Federal Civil Defense Administration.

3 Does not include interest payments on national debt ($6,150,000,000) or trust fund disbursements for old-age benefits and unemployment compensation ($5,999,219,656).

4 Paid out of separate revenues of District of Columbia, even though appropriated by Congress.

D O T

(Dope Observations Trends)

JAMES E. SHERIDAN
Executive Vice-President, American Title Association

Building starts hold up well. After a slump, July starts are reported by the Department of Labor at around 104,000. That means we had starts of better than 650,000 in the first seven months of this year.

Cagey Buyers

Selling these is a horse of another color. There is resistance. No buyers' strike or anything approaching that. But sales are slowed and potential buyers continue to shop.

Regulation X

Regulation X was suspended by the Federal Reserve System, effective September 18th, pursuant to Act of Congress which makes this lifting mandatory whenever housing starts in any three consecutive months were under the annual rate of 1,200,000 starts.

This means that limitations on housing credit reverts to standards that applied before the regulation became effective in October, 1950—the terms of the National Housing Act.

On veterans housing, the non-down payment rule continues up to $7,000, then 4% (about the same as at present) is required up to $8,400. Above that figure, the down payment must be at least 5% regardless of cost.

When considered in conjunction with FHA regulations and Federal banking laws governing national banks and federally chartered building and loan associations, the suspension of Regulation X may mean extended use of that which has been pretty much out of the picture—the second mortgage.

With the abolition of Regular X, sales, in all probability, wil be made easier, but not much.

The mortgage money market stays tight; and lenders will not enthuse about advancing money where the buyer has no equity. The boom is over; better adjust our thinking and planning definitely to that fact. Apartments to rent are available, and with concessions. Prices on farms have leveled down, not much, but down for sure. And may go lower, slightly. Old urban properties are definitely off, around 15% on a national average. New urban properties require vastly more aggressive sales effort to move.

Mortgage Money

Money is getting tighter. New York banks have started to raise interest rates including brokers' loans. That's not surprising. Seasonally, it is to be expected. The life companies are still heavy investors in mortgage paper in t r e m e n d o u s amounts, but they are only lightly in the market now. They are still buying lots of bonds of Governmental units and high grade corporations. So look for a firming up of interest rates all up and down the line.

There is heavy demand for money for plant expansion—for financing of installment credit buying. In June, and probably also in July, there was a huge expansion of installment buying. In spite of this, on July 15th, the consumer price index hit a new all time high.

Retail food prices in mid-August were the highest in our history. Food is 16% up over the prive level of June, 1950, when the Korean war started.

Production

Auto production, the steel strike and allocations of steel notwithstanding, stays up, although you can buy cars now—I repeat now—and for the first half of 1953 it is expected it will stay high, with sales also high. Employment in this and other heavy industry including wholesalers increased.

The Federal Reserve Board forecast at the close of August states total agricultural output to be a fraction less than last year, notwithstanding heat and dry weather. It was pretty disastrous in some areas, but seemingly not as bad as we were led to believe.

The loss in steel production due to the strike came to about 17½ tons, less than had been calculated. Steel bounded back fast. You just can't beat American ingenuity and American brains where production of merchandise is involved.

On August 29th, the Government suspended its controls on radios, T.V. sets, record players, china and glassware and other commodities in those categories.

Pass Higher Costs On

O. P. S. indicates it will permit industry to pass on to the public higher costs caused by the $5.20 per ton price increase allowed to steel. In turn that almost unquestionably will mean the Government will permit the passing on of all increases caused by various other labor settlements.

And there will be those increases. That's certain—probably a la the steel formula. Rubber settled on this basis just before Labor Day.

In spite of all these strikes, industrial production may hit a new high.

You can add railroad employees, dock hands, oil workers, some of the auto line, electrical workers and sufficient others to the list so that, in its impact, it will be more or less universal throughout the country.

But—and this really is a big BUT—watch coal. John L. Lewis did not call his "Memorial" holiday for five days. He made it eleven. Eleven days of no coal production cut well into the stockpile of coal on the ground. September 23rd is the date on which the coal contract expired. It's an old established custom in coal that "No contract, no work." A coal strike could be more disastrous than was the steel strike. Don't discount its possibility.

As of the date this issue goes to press, indications seem to be that Lewis has divided the operators' groups, and that one Section is preparing to sign on (more or less) the terms laid down by Lewis. There is a hint that coal operators of other sections will fall in line.

But all these settlements, or agreements, if made, are subject to approval by the Federal Government. It may be their terms will be in excess of that permitted by the Government under its wage increase formulae.

If Government disapproves the settlements, then nobody knows what will happen next. But I suppose we all should remember this is an election year.

The Title Business

It appears we will hit 1,100,000 housing starts instead of 1,200,000 as had been predicted. Labor costs are up but materials are (reasonably) stable and in good supply.

Subject to the mortgage money market and disastrous strikes, we should finish out the year in good shape and have another million starts in 1953. But, as said earlier, the boom, the honeymoon is over.

Watch and seek for new business in high highways,—and super-highways—new factory sites leaving our great cities and going to medium sized towns—public buildings, schools, town halls, fire stations, etc.—particularly watch these suburban projects, new shopping areas where a veritable city rises in the space of only a few months miles away from downtown. On this last point, we suggest you gear your plant for quick turnover of title evidences. Some of these really get "hot" with a lot of speculative turnover of realty deals. All these mean title work.

In the field of Abstracting, we suggest more and more study about new principles of rate schedules with liability assumed calculated a little more carefully. It never did make sense we should certify the abstract to a big office building for eight dollars, taking on liability that, if we muffed the title, would put us out of business.

In the field of title insurance, we suggest more thinking about an owner's policy that covers against possession and survey questions.

It would seem it would be safe not to replace employees of ordinary quality that quit unless those departures amount to over 15% of the staff.

Stated another way, it would seem we can plan for business for the remainder of this year and the first few months of 1953 on a better-than-fair up to good basis. But, repeating, don't let your foot get too far from the brake.

And go mechanical.

PERSONALS

JOSEPH H. SMITH
Secretary, American Title Association

• L. R. PETTIJOHN, Vice President and Manager of Security Title Insurance Co., Santa Barbara, California, recently celebrated his 25th anniversary with the company . . .

• JAMES R. FORD, Vice President and Manager of Southern Title & elected to Board of Directors of San Diego YMCA group last month . . . was also recently chosen as member of Board of Directors of American Red Cross, San Diego chapter . . .

• FRANK I. KENNEDY, President of Abstract and Title Guaranty Co., Detroit, Mich., and Past President of American Title Association, announces the election of LAWRENCE C. DIEBEL to Board of Directors and to office of Executive Vice President. Mr. Diebel fills vacancy left by EDWARD STRAEHLE, who died last July . . . former Vice President THOMAS P. DOWD, succeeds to office of Vice President and Treasurer vacated by Mr. Diebel, and G. EARL OWENS, formerly Assistant Vice President, becomes Vice President . . .

• MARSHALL H. COX, Secretary Treasurer of Ohio Title Association, says "Come one, come all" to Association Convention October 20-21 at Neil Hotel, Columbus, Ohio . . . he promises interesting and valuable program.

• In Beaver, Oklahoma, LAWSON TITLE CO. has moved into new modern quarters . . . partners H. N. LAWSON, JR. and M. G. MURPHY are most proud of their new establishment . . .

• CARLTON W. CROSLEY, President of Iowa Title Association, is proud of new format of Iowa Title News, the association monthly publication . . . co-editors are DON HUGHES, Secretary-Treasurer of the Association, and JACKSON HOSPERS, Secretary of Sioux Abstract Co., Inc., of Orange City . . .

• New officers of Michigan Title Association elected this month at annual convention are HAROLD A. PRESTON, Owner of Isabella County Abstract Co., Mt. Pleasant, Mich., as President; CLARENCE W. DILL, Vice President, Burton Abstract & Title Co., Detroit, is the new Secretary, and S. K. RIBLET, Manager of Newaygo County Abstract office has again been returned to the office of Treasurer . . .

• Pacific Abstract Title Company recently opened new east side office in Portland, Oregon . . . under the supervision of JOHN M. SMEATON, who is also Secretary of Oregan Land Title Association . . .

TITLE CONVENTIONS

OCTOBER 4 - 5
Kansas Title Association—Annual Convention
Allis Hotel, Wichita, Kansas

OCTOBER 6 - 7
Missouri Title Association—Annual Convention
Kentwood Arms Hotel, Springfield, Missouri

OCTOBER 9 - 10 - 11
Oregon Land Title Association—Annual Convention
Timberline Lodge, Oregon

OCTOBER 12 - 13
South Dakota Title Association—Annual Convention
Sioux Falls, S. D.

OCTOBER 16 - 17 - 18
Florida Title Association—Annual Convention
Roosevelt Hotel, Jacksonville, Fla.

OCTOBER 20 - 21
Ohio Title Association—Annual Convention
Neil Hotel, Columbus, Ohio

OCTOBER 24 - 25
Washington Land Title Association—Annual Convention
Chinook Hotel, Yakima, Washington

OCTOBER 27 - 28
Indiana Title Association—Annual Convention
Hotel Lincoln, Indianapolis, Indiana

OCTOBER 31 - NOVEMBER 1
Nebraska Title Association—Annual Convention
Lincoln, Nebraska

NOVEMBER 1 - 2
Land Title Association of Arizona—Annual Convention
Westward-Ho Hotel, Phoenix, Arizona

NOVEMBER 10 - 11
Southwest Regional Conference, Title Insurance
Executives, Biltmore Hotel, Oklahoma City, Oklahoma