OFFICIAL PUBLICATION
AMERICAN TITLE ASSOCIATION

TITLE NEWS

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VOLUME XXXII FEBRUARY, 1953 NUMBER 2

TITLE NEWS

Official Publication of

THE AMERICAN TITLE ASSOCIATION

3608 Guardian Building – Detroit 26, Michigan

Volume XXXII February, 1953 Number 2

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A good title man needs be a combination. He must possess knowledge that will enable him to build a chain of title; be the land described out of a recorded plat or an involved metes and bounds description—all this in addition to knowledge of the law of Real Property.

We have all benefited from many excellent papers on the law, on abstracting, on plant building and other phases of our profession. Rarely do we find ourselves able to prepare a paper on plants, on engineering, on survey questions; and not in many years, if ever, have we seen as exhaustive a paper as this.

We predict it will become a more or less continuous reference paper in many offices. It will become important in any training program.

The author, Mr. Ivan A. Peters, has been associated with Title Insurance and Trust Company 24 years. At the time this paper was presented, Mr. Peters was Educational Director of the Company. His activities have since been broadened and he is now Director of Branch Title Processing and Plant Maintenance Planning.

A graduate of Southwestern University School of Law, Los Angeles, Mr. Peters has long been a specialist in Extended Coverage Policies and long order searching and examining which gave him a natural background for this presentation on descriptions.

To Mr. Peters, to his good firm, and to the California Land Title Association, before whose convention this excellent paper was delivered, we express our thanks.—Ed.

WHOSE DESCRIPTION?

The Surveyor's, the Title Engineer's, The Customer's, the Attorney's or Management's?

IVAN A. PETERS

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Title Insurance and Trust Company, Los Angeles, California

Mr. President, Members of the Convention, and Guests:

The purpose of this paper is to basically review or re-examine some of the pertinent legal and engineering rules which relate to the sufficiency, effect, and insurability of land descriptions contained in deeds or other instruments, affecting the title to land. The problems arising in this field, in the course of the business of a title insurer, are varied beyond imagination. They may arise in the presentment of documents in a current transaction where their effect is more easily controlled. Often, however, problems occur in the antecedent chain of title where no present control is possible. Yet, upon close scrutiny, understanding of the elements of the problem, application of appropriate legal principles, and appraisement of risk, the title insurer can frequently hurdle what on the surface may have appeared to be insurmountable, without positive curative action. Such action might require considerable delay, great expense, and definite adverse customer relations, all of which are certainly to be avoided, if at all possible.

It is rare if a customer asks to have his title searched just to find out if it is currently insurable; thus, these problems almost always arise when time is of the essence, so to speak.

Plans have been made, refinancing is necessary, a new home being purchased, and the immediate sale of the old one necessary; funds must be raised to cover immediate hospitalization, etc. There may be any number of reasons why the sudden discovery that an exchange of deeds with unavailable or uncooperative neighbors, complicated and expensive surveys, or possibly court proceedings to quiet title or to establish boundary lines, is a serious set back to the customer. Not only is it a set back in his plans, but the reasons as to why this situation happened to him are difficult to explain, and if not properly explained to him he is completely confused and blocked in his dealings with his land. That piece of land may go off the market and not yield what could normally be expected from it as an earning unit in the community and as such, an earning unit in the title business.

Full appreciation of these factors is not always considered by us in the title industry and all too frequently full analysis, understanding, and application of good description technique is not utilized. Too frequently insurance is refused or ducked by limitations and exceptions to the insurance given. Much of this arises by not squarely meeting these problems and a tendency to pass ball to the customer to correct his boundaries through the methods mentioned, in order to permit us to "bet on a cinch." Much too, is to be said on the point of whether we as title men reasonably comprehend the position of the private surveyors, the title engineers, the attorneys, and court decisions and statutes in respect to descriptions. Descriptions are something we work with every day in every title order we handle! We can't escape descriptions—and they do raise problems.

It is not possible to cover the entire field of descriptions in this paper and I'm sure that all of you do not want to hear a long, tedious, and technical discourse on the subject, but there are some basic concepts which I believe are worthy of our reflection and consideration.

Descriptions for documentary purposes and for the purposes of record are invariably predicated on data derived from some previous survey.

A *survey* defined according to Webster is:

> "To determine and delineate the form, extent, position, etc., of a tract of land, a coast, harbor, or the like, by taking lineal and angular measurements, and by applying the principles of geometry and trigonometry."

Surveying (also defined in Webster) is the act or occupation of making surveys, or that branch of applied mathematics which teaches the art of determining the area of any portion of the earth's surface. the lengths and directions of the bounding lines, the contour of the surface, etc., *and of accurately delineating the whole on paper.*

The functional thing called a survey is the actual doing of the

survey on the ground. This includes the finding and setting of monuments, the turning of angles, the taking of measurements, recording of vertical angles, making field notes, etc. The survey is not the map. The map is prepared later from the field notes and necessary mathematical calculations. It is not infrequent, even in the title business, that the misconception is indulged in that the map is the survey. Where, however, any inconsistency or error appears on the map of survey, the survey itself, not the map, will control.

Land surveying as presently practiced, as the definitions indicate, is the act of measuring distances or areas, and the running of lines of direction upon the surface of the earth. The results of these functions are marked to the eye by stakes or other monuments, or by correlating those functions to existing monuments either natural or artificial.

Modernly the surveyor has to assist him, precision instruments with which most of us are familiar. These instruments include tapes, transits, spirit levels, spring balances, thermometers, plum bobs, solar compasses, calculation tables of all sorts, and knowledge of his art. He must also have good legs and a strong back. Sometimes his most helpful instrument is an ordinary shovel with which a buried monument can be uncovered to justify or make certain his other observations, measurements and the like.

Even if I were able, and I am not an engineer, time does not permit a detailed discussion of the method or technique employed by a surveyor under a given problem. Suffice to say that his is a precise occupation. It is commanded by the science of mathematics, aided by precision instruments, special training and knowledge. His business is governed by license requirements, business ethics, and his constant awareness of his legal liability for negligent error or omission.

After conducting this precise function the map prepared from his survey will likewise be precise. A surveyor has no alternative except to "call them as he sees them." The *effect* of his survey is for others to determine, for he cannot depart from the application of the accepted and long established rules of his profession.

Technical, of course technical, to the one-hundreth of a foot and to the one-second of bearing forced by the unyielding principles of mathematics.

A surveyor cannot, and dare not, in surveying land described in his client's deed, include any land that is not included; nor can he omit land which is included, however small or large. Some of the rules of surveying, however, recognize the extension of equitable principles of law, particularly in pro-rating excesses or shortages, but in the main, his is not a discretionary office—he must be precise. True, he may not agree with another survyor as to the proper theory or approach to a given problem or the method of accepting or setting particular monuments, but in whatever he does do he must be exact.

His is a precise business. We, who are not engineers or surveyors, often have difficulty in understanding the results of his work. Differ-

ences between his survey or a description prepared therefrom and what we as title men observe the title boundaries to be, or what they will become, are frequently noted. Often these differences are exaggerated or over-emphasized in the title business.

A surveyor cannot depart from *his* position, but we as title men may be able to help the situation by getting a clear picture in our minds of the surveyors or engineers objections or recommendations and how they relate to our title. Once we are able to accomplish that—and all to frequently it isn't easy—we then can go to the law for aid and assistance. Within our statutes and expressed in our cases much help is offered and certain discretions may be employed. Many problems which seem irreconcilable from a purely surveying point of view, without new deeds, boundary agreements or court actions; can be solved or safely insured.

Much law on the subject of descriptions is in the books. It behooves us, as title insurers, to permit it to aid us in better serving our customers and conserving our energy and our time.

In order for us, as title men, to determine what prescription to take from the medicine chest of the law, we must have a diagnosis of our ailment. We must be able to understand the problem posed by the surveyor or title engineer. Obviously, it is idle to use a gargle for a broken leg and stupid to put a splint on a sore throat. What is the ailment? How serious is it? Does it require hospitalization and surgery, or is it capable of home treatment? Perhaps it is only an imaginary ailment.

It appears that description problems are a common stumbling block of title examiners and searchers, partly because of an unwillingness to explore the intricacies of descriptions or possibly by being on unfamiliar ground with the surveyor or engineer. Examiners and searchers often throw up their hands and say, "Well Mr Engineer, you say this description isn't correct, therefore, we *cannot* pass it," or to the customer they may say, "Our starter description doesn't say the same words as yours, therefore, *yours* is wrong."

Much of this is caused by failing to appreciate the basic fact that all that is legally necessary in the way of a description in a conveyance of an interest in real property is that the description that is used be sufficiently definite, and certain to identify the land to be conveyed, or that it furnish the means of identifying the land conveyed. (McCollough v. Olds, 108 Cal. 529; Scott v. Woodworth, 34 C.A. 400; Estate of Wolf, 128 C.A. 305.)

The fact that because descriptions in the same chain of title vary in mode of expression, or perhaps do not follow particular verbiage with which we are familiar, or which we prefer, does not discredit the description necessarily. The main thing to keep foremost in our minds is, is the description used sufficiently definite on its face or aided by established rules of construction to identify the land under consideration.

At the expense of appearing pedantic, I would like to illustrate my point thus:

$$IV = 4$$
$$3 + 1 = 4$$
$$5 - 1 = 10 - (3 + 3)$$
$$\sqrt{4}\,(3-1)^2 - 4 = (10+20)^2 - (56 \times 4^2) \text{ reduced it is simply}$$
$$4 = 4$$
$$2 \times 4 - 4 = 900 - 896$$
$$4 = 4$$

It doesn't make any difference how we express the fact that $4 = 4$ as long as it is a fact. To a title man this should mean, is the description in the instrument under attack *sufficient* to describe the same land in my title? Or expressed another way, can the land to be conveyed be safely identified within the legal requirement of a description of a conveyance?

There should be no mystery connected with this operation—with straight lots we have no trouble—part lots generally no trouble—but when we get into conversion from area descriptions to measurements by distances things get fuzzy and metes and bounds and sectional land descriptions, with their many thorns, can only be the offspring of the devil.

Often we hear remarks from the surveyor or title engineer such as:

"No closure by .7 east and west—Ok north and south."

"Damn thing is no good because I have to force a closure in the traverse."

"That bearing is off 5′ and in 100′, that amounts to .145 feet and there is no tie to control it."

"Wrong basis of bearings throws the whole thing out by .6 of a foot leaving a strip on the east and an overlap on the west."

These comments frequently leave the examiner and our customers in a sea of confusion and doubt. In spite of this, the examiner must not be too hasty in condemning a particular description even when disapproval of a title engineer has been indicated. Particularly included in the definite and serious duties of the examiner is the important one of getting the customer where he wants to go as quickly as possible within that margin of safety to the insuring company that is consonant with good business principles.

Before firing the executed paper to file back to the customer with the terse comment that it must be redrawn and re-executed to include the description set forth in the preliminary report—or that the Company cannot insure title without the necessity of establishing a boundary of the land in question by means of a boundary line agreement, exchange of deeds, or quiet title suit, the examiner should review carefully the description as it bears to his title. He should consult with the surveyor or title engineer, or both, to determine exactly how

serious this trouble or discrepancy is. In other words, diagnose the case. Find out where it hurts!

Much powerful medicine is contained in the laws of our State to aid us and safely carry us by many of the dangers pointed out by the surveyors and our title engineers. The fact that our title engineers and surveyors point out objections because they, in practicing their profession, do not have the latitude of discretion that our lawyers do, does not, in and of itself mean that there is no solution to the customer's problem.

Let us review very briefly some of our general rules in respect to descriptions.

Our simplest form of description is that which refers to a recorded subdivision map, that is, where an entire lot is being transferred. From the earliest times in California, as is generally the case in other states, sales or conveyances of parcels of land by reference to a map deposited with the county recorder have been recognized. Such a conveyance, however, by referring to a lot or parcel on such a map to be valid depends upon whether the map can be produced and identified and whether, by applying the rules of surveying, a surveyor can locate the land from the descriptive data given. Commencing in 1893, through many amendments, statutory regulations have been established to govern the method of filing with the county recorder such a map, which regulations are now codified, in the B. & P. C., sec. 11500 et seq., under the title of "Subdivision Map Act." Where persons owning a whole divide that lot, many problems can arise as we shall see.

Conveyances also can be made of lands by reference to Official Maps or Record of Survey Maps under certain conditions. Conveyances which refer to *unrecorded maps* are generally not regarded as sufficient to convey a marketable title; however, such instruments should not be disregarded by title examiners for in some cases such a map has been said to be sufficient, provided the map can be produced, properly identified, or otherwise established.

Land may be described in a conveyance by incorporating by reference another instrument which contains a sufficient description (Central Pacific Railroad Co. of Cal. v. Beal, 47 Cal. 151.) Such an instrument can exclude as well as include land by such reference. Such a procedure requires that the instrument incorporated by reference be in existence, clearly identified, and most important that it set forth a correct and sufficient description.

Conveyances of land by instruments which contain blanket or general descriptions, e.g., "all land of grantor wherever the same may be situated" or "all lands belonging to the grantor in X County" are often sufficient but should be carefully scrutinized. Ambiguities may require explanation of the grantor's intent which, when considered, might limit the scope of the conveyance. (Pettigrew v. Dobbelear, 63 Cal. 396; Brusseau v. Hill, 201 Cal. 225; G. R. Holcomb Estate Co. v. Burke 4 Cal. (2d) 289.) Descriptions by name or house

number have been held to be sufficient to convey title but the need for parol evidence to establish the actual boundaries of the land conveyed usually result in an unmarketable or an uninsurable title until the boundaries are definitely fixed. (Stanley v. Green, 12 Cal. 148; Estate of Wolf, 128 C.A. 305; Von Rohr v. Neely, 76 C.A. (2d) 713, 716.)

Under metes and bounds, that is naming the land by measurements and boundaries, certain priorities of control are given to us in the rules which control the construction and interpretation of such descriptions.

The order of such priority is as follows:

1. Natural monuments—rivers, trees, rocks, a ridge, etc.
2. Artificial or man-made monuments—walls, fences, stakes, streets, etc.
3. Lines.
4. Angles.
5. Surfaces.

The cases hold that where there is a conflict in the calls of a description between monuments and calls by lines, angles, and surfaces, the monuments control. (Curtis v. Upton, 175 Cal. 322.) The theory is that a person purchasing or selling land is more likely to make mistakes in respect to course (that is, bearing,) distance, and quantity than in respect to permanent objects, which objects from being mentioned in the deed, are presumed to have been examined at the time. (Colton v. Seavey, 22 Cal. 496.)

The rule is also found in C.C.P., 2077 which sets forth rules of construction of the descriptive portions of a conveyance when construction is doubtful. In Section 2 it is stated, "when permanent and visible or ascertained boundaries or monuments are inconsistent with measurements, either of lines, angles, or surfaces, the boundaries or monuments are paramount."

There are qualifications to this rule, however, in that:

a. Monuments yield to other calls to effectuate the intention of the parties, and the rule is never followed where to do so would lead to an absurdity or where they are inconsistent with the manifest intent of the parties. (Miller v. Grunsky, 141 Cal. 441; Powell v. Allen, 155 Cal. 161.)

b. Calls for monuments must refer to objects clearly and definitely established.

c. Where it can be shown that the mistake is in the call for the monument and not in the other calls the rule that monuments control is not always applied. (Lillis v. Urrutia, 9 Cal. App. 557.)

d. Where boundaries are not certain, and the location of the monuments named is uncertain, or left in doubt, then the course and distances, as shown by the field notes and maps of the

original survey, will be considered as fixing the boundaries. (Wise v. Burtan, 73 Cal. 166.)

Within the limitations of the above qualifications, however, the rule is well established that *permanent objects as boundaries* or *natural boundaries* when set forth in a land description control courses, distances, and quantity, if they do not agree. (Weaver v. Howatt, 161 Cal. 77; Hunt v. Barker, 27 Cal. App. 776.) Such monuments control both courses and distances *if there is conflict* without regard to whether the monuments were seen by the parties to the deed or not. (Anderson v. Richardson, 92 Cal. 623.)

C.C.P. 2077, Subdivision 3 states:

> "Between different measurements which are inconsistent with each other that of angles is paramount to surfaces and that of lines paramount to both."

Thus, lines control angles and angles control quantity. Where monuments are uncertain or in doubt, lost, or destroyed, the course and distance as shown by the field notes of the original survey will be considered as fixing the boundaries.

Generally a quantity expression in a description, e.g., containing 42.49 acres, is given no weight and not considered a part of the description. However, where the description of the land by monuments, distances, or otherwise is vague and indefinite by reason of conflicting lines or by the omission of a line, or from any other cause, then a statement of the quantity of the acreage often serves to determine the location of the boundaries. (Hostetter v. Los Angeles T. Ry. Co., 108 Cal. 38.) Also, a quantity recital is given weight where not to do so would defeat the apparent intention of the parties.

Excess verbiage, false, vague, or indefinite statements or words are generally disregarded by the courts where the description can otherwise be made effective. Again the rule finds expression in 2077 C.C.P. where in Subdivision 1 of that section it is stated that:

> "Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false, *does not* frustrate the conveyance, but it is to be construed by the first-mentioned particulars."

and in Subdivision 6 of said section:

> "When the description refers to a map, and that reference is inconsistent with other particulars, it controls them if it appear that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars."

It is not an infrequent occurrence that the question arises where a wrong tract number or incorrect reference to the title of a named tract appears in a deed of record, but that the correct county and subdivision map reference is shown, e.g., Tract 6155 instead of 6165 which is correct, or Highland Park Subdivision No. 2 instead of Blanes Subdivision of Highland Park Subdivision No. 2. This dis-

crepancy is not fatal, for under said Subdivisions 1 and 6 of section 2077 C.C.P. and cases applying those sections, such discrepancies can be passed.

In Leonard v. Osburn, 169 Cal. 157, it is stated:

> "A deed is not void for uncertainty because of errors or inconsistency of some particulars of the description. Generally speaking, a deed will be sustained if it is possible from the whole description to ascertain and identify the land intended to be conveyed . . . nor will the deed be void for uncertainty from the fact that the description in part is false or incorrect, if there are sufficient particulars given to enable the premises intended to be conveyed to be identified."

Thus if the correct map reference is included either by reference to the book and page of recording thereof or is sufficiently identified as to the surveyor's name and date of survey, and has been recorded, it appears under the cases that the correct map reference supplies the means of identifying the property conveyed and the inconsistent or false reference in the tract name or number is disregarded.

The prnciple announced in Subdivision 6 of 2077 C.C.P., to the effect that where the parties were dealing with respect to a particular map a discrepancy in a metes and bounds description which conflicted with the showing on the map must give way to the matters disclosed by the map is upheld in Wheatly v. San Pedro, L.A. & S.L.R.R. Co., 169 Cal. 502.

An interesting case involving errors in descriptions is found in Duryea v. Boucher, 67 Cal. 141. The description set forth was "The north ½ South ½ Southwest ¼ *Southwest* ¼ of Section 13, etc., . . . being bounded on the south by the *Old Shaw Claim*, on the east by the *Clum Ranch*, on the north by the *Paul Claim*, and on the west by unoccupied lands."

The reference to the government subdivisions as shown would have located the land in the *southwest* ¼ of Section 13 instead of the *southeast* ¼ of said Section 13. The court stated that, "It makes no difference that the wrong legal subdivisions are inserted . . . these may be rejected as false where the remaining description sufficiently identifies the land." The court in this case applied the rules of adjoinders to establish and identify the ¼ Section intended.

As soon as there is an adequate and sufficient description with convenient certainty of what is intended to pass by the particular instrument, an erroneous addition will not vitiate it. So much of the description as is false will be rejected and the instrument will take effect if a sufficient description remains to ascertain its application.

Much help is gained from the general rule based upon C.C. 1069, that private grants are strictly construed against the grantor except as to any reservations contained therein which are interpreted in favor of grantors.

Other statutory aid can be found in Sections 1858, 1859 and 1860 C.C.P. wherein, briefly, in construction of instruments it appears that:

a. Where there are several provisions or particulars a construction, if possible, is to be adopted as will give effect to all.
b. That the intention of the parties is to be presumed, if possible, and that a particular intent will govern a general one that is inconsistent with it.
c. That the circumstances under which the instrument was made, including the situation and circumstances of the subject of the instrument and of the parties to it, may be considered in interpreting the language of the instrument.

From all of this comes a cardinal rule of construction of the descriptive portions of the conveyance. It is to effectuate the intent of the parties if, by any possibility, that intent can be gathered from the instrument. (County of Los Angeles v. Hannon, 159 Cal. 37.)

It is the policy of the law not to defeat or frustrate but to sustain the instrument if possible. In Blume v. McGregor, (1944) 64 C.A. (2d) 244, in construing a metes and bounds description in which five courses and distances were omitted, the description was read backwards from the point of beginning to determine the true intent of the parties. Also, in the last case, the general rule is set out that the sufficiency of the description will be sustained if a surveyor can take the deed and locate the land set forth therein in the ground *with or without the aid of extrinsic evidence.*

Bearing in mind these rules, and our general knowledge and experience as title men, let us look at some examples concerning descriptions and some of their tricks.

The simplicity of descriptions of a specific fractional part of a lot, such as the north 50 feet or north 10 acres, recommends and encourages their use, yet they are not always simple, and the problems arise from failure to understand the effect of such divisions when applied to lots of varying shapes. If a description, for example, calls for the east ½ of a certain lot, does this describe the east half by area or width, that is, a bisection of the north and south lines? There is no question when the lines of the lot all correspond to the cardinal points of the compass. For example, (Figure No. 1) in Wood v. Mandrilla, 167 Cal. 607, the following situation was presented:

> W acquired title to all of the southwest ¼ of Section 30, etc., included in the southwest ¼ were 178.98 acres. W later sold to M, "The east ½ of the southwest ¼ of Section 30, Township 20 South, Range 24 East, M.D.M." No acreage was mentioned. M took possession of approximately 90 acres or ½ of the total of 179.98 acres in the southwest ¼. On the original township plat a north and south line was shown on the acreage noted as 80 acres. W contended because of the 80 acre line being shown on the township plat *as a government sub-*

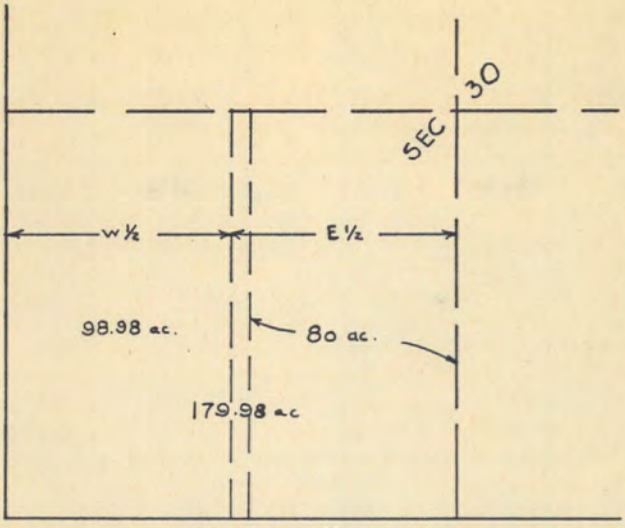

Figure No. 1

division of the east ½ that on that basis 80 acres were conveyed by the deed.

It was held, the word "half" has a plain, common, and natural meaning, and when used in describing lands is to be understood literally. If used without qualification it must be given its literal meaning of two equal parts. M is entitled to ½ of the total acreage. The same rule applies as to other fractions as ⅓, ¼, and the like.

Conflict enters the picture, however, where in the division of a lot by area certain lines of the lot do not agree as to length. For example (Figure No. 2:)

> By deeds from A, the owner of the whole lot, both given at the same time, one describing "The north ½ " and the other "The south ½," conflict arose as to how to divide the lot. P contends for one-half the area bounded by a straight line drawn east and west sufficiently north of the south line to embrace ½ the lot area. D contends that the east and west lines should be bisected. In either event the area is equally divided, but the frontage is affected. P's contention would give him 45 feet and D 35 feet frontage. D's contention would give them equal frontage but the dividing line would not be at right angles to the street line.
>
> In Lavis v. Wilcos, 116 Minn. 187, P's position was upheld.

If writing a *record policy only*, a title company could insure both descriptions, but any conversion into metes and bounds or lineal measurements would have to carefully be considered. In A.T.A. and Extended Coverage such half descriptions might be insured if the parties had placed a practical construction on a division by clear or

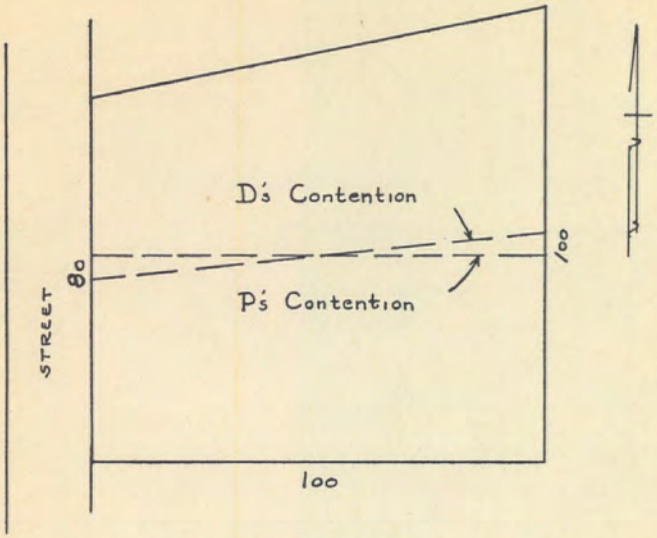

Figure No. 2

long acquiesed in possession lines conformable with the probable title lines.

If it can be determined that a line was established and marked on the ground along the probable title line at the time of the split, the courts would view the term half, as used, in the light of such showing *as surrounding facts and circumstances* indicating the intent of the parties.

Another variation of this same type of division is illustrated by the following example (Figure No. 3:)

> A lot 100′ by 162′ in the form of a parallelogram and a division is made of the lot as "The southwesterly ¼ of lot so-and-so." An action develops and it is claimed by D that the southwest ¼ of the lot is ¼ of the area of the lot being the rear 40.5 feet thereof and extending across the entire width of the lot. P claims that it is the southwest ¼ determined in the same manner as sectional lands are subdivided by dividing the area into halves by running lines equidistant from the boundary lines both north, south, east and west.

Such a contention would result in that shown by the area covered by the probable title line in Figure No. 3. In a Standard Form policy the southwest ¼ of the lot could be insured, assuming other factors as sufficient, because the insured does have title to that portion of the lot wherever it is determined to be. But, in Extended Coverage and A.T.A. work, facts which the survey and possession show may conflict seriously with any fixed supposition as to what was intended.

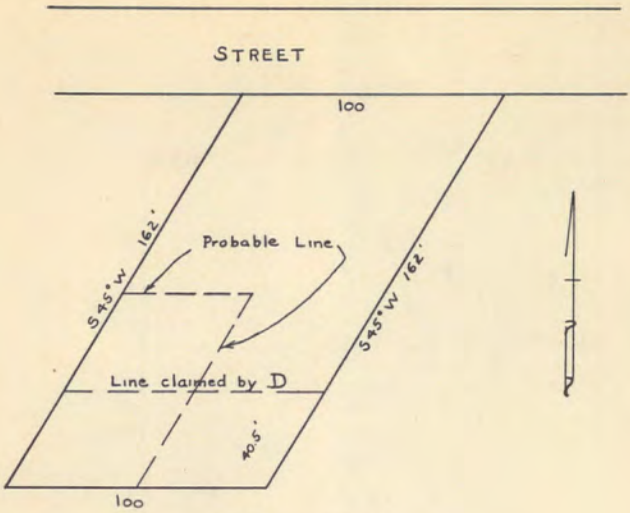

Figure No. 3

Specific quantity descriptions, e.g., "East 20 acres" or "East 50 feet" of a lot present problems where a government subdivision or a lot on a recorded map are not regular in form.

In a description calling for the east 20 acres, for example, the general rule is that the specified number of acres will be set off in *parallelogram* form on the appropriate side (Woods v. Selby Oil and Gas Co., 2 S.W. (2d) 895; affirmed 12 S.W. (2d) 994; 26 C.J.S., page 385.) In other words, a line parallel to the called line is laid off a sufficient distance from the line to embrace the number of acres called for. Also, a description calling for "The southwest 10 acres" or "10 acres in the southwest corner," are usually square in form or within lines paralled to the south and west lines of the subdivision of which it is a part. (Harper v. Hesterlee, 109 S.E. 902.) These rules yield, however, to the intent of the parties if expressed or are presumed from surrounding facts and circumstances where the tract being divided is irregular. For instance, in Figure No. 4 a lot has a total area of 155 acres; portions are deeded out as "The north 80 acres" to D and "The south 75 acres" to P. It was held in one eastern case that such a division should be made by enclosing 80 acres of land by a line parallel to the northeasterly line, following the above rule of parallelograms, but that the south 75 acres could not be divided according to that rule for it would lead to an absurdity by causing an overlap at (1) and leaving an area back in the grantor at (2.) The grantor had conveyed everything he owned and did not intend to retain anything.

A surveyor and a title engineer would probably call these inadequate and uninsurable descriptions by reason of not being able to ascertain

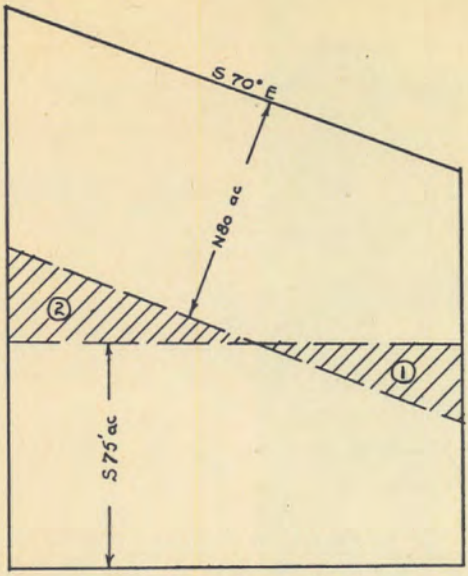

Figure No. 4

what the true boundaries were; however, again in Standard Policy work such descriptions could be insured. No description based on any *specific dividing line* could be insured, however, without a boundary adjustment by the owners. Conflicts in such situations could be avoided if the cuts were occurring in a current order by drafting descriptions which would define the south line of the north 80 acres as parallel to the north line, etc., and the remainder as "All of the lot etc., except the north 80 acres the south line of said 80 acres being parallel to the north line," etc.

One of the most common forms of description in California is the division of a lot on a recorded subdivision by the north, south, east, or west so many feet. Although there appears to be no decisions interpreting the method of laying off such a division, most engineers assert, and it has become so widely used and accepted as to amount to a trade custom, such a division is laid off, as illustrated in Figure No. 5. A division of the north 50 feet and the south 50 feet of a lot is made by constructing a line parallel to the called directional line, north line and south line in this case, at the distance prescribed, which distance is measured at right angles to such directional line. No problems present themselves if the lines of the lot are at right angles to each other and the actual amount of footage exists in the lot.

When any of the lot lines are not at right angles diffculties are presented. The technical rules of platting and construing such descriptions must be observed and considered in title work. It is also very essential to bear in mind *intention*, and the control of surrounding facts

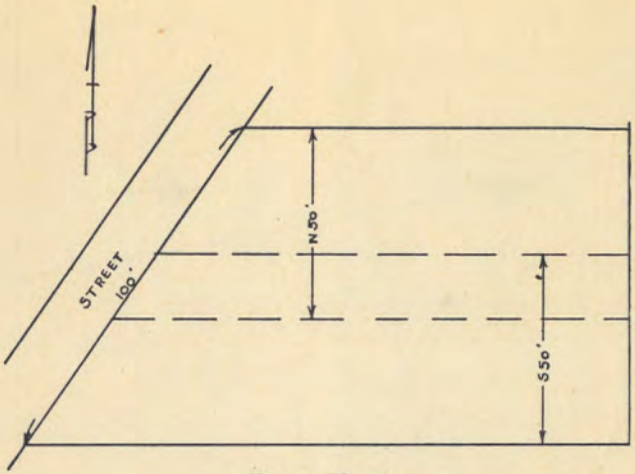

Figure No. 5

and circumstances as indicative of intent at the time of the division of a lot by such descriptions. Persons in their ordinary dealing with real property do not always view their ownerships and conduct themselves according to the technical rules, and very frequently it is shown that they have placed a practical construction on their choice of language which can, in many cases, be safely accepted by a title company. Such matters can very often be easily ascertained by making a ground examination.

An actual case involving a very similar situation presented here was considered by our office within the past few weeks.

You will observe in Figure No. 6 that the east and west lines of lot 1 and the north line are at a considerable angle to one another. Descriptions were included in conveyances filed for record as "The north 50 feet," "The south 50 of the north 100," "South 100 of the north 200." and "The South 50 of the north 150 feet," etc. These conveyances have been on record for some time and insured according to the above descriptions. The owner of the lower parcel hired a surveyor to stake his parcel and the surveyor, whom we will call XYZ, staked the parcel according to the technical rule of constructing perpendiculars to the north line, calculating the distances down the east and west lines, and placing stakes, as noted. Closer scrutiny by the surveyor would have shown a practical construction of what was meant by "The North 50 feet" and the South 50 of the North 100 feet, etc., had been made by the owner who originally sold, and by his grantees.

Actually the old owner had had a survey made originally to establish these 50 feet parcels as measured along the east and west lines. This is borne out by the finding of iron pipes set at the corners of the 50 foot parcels measuring along the east and west lines of lot 1. These are the monuments set by LS 2304, as shown.

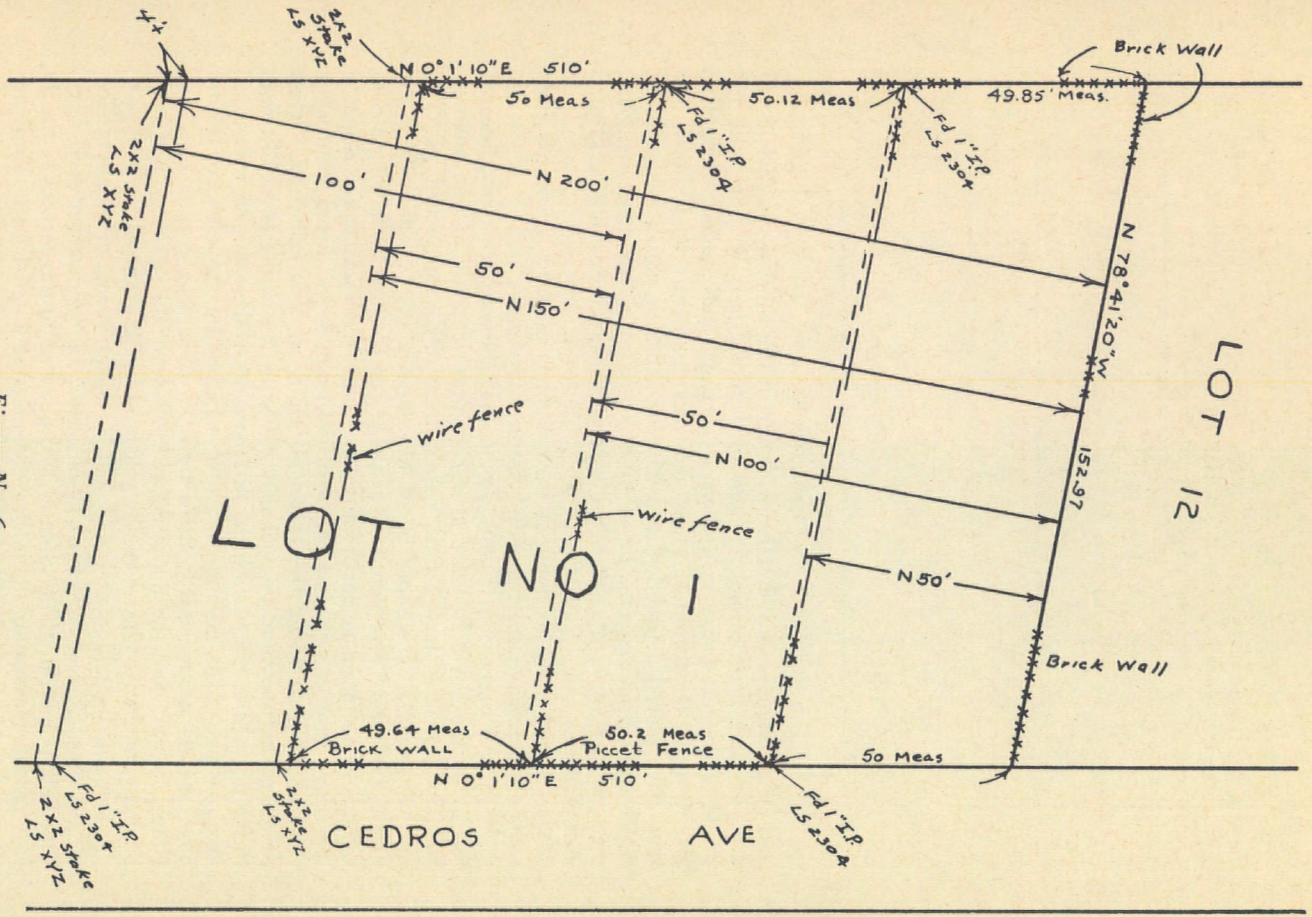
4"x
2x2 Stake LS XYZ
N 0° 1' 10" E 510'
50 Meas
Fd 1" I.P LS 2304
50.12 Meas
Fd 1" I.P LS 2304
49.85' Meas.
Brick Wall
2x2 Stake LS XYZ
100'
N 200'
50'
N 150'
N 78° 41' 0" W
152.97
LOT 12
wire fence
50'
N 100'
wire fence
LOT NO 1
N 50'
Brick Wall
49.64 Meas
Brick Wall
50.2 Meas
Piccet Fence
50 Meas
N 0° 1' 10" E 510'
Fd 1" I.P LS 2304
2x2 Stake LS XYZ
2x2 Stake LS XYZ
Fd 1" I.P LS 2304
CEDROS AVE

Figure No. 6

In addition to the existence of monuments set on the ground at the time of division, which monuments alone could control a conflict of this sort, the parties who purchased went into possession on such a theory and have established fences and walls closely conformable with the monuments. This fact was not considered at all by Surveyor XYZ who applied only the engineering approach. The distances shown as measured on the sketch, are not measurements by a surveyor but were made with a tape by our office personnel and no refinements were used such as temperature adjustments and the usual levels, etc. The walls and fences indicate a very close adoption by the owners themselves of an interpretation of the descriptions in their conveyances as measured along the east and west lines of Lot 1. Is it possible to now write on a parcel as "The southerly 50 of the north 150 feet of lot 1, etc., measured along the easterly line of said lot 1?" It is my opinion in view of these disclosures, which were simply and easily gathered, that it is safe to do so.

Some very distressing problems arise under divisions of lots where the lots are shown on the subdivision map with distances of the lot lines extending to the centers of streets and the map bears a legend "Areas and distances computed to street centers" or other similar language.

The ordinary situation is where lots are shown on a subdivision map and where no legend appears. But where some of the measurements and some of the lines of the lots extend to the center of adjacent streets, and in some cases the acreage showings for the lots on said maps can only be arrived at by including the area in the street adjoining the question arises as to what constitutes the lot (Figure No. 7.) The rule is clearly established in California (Earl v. Dutour, 181 Cal. 58; Peake v. Azusa Valley Savings Bank, 37 C.A. (2d) 296,) that in fractional divisions of such lots, whether by area or measurement, the lot is considered net of the area occupied by the street even though the owner, at the time of the division, owns the area in the street subject to the public easement. The courts view the terms "lot" or "block" in their ordinary meanings of that part of the lot or block set apart to private use and occupation and not in the technical sense of including the street area. This is a presumption of the intent of the grantor and in the absence of any clearly conflicting circumstances in the deed or on the map referred to in the deed the divisions in such cases will be considered net.

This presumption may be rebutted by a statement on the map or matters shown in the deed. When doubt is raised as to the meaning of the term "lot" or "block," and what the grantor intended, parol evidence may be introduced to explain the intent and clarify the instrument's meaning. Such matters include the common custom in the community as to the meaning of the term "lot" or "block" as used in relation to such tract map and in conveyances by the subdivider. How the land has been assessed may be taken into consideration.

Ground examination, including measurements, location of possession lines, can be indicative of the interpretation of what the mean-

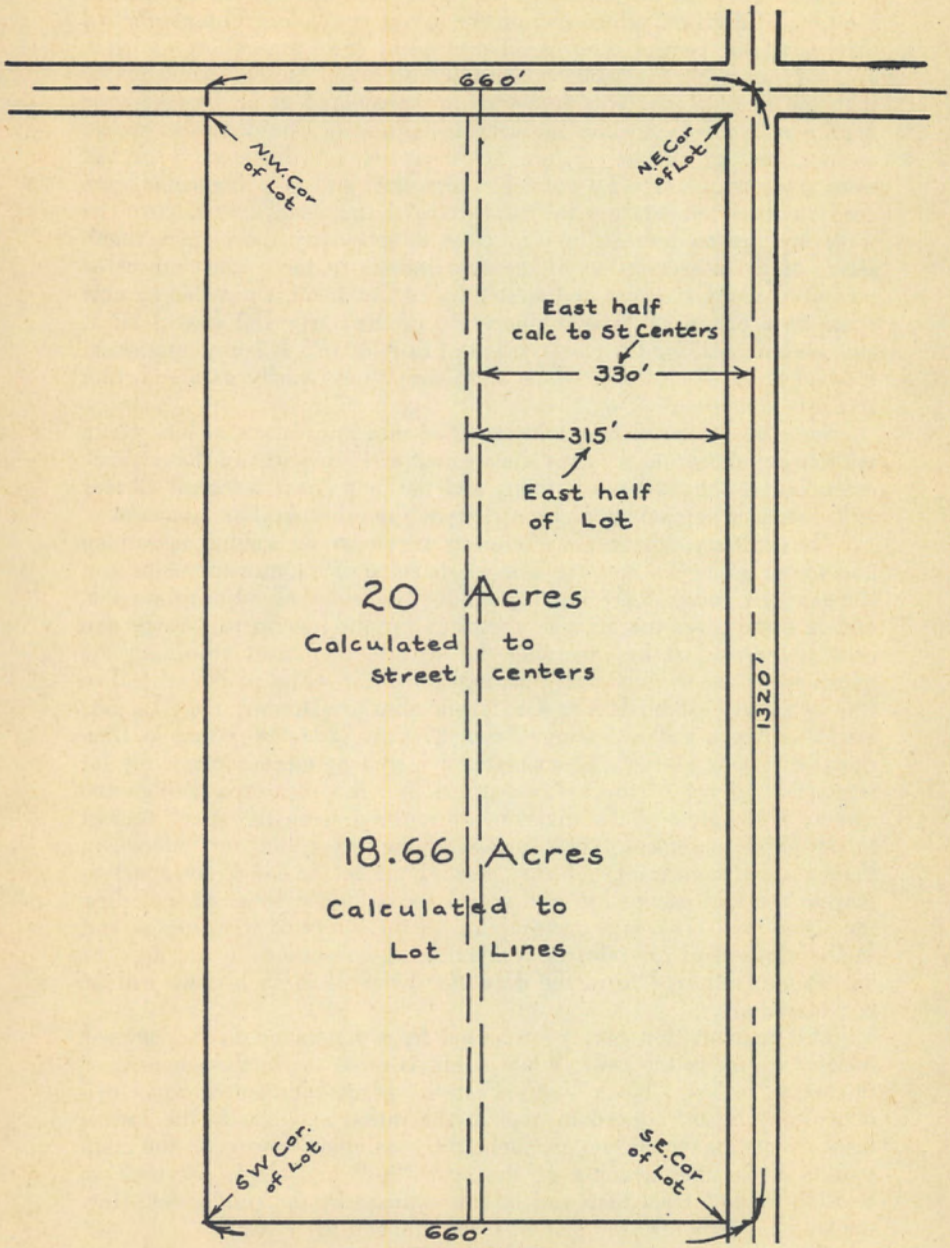
660'
N.W. Cor of Lot
N.E. Cor of Lot
East half calc to St Centers
330'
315'
East half of Lot
20 Acres
Calculated to Street centers
1320'
18.66 Acres
Calculated to Lot Lines
S.W. Cor. of Lot
S.E. Cor of Lot
660'

Figure No. 7

ing of statements on the map as to distances and areas measured to street centers actually have meant to the people affected. Evidence of such a nature is not considered for the purpose of changing the written instrument but for the purpose of explaining the language contained therein. (Ferris v. Emmons, 214 Cal. 501.)

Thus, in this example (Figure No. 7) in the absence of any qualification on the map or in the deed such a lot would be considered net of the street as to east ½ and west ½ divisions. But, if a legend appeared on the map or the language of the deed indicated otherwise, the local situation and how the people treated such a situation in their dealings with the land would have to be considered. Both possibilities, net and gross, would have to be looked at, the assessor's attitude and the ground situation inquired into before definitely taking a position as to a specific portion to be insured.

The meanings of the terms north, south, east and west, or northerly, southerly, etc., are held in the absence of any additional controlling language to mean the cardinal points of the compass. True compass points not magnetic bearings. In other words, in the absence of ties to some known monument or a phrase like "Northerly parallel to the river" the term north or northerly will be construed as north on a meridian of longitude, or north on a straight line connecting the point of

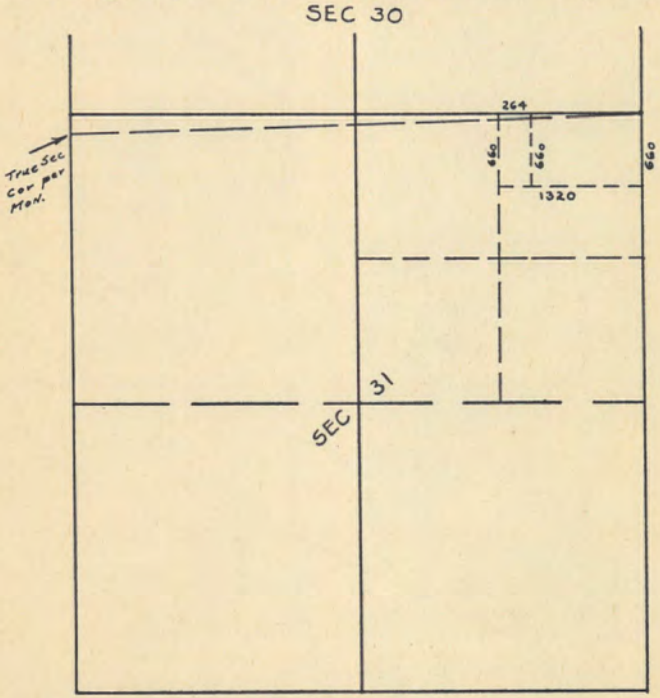

Figure No. 8

commencement of the line with the north pole. East and west standing alone as a directional bearing means at right angles to the meridian at the point of commencement of the course. Such a course would be a parallel of latitude. In the illustration given in Figure No. 8, Section 31 was surveyed and shown on the original township plat as a regular section. The actual northwest corner of the section was monumented on the ground at the time of survey some distance south of the position for the northwest corner as shown on the plat. Section 30 adjoining on the north, of course, was governed as to its south line by the monumenting of the northwest corner of Section 31. A, owning land both in Sections 30 and 31, made various conveyances of portions of his land using in his deeds descriptions which followed a pattern of subdivision, a typical description described "certain land in Los Angeles

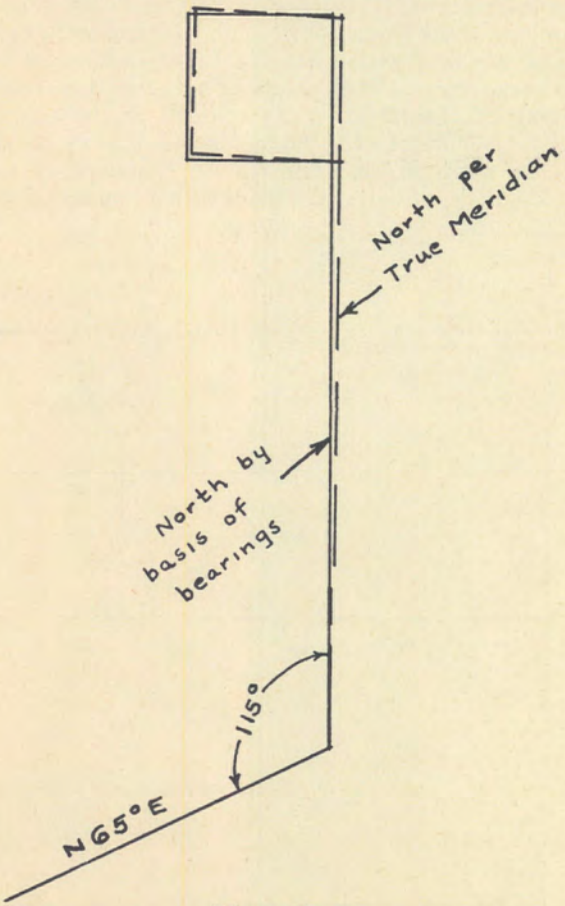

Figure No. 9

County, (etc.) described as: Beginning at the northeast corner of Section 31; (identifying it by township and range;) thence south 660 feet; thence west 1056 feet to the true point of beginning; thence west 264 feet; thence north 660 feet; thence east 264 feet; thence south 660 feet to the true point of beginning." No ties, bearings, or qualifications as to "that portion of Section 31, etc., included within the following described land" were used. In the absence of any qualifying controls of the courses and distances the effect of the description is to convey a portion of Section 31 and also grantor's interest in that portion of Section 30 included therein.

This same type of call of "north" or "due north" without tie or bearing points up another very subtle situation which can prove very embarrassing (Figure No. 9.)

In a well known oil producing area in the state, a metes and bounds description was used in an oil lease which commenced at a point on the boundary of a certain ranch, as established by a particular survey and then proceeded along the ranch boundary line on a named bearing, shown in this illustration as *North 65° East* so many feet to a point; "thence due north 13,955.04 feet to the true point of beginning; thence due west 660 feet; thence due north 660 feet; thence due east 660 feet; thence due south 660 feet to the true point of beginning." A dispute arose as to the meaning of "due north" as used in that description. In a recent appellate court decision the finding of the lower court was sustained that the term "due north" means along the true meridian and not along a line which would be established as North 0° on the basis of the bearings of the ranch survey. A sharp difference of opinion among leading engineers and surveyors testifying as to the true meaning of the terms "north" and "due north" as used in the description and method of surveying the land covered by the lease is noted in the case. The difference in the two locations of the north course resulted in approximately 12 feet and involved whether a high producing well invaded plaintiff's land. The matter is going up before the Supreme Court now, but unless a reversal is granted on this point "due north" means north according to the true meridian. This illustrates that if it is meant that a basis of bearings is to be used, all angles turned should be in relation to that basis of bearings and not left to speculation and conjecture as to the actual intended direction.

Frequently, the question of apportionment of excess or deficiency is presented in surveys for A.T.A. and Extended Coverage work or by Licensed Surveyor Maps filed for record.

The general rule is that any excess or deficiency is to be apportioned among the several lots in proportion to their respective platted widths (Booth v. Clark, 59 Wash. 229; Eshleman v. Walter, 101 Cal. 233, applies this rule of apportionment to a Government survey section; Brumley v. Hall (April, 1952) 110 A.C.A. 846.)

Figure No. 10 illustrates facts which are reported in a recent appellate case (Brumley v. Hall, (April, 1952) 110 A.C.A. 846.) The

lower court threw all of a deficiency of 19.65 feet into lots 31 and 32, being the lots owned by the parties to the action. No part of the deficiency was assigned to lot 30. On the appeal the lower court was reversed and the deficiency was apportioned between the three lots equally.

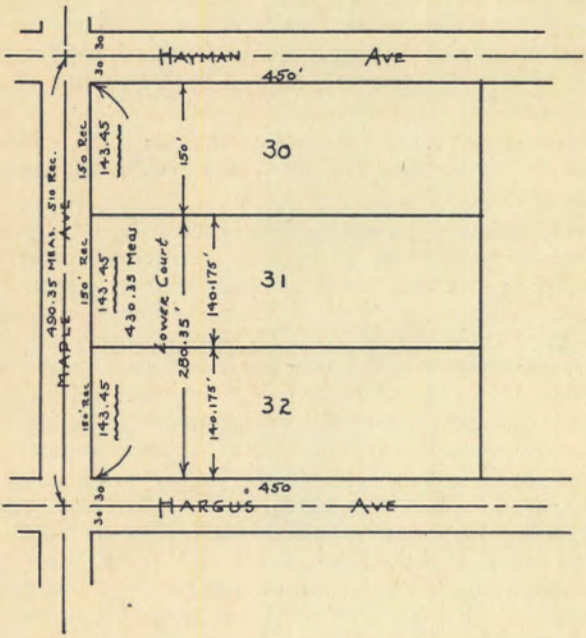

Figure No. 10

This general rule of apportionment is subject to many qualifications and care should be exercised in applying the general rule without careful consideration. Among the qualifications are noted the following:

1. If all lots on a subdivision are given dimensions except one, it has been held that the subdivider intended that the undimensioned lot takes the excess or deficiency. This is sometimes called the "Remnant Rule."
2. Where improvements have been constructed on the original lot lines or the lots staked or otherwise monumented the monuments may be controlling. (Andrews v. Wheeler, 10 C.A. 614.)
3. If the lines as originally surveyed can be retraced and the error accounted for as not resulting from imperfect measurement but from some other reason which would place the excess or shortage in a particular lot the general rule is not followed.
4. If adverse possession has been established for the statutory period along the original lot lines or boundaries are established by sufficient agreement or acquiescence along the original lot

lines, the general rule is not followed. (Skelton, Boundaries and Adjacent Properties, Chapter III.)

Recently our Company has been devoting considerable time and study to problems presented in questions arising out of titles to lands formerly public lands. In particular, the circumstances surrounding the surveys upon which the original township plats were based and the disclosures of subsequently made dependent and independent resurveys. Much effort is being put forth to be sure that the plant facilities in our offices, particularly in our branches, contain not only the original township plats but all other township plats since made, based upon either the dependent or independent surveys. In many cases our tract books and usual plant procedure must be supplemented to protect against the snarls developed by this inquiry. Time does not permit any detailed discussion along this line, nor is our inquiry complete; however, it may be well to show an example of one circumstance that has been uncovered.

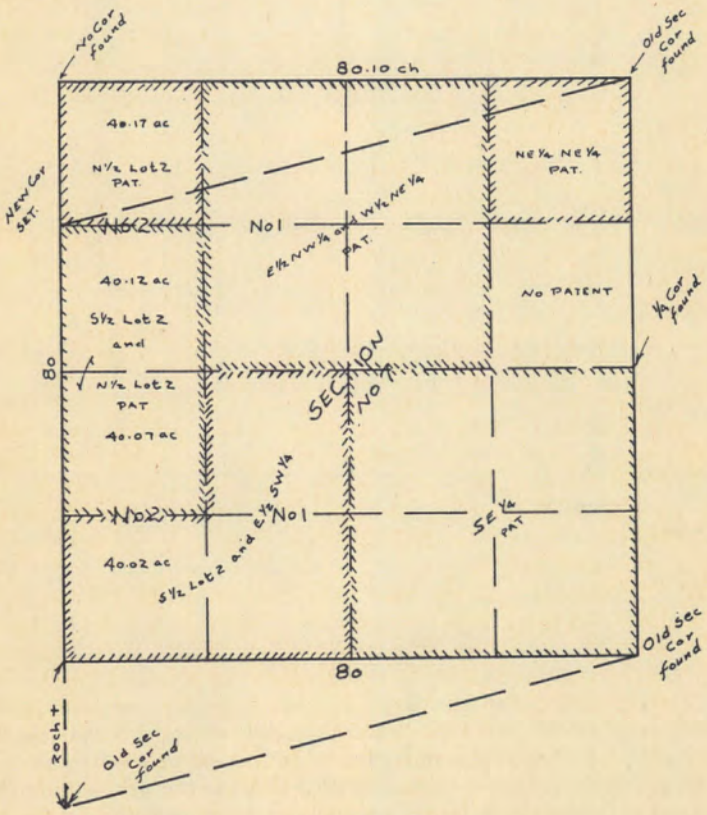

Figure No. 11

Figure No. 11 shows the original survey of Section 7 to be a fairly regular section containing 640.38 acres. All of this section was patented in the manner shown by the cross hatching, except the southeast ¼ of the northeast ¼. The dashed lines show in effect the approximate shape if the monuments set for the section corners were followed. Actually the old southwest corner monument is not as it is indicated on this sketch but about 38 chains west and 20 chains south of the corner shown on the original plat. As the monuments set for the section control its size and shape, strange things occur when attempt is made to reconcile the descriptions of the patents, all of which were issued sometime prior to 1922. In 1922 this section was resurveyed and the present section 7 which previously was shown as regular now appears as in Figure No. 12.

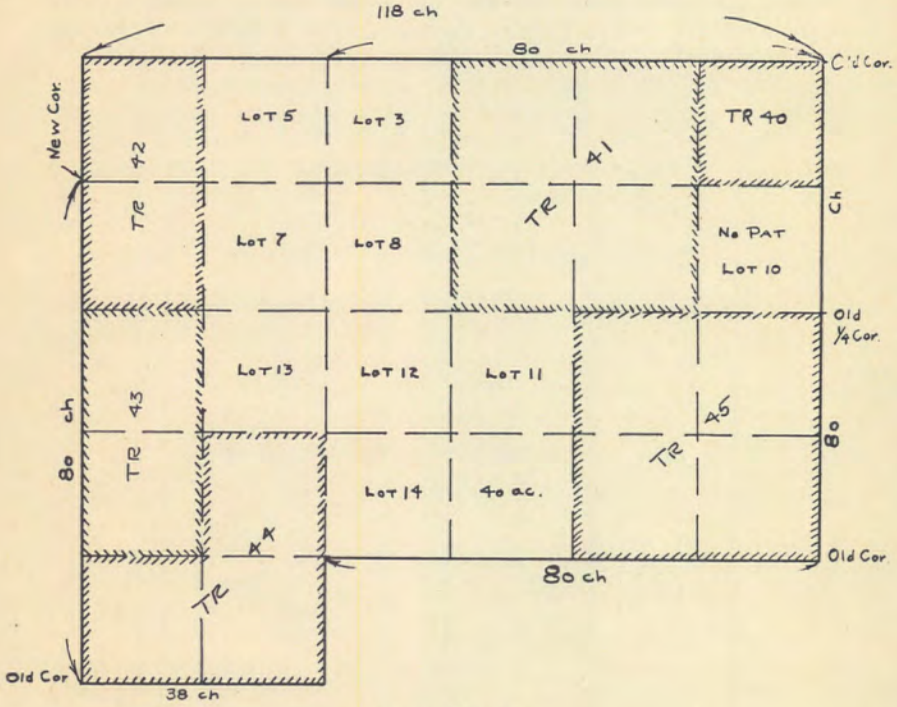

Figure No. 12

You will notice that it is now 118 chains on the north line and the south line is a little peculiar. What have they done with the originally patented land? That is shown by tracts on this survey, as is customary, but notice their location—cross hatching is what the new survey shows for those patents. Notice all the nice new land represented by the areas with lot numbers shown. Lots 3, 8, 11, 12, 14, and the 40 acre piece

down at the bottom once were in the old section and had been patented. Not content with putting a section stretcher on this section, the government has issued patents to all of these nice new lots except the part shown as Lot 10 which no one seems to want either under the old look or the new look.

Have we issued?—fortunately no—what's the answer?—we don't know yet but the case is particularly illustrative of what may occur on resurvey as we attempt to retrace the old surveys and apply the data shown by subsequent surveys.

In the foregoing I've laid a bit of stress on many factors which can be utilized in favorably viewing description problems. Ours is a changing business, a growing business, and as the years go along new rules of practice are developed to meet the demands and needs of our customers. Many of the reasons used today to support the undertaking of risks would not have been considered 15 or 20 years ago as valid or persuasive.

Experience and more inquiry into the intricacies of our business have taught us new methods and have urged us to explore deeper into those phases of our laws, our experience, and the facilities at our disposal which will aid and furnish solutions to the problems raised in our business. Many solutions to problems that might otherwise require much delay, expense and ill-will, are arrived at by our lawyers, our title committee, and our management in their desire to keep in a healthy condition our customer relations. Insurance can often be given by the undertaking of risks after appraisement of a complete analysis of the problem and the presentment of all facts which bear on the problem both record and off-record.

Applying the essence of this approach, much reliance is placed on the cardinal rule of construction of a conveyance *to effectuate the intent of the parties,* if by any possibility that intent can be gathered from the language employed. This is an easy phrase to use and as stated by the court in a leading case (Walsh v. Hill, 38 Cal. 481,) "the only rule of much value . . . one which is frequently shadowed forth, but seldom, if ever, expressly stated in the books . . . it is to place ourselves as nearly as possible in the seats which were occupied by the parties at the time the instrument was executed; then, taking it by its four corners, read it."

It must be remembered, however, that the intention must be expressed in the conveyance, not merely surmised. If the writing does not furnish the *means* whereby the description may be made sufficiently definite and certain, then the instrument must be held void. (Saterstrom v. Glick Bros. Sash etc. Co. 118 C.A. 379.) A deed which failed to describe land so that it could be located, and furnished no means by which its description could be made more definite was held void in (Smith v. California Portland Cement Co., 134 C.A. 630.)

Extrinsic facts and circumstances as aids can be considered to explain an uncertain phrase, or term, or ambiguities (Reamer v. Nesmith, 34 Cal. 624; County of Los Angeles v. Hannon, 159 Cal. 37; Warden v.

Brandes, 103 C.A. 744.) Such extrinsic matter or parol evidence cannot be used where (a) it would add to or vary a description which is otherwise definite and certain or (b) to explain an ambiguity on the face of the instrument (Brandon v. Leddy, 67 Cal. 43,) as where the deed shows there are two lots to which the description equally applies. In such case the deed is void. Resort must be made to the common methods of adjusting boundary lines where it is not possible to apply within safe limits the rules of construction or where the factor of unmarketability is determined to be seriously affected.

Adjustments are usually made by exchange of deeds, by court proceedings, or agreement. However, it is possible that boundaries may have in fact been adjusted by the acts of the parties and not reflected on the record. This would include adverse possession, estoppel, or by agreement and acquiescence. Detailed discussion of these factors is not possible at this time but a comment or two on establishment of boundaries by agreement should be made.

Uncertainty of the boundary line is essential for the basis of an effective agreement. The reason is obvious because if the true boundary line is known an agreement that it be established in another position would not operate to transfer the titles of the agreeing parties up to the new or agreed line. That could be accomplished only by a conveyance or other recognized method of transfer. It is not required that the true boundary be impossible of location but only that the parties believe that uncertainty exists.

As to an oral agreement establishing a disputed boundary, it is essential that the parties acquiese in the location of such agreed line by possession up to the line for the statutory period to bar an action for recovery of the land up to the old line. Two fine articles on boundary changes by agreement and acquiescence can be found in 14 California Law Review 138; and 14 Southern California Law Review 460.

Much consideration must be given to the factor of unmarketability of title by reason of variations of the record title description and the description which to be sustained must be supported by extrinsic facts, construction of intent, etc.

Management and title committees will weigh this in their appraisement of risk and if they feel that customer relations, and facility of operation is better served by solving the problem of the customer by using the rules of construction, etc., the objection of unmarketability in many cases can be subordinated in the interests of good service and cooperative relations with our buying public. (Insurance of Marketability of Titles, panel discussion, 1950 C.L.T.A. Convention Proceedings, page 87.)

Whose description? It doesn't make any difference whose, if it is a description that permits insurance to be given within reasonably safe bounds and the customer's deal to be carried out.

You have been most kind and attentive during the presentment of this long and technical paper. Thank you very much.

LAND MEASUREMENT TABLE

TABLE OF CHAINS AND FEET

chs.	feet	chs.	feet	chs.	feet	chs.	feet
1	66	26	1716	51	3366	76	5016
2	132	27	1782	52	3432	77	5082
3	198	28	1848	53	3498	78	5148
4	264	29	1914	54	3564	79	5214
5	330	30	1980	55	3630	80	5280
6	396	31	2046	56	3696	81	5346
7	462	32	2112	57	3762	82	5412
8	528	33	2178	58	3828	83	5478
9	594	34	2244	59	3894	84	5544
10	660	35	2310	60	3960	85	5610
11	726	36	2376	61	4026	86	5676
12	792	37	2442	62	4092	87	5742
13	858	38	2508	63	4158	88	5808
14	924	39	2574	64	4224	89	5874
15	990	40	2640	65	4290	90	5940
16	1056	41	2706	66	4356	91	6006
17	1122	42	2772	67	4422	92	6072
18	1188	43	2838	68	4488	93	6138
19	1254	44	2904	69	4554	94	6204
20	1320	45	2970	70	4620	95	6270
21	1386	46	3036	71	4686	96	6336
22	1452	47	3102	72	4752	97	6402
23	1518	48	3168	73	4818	98	6468
24	1584	49	3234	74	4884	99	6534
25	1650	50	3300	75	4950	100	6600

GENERAL INFORMATION

1 surveyor's chain—100 links of 7.92 inches each.
1 rod—16½ feet.
4 rods—1 chain.
1 pole—1 rod.
1 mile—80 chains or 5,280 feet.
1 acre—10 square chains or 43,560 square feet.
1 acre in square form—208.71 feet on each side.

The radius of a 1 degree curve is practically 5,730 feet. To find the radius of any curve, divide this number by the number of degrees in the curve desired.

To find a true bearing from any given magnetic, if the given bearing is NE or SW, add the magnetic declination, and if NW or SE subtract.

The magnetic declination in Los Angeles County was about 14½° E. at time when most maps using magnetic bearings were made.

Fig. No. 13

LAND MEASUREMENT TABLE

ACREAGE

Acres	Square Feet	1 Acre Equals Rectangle	
		Length	Width
1	43,560	16.5	2640.
2	87,120	33.	1320.
3	130,680	50.	871.2
4	174,240	66.	660.
5	217,800	75.	580.8
6	261,360	100.	435.6
7	304,920	132.	330.
8	348,480	150.	290.4
9	392,040	208.71	208.71
10	435,600		

Sectional map or a Township with adjoining Sections

36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

MAP OF SECTION

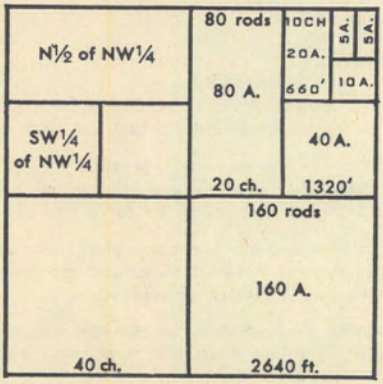

Fig. No. 14

At the 1952 convention of the California Land Title Association, we were impressed by the thoroughness of discussion on the California Land Title Association (CTLA) form of policy of title insurance, so much impressed in fact that we sought and received permission to reproduce the discussion in "Title News."

It is usable in large measure, we believe, "as is" to many members in their public relations work explaining Title Insurance. It is usable either in its present form or as a framework upon which members could construct material for lectures, text book material, usable in a training program.

We believe it is especially usable in the offices of representatives and agents of title insurance companies as study and reference material.

—Ed.

CTLA STANDARD COVERAGE— OUR LAWYERS LOOK AT THE POLICY

LAWRENCE L. OTIS, *Vice-President and Chief Counsel*
Title Insurance & Trust Company
Los Angeles
F. W. AUDRAIN, *Counsel*
Security Title Insurance and Guarantee Company
Los Angeles
FLOYD B. CERINI, *Partner*
St. Clair, Connolly & Cerini, and *General Counsel* for
Western Title Insurance & Guaranty Company
San Francisco
EARL RIPLEY, *Partner*
Landels & Weigel, *Counsel* for
California Pacific Title Insurance Company
San Francisco

MR. OTIS: In our Conventions we have dealt at length with many of the problems encountered in our day-to-day activities. None, at least in recent years, has given critical attention to our principal product—the policy itself. It remains for this panel, therefore, to take the most used form, the California Land Title Association standard coverage policy, and highlight its provisions.

The chart in your hands (reproduced on page.....) giving the salient features of this policy will help expedite our discussion. The footnotes are simply reminders and will perhaps take the place of notes you might otherwise want to make yourselves. With that chart before you, we will dispense with introductions. We are going to take those twenty-five points one after the other. If we think of it, we will mention the number, and that will give you the point which we are talking about. We will take them in order and we will discuss them one by one.

As you see, the first point is that the policy insures the insured against "Loss or Damage."

Number 1. Loss or Damage

MR. AUDRAIN: These words refer to the monetary figure finally adjudged or agreed upon to represent the compensation to an insured that loses his entire title, or finds that another is in fact a part owner. We here include the insured lender whose lien does not occupy the position in the chain of title reflected by our policy or who sustains loss of his security because of one of the true insurance risks such as a forgery or a deed by a person adjudged insane in this jurisdiction.

An incidental feature is the matter of the time when the loss or damage occurred. The policy date or the date when the settlement is being discussed or the date of a trial. For one insured of Security

Title, the trial court used the policy date rather than the trial date which was five years later than the policy date. The issue in the case was the difference in the value of a lot, with or without the easement we did not see on our books.

Number 2. Not Exceeding $_____

MR. OTIS: The maximum liability is always stated in the policy. You would think that would be simple, since the Court has held that the Company has a right to fix the terms upon which it would enter into the contract of guaranty. But I will give you an illustration of a man who didn't believe it. We insured him and stated a maximum liability of $8,000—that he was fee owner of the property. Accordingly, he felt confident in making an oil lease in which he was to get a substantial bonus. Before the lease was delivered, it developed, and we reported, that he did not own the oil, and we tendered him our check for $8,000, the face of the policy. He said, "Nothing doing. You are liable to me for your negligence in not showing the reservation of oil in your policy, and your policy limit has nothing to do with your liability for negligence." I don't know how many attorneys, one by one, wrote us claiming the $24,000 which he felt he was damaged—and which, I think, as a matter of damage, he could have established. However, I furnished each set of attorneys, in order, with my memorandum of authorities which I believed established the law; and, fortunately, they did not put it to the test of a suit.

Number 3. Vesting

MR. CERINI: When we insure against loss or damage by reason of title to land being vested otherwise than as stated in the policy, it seems to me that the risks we assume by such insurance are primarily risks against off-record matters, that is, risks arising from some inherent defect or invalidity in the chain of title of which no notice is given by the public records. I believe this to be true notwithstanding that our vesting is subject to Schedules A, B and C and the Stipulations of the policy, and thus excludes from the coverage of the policy any liability for loss by reason of an erroneous vesting arising from matters within the exceptions of the policy, most of which also relate to off-record matters.

When we vest a title which appears from the public records to be perfect and impregnable, we assume the risk that such vesting will not be defeated by there being a transfer or link in the record chain which is void or invalid by reason of a number of defects or matters, many of which are enumerated by the chairman of this panel in his article on "What Protection is Title Insurance." These risks are classified by Mr. Otis in his article under six general headings, to wit: Identity of Parties, which embraces forgery, false personation

and mistaken identity; Competency; Status, which includes marital status, bankruptcy and fictitious entities; Powers, such as those conferred upon agents and fiduciaries under powers of attorney, trusts, etc., and, by law, upon governmental agencies, corporations, partnerships and so on; Delivery of instruments; and Laws, both statutory and case law which have a direct impact upon title to property. I refer you to Larry's article which is printed in booklet form and is available from the Title Insurance and Trust Company.

Judgments and decrees that are void for want of jurisdiction or other reasons will, of course, defeat a title which may appear good.

A fairly recent case, that of Wilson v. Pacific Coast Title Insurance Company, (1951) 106 Cal. App. 2d 599, serves to illustrate how title might have vested otherwise than as shown. The insured plaintiff sued the title insurer because another title insurer had refused to recognize him as owner and vestee, claiming a trustee's sale pursuant to which the insured had acquired title was invalid. It turned out that the trustee's sale was good so the defendant title insurer was not liable, but if the sale had been in fact invalid, then title would have vested otherwise than as shown and the plaintiff would have prevailed.

Another illustration is exemplified by the case of Yeoman v. Sawyer, (1950) 99 Cal. App. 2d 43, where a man having a wife in a mental institution was living with another woman as husband and wife with whom he took title to property in joint tenancy which was paid for one half by each. In a quiet title action by the administratrix of the man's estate against the "other woman," the court held that since the husband had contributed community funds toward the purchase of the property, a joint tenancy was not created with the other woman; that a tenancy in common was created and hence that a vesting as joint tenants would have been wrong.

Then there are instances where title may vest otherwise than is shown and where we may be liable as a result thereof because our insured was not a purchaser for value under the recording laws and had no knowledge of any defect or other matter affecting the title at the date of issuance of the policy. There are a number of illustrations of such situations that can be given and not all of them involve fraud, but time does not permit any reference to them. Please bear in mind, however, that our risk of loss as to vesting being otherwise than is shown is considerably enhanced whenever we insure a person who is not a purchaser for value. And I feel fairly sure that we might not be able to successfully sustain a defense that an insured did not actually suffer a loss because the property was acquired by gift or by descent or devise.

Number 4. Unmarketability

MR. RIPLEY: The title policy insures against loss by reason of unmarketability of title, unless such unmarketability exists because

of defects, liens, encumbrances or other matters shown in the policy. The only justification for the inclusion of this clause in the policy, it seems to me, is to make certain to our insured that if he sells, he may without fear of loss promise his buyer that he can furnish a marketable title. If he cannot furnish such title if and when that time comes, we may be called upon to pay his loss or damage, plus possible litigation expenses. His loss could be the difference between an advantageous sale price and the value of the property, in its defective condition. Or his damage could be the amount the buyer recovers from him if the buyer should sue for breach of contract, which, under our law, would be relatively small.

Occasionally claims based on asserted unmarketability occur in other than vendor-vendee situations. An interesting and significant example is found in the case of Hocking vs. Title Insurance & Trust Company, decided by the California Supreme Court last year. In that case, the title company insured a vacant lot in a subdivision for the amount of the purchase price, which was approximately $13,000. In accepting the subdivision map for recordation, the recorder failed to require, contrary to law, the posting of bonds to guarantee the installation of street work in accordance with a municipal ordinance. This failure was not mentioned in the policy. When the insured sought a building permit to erect a house upon her property, her application was denied upon the ground that the local ordinance requiring the bond was not complied with. The insured sued the title company for the entire $13,000, contending that the title she obtained was defective by reason of absence of the bond-supported agreement. She maintained that had the bond been posted as required by law, then installation of the street work would have been guaranteed, and the lot would have been worth the full $13,000, whereas under the then existing conditions, the lot was valueless. The court discussed marketable titles, and then held that plaintiff's title, as such, was good and marketable, although conceding that the lot was rendered practically worthless. The court said it was the condition of her land with respect to adjacent street improvements and not the condition of her title which was different than what she expected to get. It said that the facts she pleaded would have no effect on the marketability of her title, but merely impaired the market value of it.

Number 5. Defect in Title

Of more significance to the insured is the next provision in the policy, which protects the insured from loss or damage arising by reason of any defect in title, unless such defect is shown in the policy. It would serve little purpose here to attempt to enumerate or classify the many defects which might exist. Brief mention, however, might be made of those defects arising from voidable transfers, for which defects the abstractor, searcher and examiner is, or should be, ever

on the alert. Illustrations of these are certain deeds by minors, deeds of community property by the husband alone, deeds fraudulent as to creditors, and deeds by corporations to its officers or stockholders without proper supporting resolutions. Another source of many defects is faulty judicial proceedings, including, of course, probate and guardianship matters. Fortunately for us—and for our insureds too—most of the defects just enumerated are sooner or later cured by time.

Number 6. Lien on Title

MR. OTIS: We have had some recent experiences by way of overlooking record liens. The first of these was under an interlocutory decree of divorce. The decree itself—a certified copy—was recorded; and it had numerous provisions with respect to property, and alimony, and that sort of thing in it. There was a provision that the husband pay the wife $36,000 at the rate of $1,000 per month. Our people concluded that this was part of the alimony award and would not constitute a lien, so did not show it. Of course, being for a sum certain, though payable in installments, recordation resulted in creating a lien for the entire amount. Again, we sometimes overlook possible liens for unpaid maintenance costs under provisions—in the nature of a contract—buried in the middle of a many-page declaration of restrictions. On the other hand, we have been accused of overlooking the lien of an attorney for fees awarded in an order for temporary alimony; but, unless the order has been *entered*, recordation does not create any lien. See Civil Code Sec. 137.5.

Number 7. Encumbrance on Title

MR. CERINI: Encumbrance is a broad word. It is partially defined in Section 1114 of the Civil Code as including taxes and assessments and all liens upon real property. In the case of Johnson v. Bridge, (1923) 60 Cal. App. 629, the court stated that "As applied to an estate in land, an encumbrance may include whatever charges, burdens, obstructs or impairs its use or impedes its transfer." Thus, among other things, easements, (Rutigon v. Phelps, 190 Cal. 608,) overlaps and encroachments, (Johnson v. Bridge, 60 Cal. App. 629,) covenants, conditions and restrictions, (Zlozower v. Lindenbaum, 100 Cal. 766; Whelan v. Rossiter 1 Cal. App. 701,) have been held by our courts to be encumbrances. The case of Smith v. Title Insurance and Guaranty Company, decided by the Appellate Division of the Sacramento Superior Court (Appeal Case No. 82664) on January 12, 1950, affirmed a judgment of the Sacramento Municipal Court holding that a title insurer was liable under our former CLTA standard form policy for failing to show as an exception in its policy an assessment, which appeared on the assessment book in the county engineer's office but which assessment was not confirmed and did not become a lien until

after the issuance of the policy. The basis of the decision was that the assessment, though not a lien, constituted an encumbrance shown by the public records and as such was within the scope of the policy coverage. As will appear later in this panel discussion, our present standard coverage policy excludes such coverage.

A New York case, that of Holly Hotel Company v. Title Guaranty and Trust Company (264 NYS 3, affirmed 264 NYS 7) is, I believe, of some interest, at least as showing the difference between a covenant and a condition and the failure to recognize that each may be a different type of encumbrance. Also the case shows how strictly a policy and its exceptions are construed against the insurer. The distinction between a condition and a covenant seems to be that a condition can only be imposed as a qualification of an estate granted in a conveyance while a covenant is created by an agreement, whether contained in a deed, an agreement between two or more owners, or other writing. The consequence of a breach of a condition may be reversion of title, while upon a breach of a covenant, the remedy is an action for damages or by way of injunction. In the New York case mentioned, the policy issued in 1920 insured against loss by reason of any encumbrance on the title, but it set forth as a typewritten exception from the policy coverage "restrictive covenants" as set forth in a recorded deed to which reference was made. As a matter of fact, such deed contained a condition subsequent with a right of reversion relating to the same subject as the covenants. In 1930, the title insurer refused to insure a proposed mortgage of the property without showing the condition as an exception unless the insured obtained a quit claim deed of the reversionary right. The insured proceeded to obtain such a quit claim deed at a cost of $5,000. He then sued the title insurer and recovered judgment. The court held that the title insurer in excepting only restrictive covenants—and regardless of its reference to the deed containing the condition—did not thereby except the condition from the coverage of its policy. It stated that the title insurer had assured the plaintiff his title would not be disturbed. And I quote:

> "A purchaser of title insurance may rely as any layman would rely on the language employed by the company to state or qualify the scope or extent of the protection sold. To ascertain the same, he is not called upon to have a lawyer construe an instrument of record excepted by the insurer as a covenant in order to see whether it is more than a covenant. In this connection neither notice nor knowledge is important."

Number 8. Defect in Execution

MR. AUDRAIN: These are key words which bring to mind the unauthorized deed or act by a guardian, probate representative, a receiver or act by a political subdivision. You will also think of the deed by a suspended corporation, the irregularity that can occur in

the transfer of all corporate assets, the acts of attorneys in fact and attempted or insufficient signatures by mark.

Last month I had occasion to measure the scope of this phrase, finding no other language in the policy that seemed as nearly applicable to what men often call a "situation." We recorded a trust deed regularly acknowledged. However, the notary used his old stamp with a past expiration date for his commission. The insured, one of those well informed, retired lawyers from Indiana or Ohio seized on this item and confronted our title officer with a demand that we make perfect his lien, the insured not regarding a title insurance policy as being a responsible contract. The confrontation ceremony was interesting but unprofitable. Ultimately, the insured lawyer came to me and, while readily acceding to the immateriality of the commission date defect, asked this question: Suppose the notary acted without authority or there had been no acknowledgment and the trustor made and enabled recordation of another deed of trust a week after the insured paper was recorded. Does the policy expressly cover that situation? I could find no undertaking in our policy to cover that risk, for execution does not include acknowledgment, and we cover priority at policy date only.

Number 9. Priority Over Insured Mortgage or Deed of Trust

This phrase lets us in for much of our trouble, and I think most of that trouble is of our own origin in that we too often fail to finally account for or dispose of the prior lien or encumbrance disclosed by our own records.

This part of the policy also requires that we consider potential liens disclosed by notices of non-responsibility, notices of completion, estate tax liens, matters which would ordinarily be out of the chain of title but for reference to such matters in leases, contracts and other instruments regularly of record.

Number 10. Taxes and Assessments

MR. CERINI: The policy does not insure against loss by reason of the existence of any taxes or assessments which are not shown as existing liens by the records of any taxing agency or by any public records. You will note that this language excludes from coverage any such liability as arose in the case of Smith v. Title Guaranty and Trust Company, which I have previously discussed.

A "taxing agency" is defined in the Stipulations of the policy as "the State and each county, city and county, city and district in which said land or some part thereof is situated that levies taxes or assessments on real property." Therefore, if the land is situated in a taxing agency which maintains its records outside of the county in which the land is located, then the records of such taxing agency

must be examined to ascertain if there are any existing tax or assessment liens.

Before dispensing with further discussion of this exception, it may be well to mention the case of National Holding Company v. Title Insurance and Trust Company, (1941) 45 Cal. App. 2d 215, where the Title Insurance and Trust Company was held liable for failure to show the first installment of taxes for 1935-36 that were paid under protest and where such taxes were later set aside and declared void and then subsequently the property was reassessed and taxes fixed for such year. The standard exceptions of our policy would not protect against any such liability.

Number 11. Easements

MR. AUDRAIN: There are, of course, many off-record easements which are beneficial and burdensome which affect land. Sometimes these easements have a material bearing on the price a proposed insured would pay for the land. They can be vital to a proposed building program in getting to or from the property.

I think that more than one title man has had difficulty with the easement apparently not within his chain of title, but which was there and should have been found, had a proper analysis been made some years earlier of an instrument affecting his property in question together with several other parcels.

While possibly not wholly relevant here, some of you have been confronted by an insured who makes some demand on you because he has come to dislike the community driveway which was pointed out to him or which he saw when he bought the land but which you failed to show in your policy, although the agreement for the driveway was regularly of record.

Number 12. Liens

MR. OTIS: Liens not shown by the public records against which the policy does not insure: I think there, by reason of the word "encumbrances" following, it refers to liens in their technical sense; but such liens might include the vendor's lien. The vendor has a lien when he sells and conveys the property without receiving the purchase money or security therefor. Naturally, that vendor's lien cannot be enforced against a good faith purchaser for value, one who doesn't know about that vendor's lien and who paid value for the property. Not all our insureds, however, are good faith purchasers or purchasers for value, and very possibly we might be liable under the policy, except for this provision, since it would not be a lien shown by the public records.

Another instance would be a mortgage which was given prior to the date the purchaser acquired the particular property. One doesn't

look to see whether the fellow mortgaged the property before he acquired it. That would, in a sense, be a mortgage or a lien that is not shown by the public records, having regard to the new definition in our policy which defines public records as those which, under the recording laws, impart notice of matters relating to land, since such mortgage would not be in the chain of title.

Number 13. Encumbrances

We do not insure against encumbrances not shown by the public records—such things as notations on the Street Superintendent's or City Engineer's maps like: "This property, subject to inundation in rainy weather."

Nor against encroachments: They are not shown by any public records. In this standard policy which is confined to the record, insurance is not given against encroachments.

Nor against an outstanding, unrecorded option, it not being an interest in real property.

Number 14. Rights of Persons in Possession

Under 14, we have the rights of persons in possession. That would include the vendees in possession. It would include the tenants in possession. As noted in the foot-notes, in the chart (page.....,) it might include relatives. Now, the rule is that if the possession is consistent with the title, one need not inquire further, and that would be true of the family of the record owner, although, in our extended coverage policy inspections, we encounter relatives who say, "What are you doing here," and the inspector will state his purpose, and the other party will say, "Oh, I have an interest in this property; I put some of my money into it." Those are interests which, being consistent with the record, if a party is in possession, it is not necessary to follow up. Of course, once the statement is made in connection with our extended coverage policy, we have to run it down; but in speaking of our standard coverage policy, the fact of relatives or others in possession inconsistent with the record is not notice that has to be followed up—but take the situation of a tenant: The law is that where you find a tenant in possession, you must make inquiry with respect to all of his rights—not alone under his lease; he may have rights under a collateral or distinct agreement.

There is an interesting case in the books with respect to the lease of a service station. I believe it is a San Francisco case—Basch v. Tide Water Associated Company, 49 Cal. App. 2d 743, in which the lessee in addition to the lease had a separate collateral agreement that during the period that a street was being put through along his property, he need not pay any rent because he probably figured that nobody could drive in for service. A purchaser bought

the property at a time when the tenant was not in possession. The work was going on. His lease was not recorded, but the vendor gave the lease to the purchaser to examine. The purchaser took over the property without making any inquiry of the tenant. He therefore did not know about this collateral agreement, and when he sued for the rent, claiming that he was not bound by this collateral agreement, the Court said that recordation of the lease would be the same as possession by the tenant and actual knowledge of the lease would be the same as knowledge obtained either from possession or from the record—and those are equivalents, actual knowledge of the lease, recordation of the lease, and possession of the tenant, and each puts one on inquiry as to all rights of the tenant; and it was held he could not collect his rent.

Number 15. Rights Ascertained by Inspection

That is something more than the rights of parties in possession. Those are physical things. We are all familiar with the unrecorded easement and that sort of thing.

We were to write an extended coverage policy on a piece of property and just over the line on the adjoining property we found a nice big tree that came up about three feet, made a direct right angle turn, came across the line over onto the property that we were to insure and then went up and bloomed in profusion over our property; and the question was: What rights did our owner have with respect to that tree which was going to interfere with his proposed improvements.

Now, there are two rules with respect to trees. One is that you can cut the branches and roots of your neighbor's tree that may come over onto your property, but there seems to be a qualification of that rule that you can't kill the tree in so doing. If you cut this tree at the line, naturally you kill it. Your remedy is to go into court and seek its abatement as a nuisance and, if necessary, the court can order the tree out.

Number 16. Rights Ascertained by Inquiry

Now, this is different from the inquiry of the party in possession with respect to his rights; but if you find a party in possession and his rights are not consistent with the records, then you must inquire of him, "By whom did you receive your right to the possession of this property? To whom are you paying rent?" Or, if a vendee in possession, "To whom are you paying the purchase price;" and if he names some third party who is not in the title, then that is a right that you must follow up, because the possession of the vendee, or the possession of the tenant, is the possession of the owner; and if he is not the record owner, then you want to know about it.

Number 17. Rights Ascertained by Survey

We are all familiar with the fact that in the standard coverage policy, we are relying on the record, we are looking at the maps of record, and it would hardly seem necessary for me to add aything to what my good friend Ivan Peters told you a day or two ago, except that he said, "Now, here is a picture that we are going to talk about." So I would like to talk about that.

You will remeber that that pictured sections 30 and 31, and there was a description of a parcel that started at the northeast corner of the lower section, and, according to his version, the description went south 660 feet, thence west so many feet, thence north 660 feet, thence east so many feet, then south 660 feet, closing and making a quadrilateral, and that description did not say that the property was a part of Section 31. It started at the northeast corner of Section 31 but then simply was described that way.

Now, looking at the map which showed an east-west line for the common section line, you would not suppose there was a possibility of that description going north into the upper section. But, as he said, the fact is that a survey would show that the common section line ran from that point—the northeast corner, a known monument, ran south of due west, and therefore when the calls came down 660 feet, over a certain distance and up 660 feet, that 660 feet carried that line above the section line and into Section 30. The later deed by the common owner to the property to the North called for the section line. Therefore, it created an overlap of that portion of the first description which went into Section 30, which we did not mention in our policy. That is the subject of litigation, over $250,000 worth of oil having been taken from the overlapping portion.

Number 18. Mining Claims

Of course, you can leave mining claims out when insuring city property, ordinarily; but it isn't safe to leave them out in a great many other situations, and I just want to mention one of them.

We were asked to insure an oil lease by the United States Government and there appeared on the record a mining claim of some years back. We declined to omit that mining claim—and we are very glad we did so! Because, in the short period after we issued the policy, the United States cancelled the oil and gas lease because they said, "We didn't realize there was an outstanding mining claim." While there is an outstanding mining claim, even though the claimant is not in possession, even though perhaps it has not been worked for years, until that mining claim has been cancelled or terminated and the United States takes possession, they may not issue an oil lease.

Number 19. Reservations in Patents

MR. AUDRAIN: Mineral reservations and reservations for canals and irrigation have been of more concern to us in recent years. I think there are an increasing number of title men who are reluctant to rely on the printed exception where the patent or the statute under which the patent issued withheld all or part of the minerals. For some situations I think that we should make specific reference to segregated mineral ownership in our policy. Many title men are not quite secure in their composure when having to look for escape in the little print.

As to canals and irrigation, much more comfort has been extant as to the printed exception. That the exception has real significance can be illustrated by reference to those owners who hold acreage and who have to sustain Central Valley water ways across their land without compensation, because Congress enacted a statute in 1891 providing that patents should reserve such rights to the sovereign.

Number 20. Water Rights

As to water rights, we often encounter an agreement or decree of record which bears specifically on the water rights in or for the benefit of land otherwise of small value without such rights. These, I think, should be shown in our policy. Some companies, fearing that the showing of any matters relating only to water rights might destroy or weaken the printed exception, carry a statement at some appropriate place in the policy that the showing of such specific matters does not vitiate the effect of the printed exception.

I have assumed that every title person here is safely aware of the fact that many of the most valuable water rights have never been or are they now evidenced by any instrument of record in any county recorder's office.

Number 21. Governmental Regulations

MR. OTIS: The language in the policy is perhaps incomprehensible to anyone who does not live in or near the City of Los Angeles and has not had some experience with our peculiar zoning ordinance. Now the provision of the policy is, in part, that the "policy does not insure against . . . zoning ordinances prohibiting a reduction in the dimensions or area, or separation in ownership, of any lot or parcel of land." So far as experience has indicated, the reason for that provision is confined to the City and County of Los Angeles. The City of Los Angeles enacted a zoning ordinance which provided, in part, that no parcel of land held under separate ownership shall be reduced in any manner below the minimum lot area, size or dimensions and that no lot shall be so reduced, diminished or maintained, that the

yards, other open spaces or total lot area shall be smaller than prescribed by this title, and that title states that the minimum shall be 5,000 square feet with a frontage of 50 feet. The ordinance does not declare that a sale in violation of its provisions shall be either void or voidable. However, an owner—I suppose to get away from rent restrictions—sold the nine units of his bungalow court to nine different purchasers and the City contended that that was in violation of the ordinance, that the sale was faulty, and so the owner, this so-called subdivider, brought an action to determine whether or not the sale of his bungalow court units was in violation of the ordinance, and the trial court held that it was a violation, that the zoning ordinance was valid; that it was a violation of a penal ordinance and therefore the deed was void. The appellate court affirmed; the Supreme Court in its opinion, affirmed. This association filed briefs as a Friend of the Court, and on rehearing, the Supreme Court finally held that the deed was not void, but voidable, inasmuch as this ordinance was passed in furtherance of the provisions of the Subdivision Map Law and under a provision of that law, permitting such further regulations as a local body may impose, sales in violation are stated to be voidable.

Now it is impossible, either with respect to the tremendous area of the City of Los Angeles or with respect to the 56 other cities, not to mention the unincorporated area, of Los Angeles County, to cover the zoning ordinances from day to day even if you wanted to, and we felt that we wanted to. We felt that it would be good service to our customers if we could, but after great study, we concluded that we just couldn't do it, and, accordingly, this provision was the answer.

Number 22. Defects Known to Insured Not Disclosed to Us

MR. RIPLEY: We do not insure against loss arising out of defects, liens, encumbrances and other matters known to the insured, unless such matters are disclosed to the company in writing before the policy issues, or unless they appear on the public records. This is probably the most used avenue of escape from liability when claim is made against us on the policy. I do not mean by that that we are not fully justified in using it. The rule requiring disclosure by the insured is an entirely reasonable one. To illustrate, suppose the purchase price for certain land was furnished by A, but title was taken in the name of B. If we insured B, not knowing A paid for the land, we should not, of course, be required to defend him in a suit brought by A to recover the property. The same would be true where the title deed to our insured was taken by him for security only, without his disclosing this to us, and we were then requested to defend him against the claims of the mortgagor. This requirement of disclosure also serves as a hedge against liability and loss which the title company might otherwise incur through fraudulent claims.

On the other hand, too often we mistakenly think this clause gives immunity from liability when it actually does not. By its own

terms, it does not excuse us it we miss a defect shown by the public records, even though the insured had knowledge of the same. Also, there may be many situations where the insured has knowledge of certain facts but is not charged with the duty of disclosing them because he does not know the title consequences which might flow from such facts. For example, suppose the insured knew the person from whom he purchased was under 21 years of age but did not know, as a matter of law, that such person could not transfer a good title. If we insured the transfer, it is doubtful we could disclaim liability to him solely on the ground that he failed to tell us about the nonage of his grantor.

In any situation which might arise before the courts under this particular provision of the policy, I think we can expect it to be construed liberally in favor of the insured.

Number 23. Defense and Subrogation

MR. AUDRAIN: Suppose your insured suffers loss by way of having an adverse interest established against him, based on some record matter you misconstrued or missed. You pay him, suffer your loss and that's all—except to endorse the pro tanto reduction on the policy if that is your practice.

You have no contract right to pay him the face of the policy and take title, even if to you that would be the most feasible solution. The insured owner keeps what he has left and your money. Perhaps, since your policy liability has been reduced, you should persuade him to increase his liability and buy more insurance.

If you settle for a lender, you can take an assignment of the paper. This is where you exercise your right of subrogation. Sometimes this paper thus acquired, with careful attention to the security, the owner and other liens can work out to where you have no loss or a substantially reduced loss.

With reference to defense, we all readily accept and meet our responsibility as to claims clearly within our policy liability. However, there may be variations in practice as to this situation. Your insured is served with a conventional quiet title complaint. You know or you find out that the only basis for plaintiff's claim is a matter which is clearly within the policy exceptions. Rather than discuss what may be done, I'll confine my comments to what we do at Security. If the insured has a lawyer, we are usually successful in having the lawyer see that the litigation is solely the insured's problem.

If there is no lawyer for the insured or if the insured does not comprehend what we are talking about, we tell him that we will defend but that he had better discuss the matter with a lawyer of his own choice, for we may find it necessary to withdraw from the case.

In each case where we have made a motion to withdraw, such motion has been granted. You should, however, have some conviction

that the pleadings will not be amended or that the litigation will not veer back your way after you have withdrawn from the case.

Number 24. Settlement

MR. RIPLEY: A title insurance policy is a contract of indemnity. That is, the insurance afforded is intended to protect against actual loss suffered, limited, of course, by the extent of the liability assumed under the policy. In the settlement of any claim, the main thing to remember is that payment should be made strictly in accordance with the terms of the stipulations in the policy covering this matter. These provide that loss shall be payable, first, to any insured owner of indebtedness secured by a mortgage or deed of trust, or if more than one, then in the order of their priority, and thereafter loss shall be payable to the other insured or insureds. If this rule is not adhered to, the company might find itself paying twice on the same thing. Let me illustrate: Suppose that the title company failed to show certain building restrictions which were an encumbrance upon the title, and settlement is made with the insured owner without the approval or consent of the beneficiary under an insured deed of trust. If the deed of trust should thereafter be foreclosed, the purchaser at the foreclosure sale could assert an identical claim.

This rule applies also when there are several insured co-owners. Payment of loss under the policy should not be made to only one. but should be paid ratably to all of the co-owners in proportion to their respective interests.

Another thing to keep in mind is that any payment of loss under a policy reduces the insurance by the amount paid. Therefore, whether payment is made direct to the insured, or to a third person to remove a cloud upon or defect in the title of our insured, we should require the production of the policy or policies affected so as to make a proper endorsement thereon.

Number 25. Public Records

MR. CERINI: The old CLTA standard form policy in the first three standard exceptions of Schedule B referred to public records (a) of the District Court of the Federal District, (b) of the county, or (c) of the city, in which said land or any part thereof is situated and also to those public records which impart constructive notice.

The present policy in the first three of such standard exceptions merely refers to public records except where in Exception 1, reference is made to the records of any taxing agency. But in Stipulation 9 of the policy, "public records" is defined as those public records which, under the recording laws, impart constructive notice of matters relating to said land. Public records, as used in the policy, is thus limited in its meaning.

The reason for this change stems in large measure from the Smith case, which also is responsible as explained for changes in the policy pertaining to taxes, assessments and encumbrances. In the Smith case, the title company advanced the defense that its policy excepted from the coverage thereof "Any facts, rights, interests, or claims which are not shown by those public records which impart constructive notice, but which could be ascertained by an inspection of said land, etc."

It does not appear from the opinion rendered in the case whether the fact of the assessment could have been ascertained from an inspection fo the land. This did not, however, bother the court which held that the County Engineer's Assessment Book which he kept in his office was a public record. And further, that such record imparted constructive notice as to the title insurance company, notwithstanding that the provisions of the Improvement Act of 1911 (Section 5373 S & HC) provides that "from and after the date of the recording of any warrant, assessment and diagram, all persons shall be deemed to have notice of the contents thereof." It would thus seem from the Smith case that a purchaser might not have constructive notice until such recording, but that the title insurer is charged with constructive notice from the time the County Engineer makes the assessment and makes a notation thereof in his records. However, it should be borne in mind that standard exception No. 1 of our old CLTA standard form policy, while specifically excepting from coverage "easements or liens which are not shown by the public records of the county or city . . . " did not specifically except "encumbrances."

I call your attention, in conclusion, again to the present definition of "Public records," which means "Those public records which, under the recording laws, impart constructive notice of matters relating to land."

MR. OTIS: That, my friends, concludes our study of the CLTA standard form policy.

(Applause.)

OUR STANDARD COVERAGE POLICY INSURES THE INSURED

against LOSS or DAMAGE (1) not EXCEEDING $.....(2)
by reason of:

1. TITLE being VESTED (3) otherwise than as shown
2. UNMARKETABILITY (4) of TITLE } unless
3. DEFECT (5) in TITLE } shown in
   LIEN (6) or ENCUMBRANCE (7) on Title } Schedule B)
4. DEFECT in EXECUTION (8) of (insured) Mortgage or Deed of Trust
5. PRIORITY (9) over (insured) Mortgage or Deed of Trust

all subject to Schedules A, B and C and Stipulations.

Schedule B (Part One)

1. TAXES and ASSESSMENTS (10) not existing liens; EASEMENTS (11,) LIENS (12,) and ENCUMBRANCES (13)
2. RIGHTS of PERSONS in POSSESSION (14)
3. RIGHTS ascertained by INSPECTION (15), INQUIRY (16,) SURVEY (17)

(Not shown by public records)

4. MINING CLAIMS (18;) RESERVATIONS IN PATENTS (19;) WATER RIGHTS (20)
5. GOVERNMENTAL REGULATIONS (21;) Zoning.

STIPULATIONS

1(d). Defects KNOWN to INSURED (22) not disclosed to us
2-6. Defense and Subrogation (23)
7-8. Settlement (24)
9. "Public Records" (25)

FOOTNOTES:

1. As of When.
2. Ceiling on Liability.
3. Forgery; Void Proceedings.
4. Invalid Maps.
5. Minors; heirs; Irregular Pcdgs.
6. By Contract: Alimony; Outlawed.
7. Covenants; Restrictions.
8. Variances; Lack of Power.
9. Importance of Write-up.
10. Significance of Present Language.
11. Community Driveways.
12. Vendor's Lien; Blanket Mortgage.
13. Misc. Data; Encroachments; Options.
14. Vendees; Relatives.
15. Curved Tree; Power Lines.
16. Rights of Tenant.
17. Shortages; Overlaps.
18. Gov't. Lease superseded by Patent.
19. U.S. Irrigation Projects.
20. Reporting Matters of Record.
21. Why "Separation in Ownership."
22. Not Mind-Reader.
23. Our Responsibility.
24. To Whom Paid.
25. New Definition.

CONSTRUCTION MARKETS

Public Works Construction

M. W. WATSON, *Chairman*
Sub-Committee on Public Works Construction
Construction and Civic Development Department Committee
Chamber of Commerce of United States

All sections of the country will feel the impacts of the construction program in 1953, notably public construction, so-called—new schools, new shopping centers, hospitals, etc.—the mammoth contemplated highway program, including toll roads. All these and other types of heavy construction will affect our profession. Seemingly these, joined with the probable housing market for 1953, point to a satisfactory operating year for the title industry.

We are pleased to carry in this issue a report on this subject released by a committee of the Chamber of Commerce of the United States, in which organization we hold a membership. The report is thought provoking. It gives, in our judgment, a factual report which should be of material assistance to member firms in planning for 1953, in establishing your budget for the second half of the year. It is one of the yardsticks by which one may measure his operations and plan to assure a profitable year.—Ed.

PENDING REQUIREMENTS FOR PUBLIC WORKS

An important part of the construction industry's activity during the years ahead is certain to be provided by the normal construction activities of federal, state, and local governments. This prospect can be counted upon irrespective of economic conditions, and would be seriously altered only by a major increase in military action. Construction and its allied industries should, therefore, be concerned with both the size and the characteristics of the market for their products which the future public works program holds for them.

At the present time, the volume of public construction of all types, and for all levels of government, is running at a third of the total of all new construction. This is the highest ratio attained except during war

and depression years. The dollar amount of public construction in 1952, at $10.6 billion, is the highest reached in any year on record except the peak war year of 1942, and almost reaches even that year's volume.

Federal Construction Activity

In the current situation, direct federal activity, while by no means dominant, is of greater relative importance than it would be without the present defense construction program. In 1951, direct federal activity, at $3.1 billion, represented one-third of total public construction. In 1952, the federal figure will reach about $4.4 to $4.5 billion; and the ratio to all public construction will be more than 40 per cent. In 1953 the prospect is for a further slight increase in the federal portion and for about the same ratio to the total of all governmental activity.

Direct federal construction in the past three years has mainly gone to the development of atomic energy production and to installations for the three armed services. After 1953, unless the international situation greatly worsens, these activities will decline. In 1954, there is at least a fair prospect that the direct federal expenditure will have receded to around $3.5 billion, and the several years following may continue at a level in the neighborhood of $2.5 billion.

Prospective Shifts in the Federal Program

Consequently, after 1953 an important shift in emphasis of public construction will take place from direct federal activity to federally aided and local activities. The emphasis within the federal program itself will also change.

In the future, conservation and development programs (dams, harbors, etc.) will be proportionately more important in the federal construction program, although the annual rate may not go more than $100 to $200 million above the 1952 level of nearly $850 million. On public buildings (post offices, court houses, custom houses, administrative buildings, special service buildings, prisons, etc.) larger expenditures will be called for than have currently been permitted. Because this activity has been held to a minimum since the onset of World War II, the accumulated need for these types of structures is very great.

Considering the backlog and new requirements that will appear during the decade, a federal program for the construction of public buildings of well over $2 billion can be envisaged. In addition, repair and modernization of existing public buildings (now held back to uneconomic limits), will provide a substantial annual market for construction materials and services.

Despite the probable resumption and expansion of these peacetime activities, direct federal construction can be expected to be a diminishing quantity in the future. The consequence could be either a marked drop in total public building of as much as from $2 to $3 billion or an increase in other public construction activities to make up all or part of that sizeable gap.

Expansion of Local Public Construction

Local public works, part of it aided by the federal government (especially in connection with highways, hospitals, schools, airports), have been steadily increasing in volume since the close of World War II. In 1946, the first peacetime year, the dollar volume of this activity was about $1.5 billion. Steadily increasing during the next five years, it reached a total of around $6.2 billion in 1951. The 1952 figure will be somewhat higher, and the prospect for 1953 and for a number of years ahead is for a continuation of the upward trend.

The virtual cessation of normal public construction during four years of war and the rapid increase in population since the war produced accumulations of requirements in practically every familiar category of public activity. The amount of the accumulation, however, can not be gauged by these factors alone. The continued shifts of population from farm to city, from isolated small towns to metropolitan areas, from the center to the outlying sections of metropolitan areas, from the older sections to the newer, have all vastly magnified the growth factor. Many existing facilities are no longer fully usable because people have moved away and left them behind.

Advancing technology has added its influence to reduce the utility of existing facilities and to increase the total requirement for new construction. Great changes in the speed of motor cars, in the size of trucks, as well as the increase in the number of these vehicles, have rendered obsolete most of the highways built prior to the late 1930s. The same factors have ordained far-reaching modifications in the structure of cities, requiring new types of streets, new facilities for parking, bus terminals, and truck loading.

New concepts of building design act in the same way as other technological changes to speed the obsolescence of existing structures. In school design particularly, new methods of layout, based not only on changes in teaching practices but also on more scientific knowledge of light, noise, and ventilation, should keep us building schools long after the mere balance between the number of seats and the number of children has been equated.

How Much Public Works Ahead?

Looked at in terms of total potential programs, the figures for public works become astronomical. The cost of bringing the highway system up to date and of meeting expanding needs has been estimated at more than $40 billion. The potential needs (by 1960) for public schools (primary, secondary, and college), libraries and museums run over $18 billion at current prices, hospitals at $3.5 billion. While such figures indicate that there will be plenty to do as long as the inclination and resources are present, they do not show what is within the realm of possibility from year to year.

Highway construction, which reached an all-time peak of $2.7 billion in 1952, will probably go to $3 billion in 1953. In 1954, a level of close to $3.5 billion might be attained and could be continued for at least a

decade. Educational building, also at an all-time high with $1.6 billion volume in 1952, is expected to rise another $150 to $200 million in 1953. Such an increase would bring school building to a probable maximum annual volume of $1.8 billion, which could be sustained for at least five years before diminishing needs would reduce the rate of activity.

Hospital building could double its present annual rate of less than $500 million a year for several years. Extensions and improvements of water systems, storm and sanitary drainage systems, sewage treatment plants, which reached a level of close to $700 million in 1952, could take additional annual expenditures of around $200 million a year for several years if the requirements resulting from postwar city growth are to be coped with. Airport construction is estimated to require nearly $300 million a year for at least three years to catch up with needs. The only category of non-defense public construction not likely to increase during the next few years is public housing, which probably will steadily decline from its present annual level of about $645 million.

The following table gives a summary of construction that might readily be done at all levels of government during the next five years, as compared with a preliminary total for 1952. In the estimate of the future, work directly contracted by the federal government amounts to about $2.7 billion.

NEW PUBLIC CONSTRUCTION ACTIVITY

(MILLIONS OF DOLLARS)

	1952	Future 5-Year Average
Residential building	$ 647	$ 200
Industrial building	1,606	650
Educational	1,618	1,800
Hospital and Institutional	478	950
Other nonresidential building[1]	359	900
Military and naval	1,346	800
Highways	2,700	3,500
Sewer and water	690	900
Misc. public service enterprise	198	350
Conservation and development	838	900
All other public	64	50
	$10,544	$11,000

[1]Includes administration buildings, post offices, court houses, airport terminal facilities, etc.

No Special "Contra-Cyclical" Measures Needed

These rough estimates indicate that a decline in direct federal building for defense purposes may be readily offset by increases in the volume of public construction required to protect the health, maintain the education, and support the economy of the nation.

There is certainly no excuse at this time to plan public construction from any other viewpoint than its relationship to basic social and eco-

nomic needs. No make-work programs are in order, and no special projects are called for to compensate for declines in other sectors of the economy. On the contrary, the accumulated public program is so large that, in face of the continued good prospects for private building, the problem is one of selection among many desirable projects rather than one of inventing projects for compensatory purposes.

Stimulative Effects of Public Construction

Looking at the potential public construction program by itself, industry can see a large and varied demand for its products. Nearly every type of construction from the heaviest to the lightest is included, and every sort of building material and equipment is to some extent utilized. The market generated by this activity is, however, by no means limited to that of the specific projects.

Highway building, for example, although drawing mainly on concrete, steel, and bituminous products for its own purposes, is stimulative of a great variety of other building utilizing the full range of materials. Motels, restaurants, service stations follow directly; but the effects reach far back from these direct and relatively minor manifestations. By facilitating travel and commerce, the highway program sparks factory and store building. Within cities, it creates the pattern within which urban redevelopment may take place and new neighborhoods may be opened.

Similarly, school buildings and utility extensions make possible the expansion of new residential construction. Dam building may lead to the expansion of electric power facilities and the erection of new factories.

The Problem of Finance

Like all other construction, public works cost money, a fact that sometimes seems to be ignored by social planners. No matter how desirable public projects may be, they can be carried out only to the extent that resources, through taxation or a reasonable limit of borrowing, can make possible. Otherwise, we may be disturbing rather than promoting economic stability.

At the present time, few governmental jurisdictions, including the federal government, dare to increase taxes. Many local governments are pressing against their borrowing limits, while the federal government faces the task of minimizing its deficit. Although in the last election many communities approved bond issues to pay for such public programs as drainage, water supply, harbor improvement, and schools, the financing problem remains a grim one.

The new popularity of toll roads and bridges is mainly a reflection of the problems that communities face in obtaining funds by more customary means. Increasing demands for federal grants-in-aid reflect the same quandary, without reckoning with the fact that the resources of the federal government are not without limits.

The situation is one that demands the most careful review by business men. On the one hand, the financing problem has to be faced. Scattered bond issues or toll arrangements are no solution for a potential

program of the dimensions that exist. On the other hand, waste in the program, either by unwise selection of projects or lax methods of operation, must be eliminated so as to hold the outlay to a minimum.

National Chamber to Make Study

Recognizing both the importance of public construction and the difficulty of providing adequate financing, Mr. Norman Mason, Chairman of the Construction and Civic Development Department Committee, has set up a special Subcommittee on Public Works Construction.

The purpose of the new subcommittee is to develop a proposal for a policy statement to be presented for consideration by the National Chamber at its coming annual meeting. It will set forth the essential role of public works construction in a progressive, free-enterprise economy. It will state the principles involved in determining the needs for such public works construction and in getting such construction scheduled and financed on an economical and efficient basis.