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Table of Contents

CAVEAT EMPTOR

By: PHIL F. CARSPECKEN

I am the Title—a faltering thing;
Buyer, beware, for I've taken my fling.

Linked with the land as the soul with the clod,
Strange and diverse were the paths I have trod;
Searchers, who followed my trail, were aghast,
Raking the muck of my dissolute past.
Spotless was I when my journey was young—
Spotless no more as these stanzas were sung;
By-ways alluring and wayward and wild
Led me astray—but 'twas **Man** who defiled.

Men have relentlessly trifled with me,
Seeking to hold and enjoy me in fee—
Pawed me and clawed me and soiled me with shame,
Muddied my record and sullied my name,
Mine was the fate of a glittering toy,
Sought for and fought for like Helen of Troy;
Bankrupts have yielded me (not without smear)—
Bankers have eyed me with lecherous leer.

I've been the plaything of schemer and knave,
Sold on the block like Circassian slave—
Torn by dissension, partitioned in shares,
Flung to a parcel of clamorous heirs,
Lawyers have toyed with me, tossed me about,
Jumbled me, fumbled me, sown me with doubt,
Wronged me with Error and cast me away
Blotched with disease like a Dorian Gray.

Linked with the land, as the soul with the clod,
These were the devious paths I have trod—
"Unclean," the cry when my record was known—
(Who but a lawyer to cast the first stone.
Who but a lawyer to marshall my flaws,
Pleading the purge of the Curative Laws.)
Judges have sighed—and with flourish of pen,
Made me a virtuous creature again.

I am the Title—a penitent thing;
Buyer, forgive—though I've taken my fling.

THE CONSTRUCTION BOOM

M. W. WATSON, *Chairman*
Construction and Civic Development Department Committee, Chamber of Commerce of the United States, Washington 6, D. C.

The intensity of the present expansion in private construction activity is vividly illustrated by a comparison of actual increases in activity in the first third of the year above that of the first third of 1954, with projected growth as estimated in the Commerce-Labor forecast published last November. The table below gives some of the significant figures:

CONSTRUCTION IN 1955

	Projected Growth (As of Nov., 1954)	Increase, 1954-55 First 4 Months
Total new construction	7%	14%
All new private construction	7	21
New dwelling units	13	39
Industrial building	-8	7
Commercial building	7	29
Other nonresidential building	13	16
All new public construction	5	-3
Industrial building	-33	-43
Educational building	16	16
Hospital and institutional building	14	-5
Military facilities	18	11
Highways	18	5
Sewer and water facilities	8	9

This comparison indicates how much more rapidly recovery has been proceeding beyond what could have been foreseen in the fall of 1954.

What's Ahead?

The year has not reached the halfway point, and, while momentum is great, there can be no assurance that, in all the booming categories of private work, the present rates of increase will continue. In the previous bulletin in this series (No. 24, March, 1955), for example, the probability of some slackening in the current rate of residential building was suggested.

On the other hand, there is great probability that the rate of public construction, now notably lagging both behind the actuality of last year and the forecast for this year, will considerably increase. Moreover, other elements, especially private industrial building, are already showing new strength.

This bulletin is concerned with the possibilities that exist, in the current healthy demand for construction, for shifts in emphasis permitting increases in one area to offset possible declines in another and so resulting in the maintenance of a high and relatively stable amount of total activity.

The Resurgence of Private Industrial Building

The most unexpected development in the year's activity is the turnabout in the trend in private industrial building. The postwar peak in industrial building was reached in 1952, after a recovery from a drop from the previous high of 1947. Activity fell off during 1953 and continued downward in 1954, so that only the two months of highest volume in that year exceeded the months of lowest volume in the preceding. There was some indication of revival toward the end of 1954, but activity was still below activity during the corresponding months of 1953. All prospects were for a lower volume of activity during 1955.

Instead, industrial construction is

now running well ahead of 1954, with monthly volumes higher than any time since June, 1953. Although the volume for the first third of 1955 was not up to that of the first third of 1953, there is a very good possibility that 1955 as a whole will not only outstrip 1953 but perhaps even come close to the peak year of 1952.

The immediate significance of this is that, if residential building should somewhat slacken in the third and fourth quarters of the year, industrial building promises to be expanding at the same time and to be adding its weight to the continuing high volume of other types of business construction.

Beyond this, there is a high probability not only for a still larger industrial building year in 1956 but also for a high level of such construction to be carried on into the 1960s. McGraw-Hill, for example, reports a larger volume of advance planning than reported in any of its previous surveys. Spurred by the buoyancy of the present recovery, faced with constantly rising labor costs, and confident of a greatly broadened demand for manufactured products in the years ahead, manufacturers' capital expenditures could well prove to be a strong supporting and stabilizing force in the construction area during the remainder of this decade.

Public Construction—the Dark Horse

As our table shows, this year's increase in construction is due to the strength of private demand. Government construction, as a whole, has been a neutral, or even a mildly negative influence. Among all the categories of public construction, only the sewer and water component has exceeded last November's expectations; all other categories are down except educational building, which so far has just come up to the forecast.

Greatest drop in public activity is in industrial construction, reflecting the completion of the mammoth atomic energy projects undertaken a few years back. (Next greatest has been in public housing, which is no longer significant.) As the development of atomic energy is made possible by private industry, it may be assumed that public expenditures for new plant will diminish (with, it is to be expected, compensating outlays by industry). Military construction also is likely to be a diminishing rather than an expanding activity.

In three areas, however, the needs for public construction are so large that it is hard to conceive of programs that, within the next decade, would come near to meeting requirements. These areas are highways, sewer and water facilities, and educational buildings. While sewer and water and educational facilities are up to the relatively modest advances anticipated in the November forecast, highway building is lagging well behind.

Highways

The President's Advisory Committee on a National Highway Program has estimated the highway needs of the country at $10.1 billion a year for the next 10 years. While there has been vigorous argument over proposed methods of financing, no one has quarrelled very much with the estimate. Yet last year—the biggest highway building year in history—the total expenditure by all types of government came only to a little more than a third of the estimated requirement.

So far this year, as the table shows, highway expenditures are only 5 percent ahead of 1954. While some step-up is probable as the year proceeds, it is not likely that 1955 will show a major step toward a highway system of the proportions contemplated by the Advisory Committee's report. Nor does it seem likely that the kind of federal legislation now in prospect will assure that 1956 will attain the level that the future will require.

Despite the halting way in which the highway situation is being faced up to, large increases in highway building are certain. There is too much at stake for anything else to be possible. Involved are not only the comfort and safety of the motoring public and the improvement in the efficiency of truck transport, important as these are, but also the possibilities of the expansion of the

automobile industry and the industries dependent upon it and, to no small extent, of the homebuilding industry as well.

Sewer and Water Facilities

Perhaps even more critical than the highway shortage, from the point of view of its effects on the private construction potential, is the growing shortage of sewer and water facilities. In order to catch up with the serious deficiencies already present, to offset obsolencence and depreciation, and to provide for growth, the Department of Commerce estimates that an annual expenditure of over $2.5 billion would be required.

In 1953 the total expenditure for sewer and water facilities was $861 million. In 1954 it amounted to $975 million, and this year, if the present rate of advance is maintained, would come to about $1,065 million. This would still be almost 60 percent less than estimated requirements.

Today few growing communities have a comfortable surplus capacity. In many localities, the expansion of building is already pressing on the limits of present sewer and water capacity, and in some places an absolute halt of expansion is in prospect. Moreover, the remedy is no longer a mere extension of water mains or trunk sewers. Additional water supplies must often be sought at long distances, and require vast undertakings for conduit and storage. Similarly, sewage disposal must contemplate extensive treatment facilities to prevent the wholesale pollution of streams—an evil which already has progressed to the grave endangerment of water and fishing resources.

A considerable step-up in expenditures for this class of public works is thus inevitable. As with highways the question is whether the step-up will be enough to prevent a drag on the expansion of the private economy.

Public Educational Building

Although expenditures for public school building have been creeping up since the end of World War II, the pace is slow indeed compared with the most conservative calculations of requirements. Last year the total amounted to a little over $2 billion. This year it may go as high as, or slightly higher than, the forecast of $2.4 billion. An increase to 2½ times this volume could be sustained over the next decade without probability of outrunning the demand.

The need for schools has economic aspects no less serious than its social ones. Cities cannot expand if new school facilities cannot be provided with the extension of residential neighborhoods. Already builders are forced into stop-gap solutions, which cannot possibly be satisfactory except for short periods, while governments trail in their effort to cope with the onrush of school population.

At the same time, the older areas of our cities cannot be maintained, let alone successfully restored, unless the obsolescent school facilities in these districts are brought up to modern standards. School building is thus intimately tied in with urban renewal.

Need for an Expansionist Policy

The potential demands for industrial and commercial building, for private institutional building, and for public works are ample to make up for any slack that would be likely to occur in residential building. The problem is to make these demands effective.

In both cases the solution lies in sound fiscal policies. Taxation must be geared to provide reasonable incentives to capital investment, and government outlays planned so as to concentrate expenditure in areas that support economic growth (see Bulletin No. 19, June 1954). Our present tendency is still to inhibit expansion by heavy penalties on capital accumulations and to dissipate public funds in a proliferation of welfare activities that make little or no contribution to a sound economy and a prosperous and self-reliant people.

IDEM SONANS

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What's in a name? That which we call a rose
By any other name would smell as sweet.
Shakespeare—Romeo and Juliet, II.

The term idem sonans means sounding the same.[1] The rule predicated upon these words is that ". . . absolute accuracy in spelling names is not required in legal documents or proceedings, either civil or criminal . . . if the name as spelled in the document, though different from the spelling thereof, conveys to the ear, when pronounced according to the commonly accepted methods, a sound practically identical with the sound of the correct name as commonly pronounced, the name as thus given is a sufficient designation of the individual referred to and no advantage can be taken of a clerical error."[2] Or, more succintly, ". . . if the names may be sounded alike without doing violence to the power of the letters found in the variant orthography, this variance is immaterial."[3]

The origin of this rule cannot be precisely ascertained; at best passing reference is noted that the courts have formulated the doctrine because of the orthography, pronunciation and variant spelling of proper names.[4] As would be expected, it has been a long accepted rule, application appearing at least as early as 1688.[5] Despite its antiquity and obvious practical significance, literature on the topic has not been extensive.[6]

Proper names are the almost exclusive domain of the rule, but there is an occasional application to ordinary words,[7] and both civil and criminal proceedings fall within the ambit of the rule.

The rationale of the rule is that "the use of a name is merely to designate the person intended; and that object is fully accomplished when the name given to him has the same sound with his true name."[8] The doctrine of idem sonans is manifestly both reasonable and necessary. Without it, mere clerical errors and good faith mistakes as to the correct spelling of a name would represent a fatal variance, despite the lack of prejudice or harm in many instances. Without the doctrine, the spelling of words would become a hazard reminiscent of the technicalities of common law pleading.

That a vast difference in consequences may flow from the application of the rule of idem sonans is at once apparent. To illustrate, let us assume that a plaintiff serves notice upon the defendant that a deposition relative to their case is to be taken in the office of D. Ray. In fact it was to be taken in the office of D. Wray. Upon these facts the Kansas court held that idem sonans was applicable and refused to quash the deposition upon motion of the defendant.[9] There should be little opposition to this holding. Suppose, however, that the record title to Blackacre is vested in Ray. A bona fide purchaser from Ray searches the necessary public records under that name. In fact a money judgment has been rendered against the person known as Ray, but was docketed against the name Wray.[10] If idem sonans applies (clearly the names sound alike), the bona fide purchaser will be deemed to have constructive notice and the judgment will constitute a prior lien on Blackacre.

In the first situation posed the defendant was not seriously misled or prejudiced; at most he had to make further inquiry to locate the proper office. On the other hand, the bona fide purchaser, despite having taken what appears to be a reasonable

course to protect himself, has his interest burdened with a judgment lien.

In short—despite the necessity of the doctrine to avoid undue emphasis upon absolute accuracy in spelling, it appears unsatisfactory to apply the idem sonans rule literally in every instance where variant names or words can be pronounced alike. A mere alphabetical collection of names that have been held either to be or not to be within the rule is not adequate.[11]

Rather there should be a two-pronged analysis of the idem sonans cases. First, what are the most common variances in words or names and what has been the ruling when such variances have been presented to the courts? For example, can the letter "d" be substituted for "t" so that there is no variance between Hudson and Hutson? If so, one searching public records under either of those names or one who has been charged with a crime against a person known by either of those names, must take cognizance of the other spelling. Second, is the setting in which the variance does or may occur of any significance **i.e.,** is a variant spelling more likely to be idem sonans in one factual pattern than in another? Does idem sonans apply to notices in tax foreclosures? Armed with such an analysis, one can more intelligently approach a situation where idem sonans is potentially applicable.

Bearing in mind the definition of idem sonans (sounding the same) we can examine the first common variant of proper names: the addition or omission of a final "s" to the name, **e.g.,** Wood and Woods or Brook and Brooks. Seldom is the consonant "s" silent when it is the final letter. Hence, the attentive ear can rather easily distinguish between the pronunciation of the two spellings, and idem sonans should not apply, **i.e.,** there would be a fatal variance between Wood and Woods, the latter spelling not representing a sufficient designation of the person known as Wood. This appears to be the majority ruling.[12]

Recognition, however, must be given to cases which are in apparent conflict with the majority rule in that idem sonans is applied despite the addition or omission of a final "s." Some of those cases are set out in the footnotes.[13] One of the conflicting cases, **Stevens v. Stebbins,**[14] contains this language: "If two names are taken promiscuously to be the same in common use, though they differ in sound, there is no variance . . . we are of the opinion that the variance between Steven and Stevens is entirely immaterial. . . . " From the language quoted it appears uncertain whether the court based its decision upon the proposition that the names were interchangeable or upon the ground that there was a variance, but that it was so slight as to be immaterial. In an attempt to reconcile the minority cases with the majority holdings, one source[15] quotes the interchangeability phrase while another source[16] quotes the immaterial variance portion, but both suggest their respective quoted language as a basis of reconciling the cases. It is suggested that either ground may explain some of the decisions, **i.e.,** a particular spelling may be so common that it is interchangeable with another spelling, or when the words are pronounced the variance may be so slight as to mislead no one, hence is in effect immaterial.[17]

However, some of the cases simply appear inconsistent. In the **Semons** case[18] the variance was between Henry E. D. Semons and Henry E. D. Semon. The Christian name and the initials are precisely the same, only an "s" was added to Semon, yet the variance was held to be fatal. Was the name any less interchangeable or the variance any more material than in the **Stevens** case, **supra,** where Steven Stebbins was a sufficient designation of Stevens Stebbins?

It should be noted that a number of the minority cases were criminal actions, the variance existing between a name specified in the indictment and a name as proved by the evidence, **i.e.,** cases in which the defendants was likely apprised of the true facts even though an error may

have been present. In no instance was it a matter of imposing constructive notice despite a name having been misspelled in the record. This factor may explain much of the apparent conflict.

The addition or omission of the final "s" must be distinguished from the variance of other letters in the names although such variance may produce one name terminating in "s" while the other name does not, Hendrix and Hendricks is a clear illustration.[19]

A second frequently occurring variance is the addition or omission of a "t" to a name terminating with "son," **e.g.,** Johnson and Johnston. Idem sonans is generally applicable because ". . . it would take a practiced ear to detect the difference of Johnston and Johnson as ordinarily pronounced by the generality of mankind."[20] The insertion of a "d" before the "son" has produced the same holding.[21] A possible alternative rationale for these decisions is that these variances, or at least some of them, are so common that in fact the names are interchangeable, **i.e.,** perhaps Johnson and Johnston are so frequently substituted, one for the other, that either is a sufficient designation for the other. This is not to say that such reasoning can be applied in all instances where this particular variation appears; it is doubtful whether Elbertson and Elberson have acquired a commonly applied interchangeability.

An oft-occurring error arises in the use of "sen" for "son" and vice versa, **e.g.,** Larson and Larsen. "Such names are usually pronounced by omitting or slurring over the last vowel. . . ."[22] hence idem sonans prevents the variance from being fatal. Again interchangeability may be part of the rationale for this holding. Of the same nature, but arising with less frequency, is the substitution of "say" for "sey" such as Lindsay and Lindsey.[23]

Seldom, if ever, does the omission or addition of a final "e" to a name alter the pronunciation, as Clark and Clarke; idem sonans is applicable.[24]

In numerous cases the courts have had an opportunity to pass upon the interchangeability of the letters "d" and "t." The letters "d" and "t" are both dentals with some similarity of sound, but the "d" has a broader and more lengthened sound than the sharp, shorter sound of the "t." This difference in sound will vary with the position of one of these letters within the name; to illustrate, in Hudson and Hutson there is closer similarity of sound than in Hite and Hyde, the former coming within idem sonans, the latter not.[25] Thus Wadkins and Watkins,[26] Hutson and Hudson,[27] Wadford and Watford,[28] Peter Peterson and Peder Pederson,[29] and Witt and Wid,[30] have all been held to be within idem sonans.

No rule is deducible as to the interchangeability of the letters "d" and "b," the very few cases in point being in conflict. When X was charged with an assault upon J. B. Denby and the victim in fact was J. M. Denby, the variance was fatal,[31] but an indictment was sufficient in charging a theft from Ad Stewart instead of Ab Stewart, the true name of the owner.[32]

The substitution of a "v" for a "w" has been deemed an innocuous variance. One case applies idem sonans because ". . . in many languages and dialects the letter "w" has the sound of "v" and vice versa."[33] Another views it as "too slight a mistake to deserve notice."[34] However, note that it was only a variance in the Christian name in one instance and in the other the defendant named in the summons was erroneously designated, but the summons was actually in the hands of the proper defendant. Should the docketing of a judgment against Levis (the judgment debtor's name being Lewis) constitute constructive notice to a purchaser from Lewis? The interchangeability becomes less desirable at this juncture.

Have the letters "a" and "e" demonstrated a high degree of adaptibility to each other so that one may freely replace the other without causing a fatal variance between the words in which they appear? In **O'Meara v. North American Mining**

Co.,[35] a deed offered in evidence bore the signature of O'Mara, while in the complaint the plaintiff's name appeared as O'Meara, but the notary had spelled it O'Mera. The court said: "But any English scholar knows that 'a,' 'ea' and 'e' have in many words the same sound. Especially is it so in proper names and in many foreign words. Both 'e' and 'ea' frequently have the same sound . . . (These names) are idem sonans."

Few cases make any analysis as did the **O'Meara** case, but most, if not all, reach the same conclusion. It was an immaterial variance to sue Key in the name of Kay.[36] A deed signed by Petterson was sufficient to convey title from Patterson.[37] A judgment against Hackman, but docketed against Heckman was constructive notice to one taking from Hackman.[38] Other cases are set out in the footnotes.[39]

Several cases have viewed the letter "u" as a proper substitute for "o" and vice versa; the names Bosse and Busse,[40] Bobb and Bubb,[41] and Rux and Rooks[42] have been held to be idem sonans.

Numerically the cases are about evenly divided as to the application or idem sonans where the first letter of the name varies, **e.g.,** Kuhns and Coons or Wray and Ray. In this situation the non-analytical application of idem sonans is particularly undesirable. Quite a wide difference exists between the use of idem sonans to hold that the variance between Clark and Clarke is non-fatal and a holding that one must search records under both Coons and Kuhns or Wray and Ray.

Several courts have taken a positive analytical stand in refuting idem sonans when the first letters differ. In **Schatz v. Kintyre Farmers' Coop. Elevator Co.,** which held that the filing of a thresher's lien against Alex Cauko did not constitute constructive notice to one buying grain from Alex Kauko, the court said: "The doctrine of idem sonans does not apply when the first letter of the surname is the wrong letter, although it may have a sound of some other letter." The **Schatz**[43] opinion cites a case of some antiquity which is equally positive in its position: "We do not think that the legislature intended that a purchaser, or incumbrancer, in searching for a name, the initial letter of which is Y should be under obligation to examine the index through the letters Y and J. We must so hold or the judgment dockets and indexes would be shorn of their value. . . ."[44] Service by publication in a quiet title action against Isaac Troth did not affect the interest of Isaac Yroth.[45] More recently the Pennsylvania court has held that one purchasing real property from Nikolai Borys had no duty to search under a different initial to discover a judgment entered against Mikola Borys.[46]

Note that these cases dealt with records imparting constructive notice, **i.e.,** situations in which the variance will likely be so misleading that the searcher never discovers the entry until an adverse claim is raised against him.

Illustrative of the failure of some courts to make any intelligent appraisal of the problem beyond stating the rule and reaching a result is the **Laclede** case.[47] The court held that a judgment for taxes against Greason would not support an execution sale of the interest of Creason, a laudable result. But of the eight cases cited as authority, only one involved a variance in the first letter and in that one case the court presumed that the jury had found the names to be idem sonans despite the varying first letters!

Frequently the change of first letters is accompanied by an inescapable change in pronunciation, hence the shelter of idem sonans is denied. Thus publication in the name of Carrey was held not a valid notice upon which to base a judgment against Scarry, "the name are entirely dissimilar, both to the eye and ear."[48] Likewise a sale on execution against Hicks was invalid when the judgment was rendered against Wicks, "it is a different name . . . and nothing else."[49] Again a judgment docketed against Sheffey was

not constructive notice to one taking a mortgage frrom Cheffey.[50] Other cases are indicated in the footnotes.[51]

On the other side of the fence are those cases which apply idem sonans notwithstanding a varying first letter. One case has singularly distinguished itself by a holding that "Kennedy may be pronounced like Canada."[52] The indictment in the case charged a theft from Canada McCutchen, but the evidence related to the property of Kennedy McCutcheon. The court went on to say ". . . there is no pretense that the defendant was misled." It is unfortunate that the court did not place its holding solely on the latter ground, rather than twist idem sonans as it did. Equally bad is the result in **Tibbets v. Kiah,**[53] where the defendant pleaded in abatement that he was known by the surname of Currier and not Kiah as he had been named in the suit. "The issue in this case was not how the name of the defendant was written or spelt, but how he was 'called or known.'" The court affirmed a judgment for the plaintiff.

An examination of the more rational holdings reveals that in few, if any, of these cases was there any serious likelihood that prejudice had resulted to the person compaining of the variance. This will be borne out by a brief recital of the facts in several of the decisions which do apply idem sonans despite a first letter variance.

In **Commonwealth v. Jennings**[54] an indictment for polygamy named the defendant's first wife as Gigger. There was no fatal variance although her name was revealed by the evidence to be Jiger or Jigr. A judgment and execution issued against Rosina Coons was sufficient as against Rosina Kuhns.[55] No fatal variance existed in **Eichman v. State,**[56] although the defendant's name appeared as Ichman in the judgment and as Eichman in the appeal bond. A notice of redemption from a tax sale given in the name of Karney was sufficient though the affidavit as to publication was in the name of Carney.[57] **People v. Williams**[58] involved an information purporting to be that of W. R. Fhele, but which was signed by W. R. Thele, held to be idem sonans. Similar factual patterns exist as a possible explanation for this line of decisions.[59]

The solution to the variance in the initial letter may be aided by the formulation of these principles: first, the variance often results in a quite different pronunciation; this should be the test first made; second, however, if there is a sufficient similarity in sound, in what context has the variance occurred? If it involves constructive notice, either by publication or through public records, the variance will likely be fatal and rightly so. But if it appears within an indictment or similar situations where the identity is clear (or readily ascertainable), it will not be fatal.

The above variances represent some of the most common errors likely to arise. There are several other facets to the rule.

Occasionally the argument has been advanced that names are idem sonans because their pronunciation is the same under some **local** (in a geographical sense) manner of speech or mode of pronunciation. The argument met with success in **Myer v. Fagaly,** [60] where a judgment docketed against John Bobb was held to be a lien upon land purchased from John Bubb. Said the court: "Even the language of a people . . . is subject to local differences which must be respected in the ascertainment of rights. According to our German mode of pronunciation prevailing in Lancaster County, the sounds of both forms (Bobb and Bubb) are identical . . . We cannot disregard such anomalies without doing great injustice; and people having relations with the people in the localities where they prevail are bound to take notice of them." Another opinion contains this language: ". . . a man's identity by his name must to most of the people of his neighborhood depend solely upon the customary pronunciation of it."[61] An English case has held it a question for the jury whether Darius, being pronounced in

the Dorset dialect as D'ruis, was idem sonans with Trius.[62]

While these cases establish the local pronunciation feature of the idem sonans rule, the paucity of cases thereon indicates that this feature has not been significantly important. Mass education and nation-wide coverage in all media of communication certainly have had their influence in decreasing any true local dialect having substantial difference from the general mode of pronunciation.

Clearly the pronunciation of names and words should be made according to the commonly accepted mode of pronunciation. So if two words are idem sonans according to the common English pronunciation, it does not matter that their sounds would differ if pronounced in a foreign language.[63] Manifestly it is unreasonable to impute to one knowledge of the letter combination which, pronounced according to some foreign language, sounds the same as the name in question. Those cases which appear to hold every person to such a standard of knowledge are to be strictly limited to their particular facts.

State v. Timmens[64] is illustrative. The court held the name Forest to be idem sonans with Fourai, pointing out that Forest was pronounced in French as Foray which is almost identical with the sound of Fourai. The result becomes more acceptable in light of the facts: first, the variance was only between a name in the indictment and the name proved by the evidence; second, the defendant, being familiar with the French language, was likely not misled.

Whether Toy Fong is idem sonans with Choy Fong was considered by the California court in **People v. Fick.**[65] It was held to be a jury question because "the court cannot say, as a matter of law, that the names mentioned . . . **as usually spoken by that people** (Chinese), do not have the same sound." (Italics added). Idem sonans has reached its nadir if one searching public records must ascertain the Chinese pronunciation of the name which is the subject of his search.

Our next avenue of inquiry is whether there are any exceptions to the broad statement that idem sonans applies to all documents and proceedings.

It has been held that idem sonans is **not** applicable to public records imparting notice, such as a judgment index. The rationale of the very few cases so holding is that such records contemplate notice to the eye and not to the ear.[66] Hence the proper concern is with orthography rather than with pronunciation.

The majority of decisions[67] have taken an opposite stand upon the reasoning that while record notice is principally a matter of sight and not of sound, "yet it is above all a matter for the consideration of the mind. . . ."[68] This is a more realistic and reasonable interpretation of the nature and purpose of such records.

At least one state, California, has seen fit to rule that idem sonans cannot be invoked to render a variance non-fatal in tax assessment cases. The leading case is **Emeric v. Alvarado**[69] in which Castro was the name of the property owner, but the assessment was made against Castero. The court held the proceedings invalid as the written name is material in such assessments rather than the sound conveyed by the letter combination. Most courts have not followed the **Emeric** principle, and idem sonans does apply to tax assessments and proceedings.[70]

A very recent case has broadly asserted that "the doctrine of idem sonans is not properly applicable in divorce cases, for the obvious reason that the plaintiff well knows the true name of the defendant."[71] The court's reasoning is sound enough when the plaintiff is careless enough to erroneously designate the defendant, but it does not consider an error made in the printing process. Perhaps the court would extend its strictness to say that the plaintiff has the burden of checking the publication and having any errors therein corrected. There is some merit in such an argument.

Summons by publication against Keesel did not give the court jurisdiction to render a divorce from Keisel.[72] The court said: "The corrupt practices in divorce proceedings could hardly be aided by the courts better than to open the door for a variance between the actual name of the defendant . . . and that in the notice constituting the service and giving the court jurisdiction."

Several cases hold void divorce decrees rendered upon service by publication because of a variance,[73] yet still seem to indorse the applicability of idem sonans to such proceedings by the very process of concluding that the names in question are not idem sonans. As a general proposition, other than the divorce cases above discussed, idem sonans does apply to constructive notice by publication. This will be discussed in subsequent paragraphs.

At this point we have examined some of the more common variances and have considered the more extreme cases which reject idem sonans entirely in certain proceedings. It almost goes without saying that no formula can be devised against which two names or words can be tested to ascertain whether or not they fall within idem sonans. The two lines of inquiry made above are the first to be considered since a precise rule is lacking.

The remaining facet is the setting in which the variance occurs. Only by considering the setting can any degree of harmony be seen in the idem sonans cases; to say the least it seems inconsistent to hold that the names Helen and Ellen are not idem sonans,[74] but that Canada and Kennedy are,[75] but seen in the light of the facts of each case the result is somewhat more rational.

As the potential of the variance to mislead or prejudice becomes greater, the idem sonans rule should become stricter. In constructive service, in tax proceedings and in records imparting notice the names should bear a closer similiarity than would be necessary in a variance between an indictment and the evidence upon trial.

Courts have recognized this limitation; indeed, we have seen that a few tribunals completely reject the doctrine. Most courts do not reject it, but rather take an approach that ". . . application of the rule is more strict in regard to constructive service than where service is personal."[76] On the other hand, it has been said that the variance is not fatal in a criminal action unless the "jury was misled by it, or some substantial injury is done to the accused, such as that . . . he was unable to intelligently make his defense or he was exposed to the danger of a second trial on the same charge."[77]

In the constructive notice or constructive service situations there is some authority that the names must both sound **and appear** similar. ". . . (W)here property rights are involved and service is by publication, unless the name of the defendant as published would both appear and sound similar to the real name of the defendant, it is not sufficient to support a judgment by default."[78]

So goes the doctrine of idem sonans. In conclusion two points merit emphasis. First, it is obviously preferable to anticipate variances which may be idem sonans. The attorney or title examiner would do well to familiarize himself with the common variances and the holdings thereon. A small measure of preventive medicine may well avoid the inconvenience and financial loss which a fatal variance can involve. Second, to reiterate an argument made earlier, the setting in which a variance occurs should be a weighty factor in determining whether any two names are idem sonans. As the potential of the variance to mislead or prejudice becomes greater, the idem sonans rule should become stricter.

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1 Ballentine's Law Dictionary (1930). The correct pronunciation is i' dem so' nanz. It has occasionally been spelled eadem sonantia as in Short v. Scurry, 1 Barn. 135, 94 Eng. Rep. 94 (K.B. 1728).

2 Kelley v. Kuhnhausen, 51 Wash. 193, 98 Pac. 603 (1908).

3 Ward v. State, 28 Ala. 53 (1856).

4 Loven v. State, 145 Tex. Crim. App. 260, 167 S.W. 2d 515 (1943).

5 Jones v. Stenor, 3 Bulst. 121, 81 Eng. Rep. 103 (1688).

6 Note, 25 Mich L. Rev. 296 (1927); 9 Title News 7 (Aug. 1930); 29 Title News 33 (Oct. 1950); 32 Title News 25 (June 1953); Annotation, 100 Am. St. Rep. 322 (1905).

7 Gaines v. Gaines, 109 Ill. App. 226 (1903). Libel action. Letter containing phrase "fauls swearing" was admissible under a declaration charging use of the words "false swearing."; Walker v. State, 13 Tex. Crim. App. 618 (1883). Verdict read: "Wee the jurors finde the defendant gilty and of mrder in the first degree. . . ." Held, mrder was idem sonans with murder; Commonwealth v. Pelligrini, 283 Mass. 300, 186 N.E. 552 (1933). Letters written in Italian and addressed to "doteli rott" were held idem sonans with "Dudley Road" where the intended victim of an extortion resided; contra, Haney v. State, 2 Tex. Crim. App. 504 (1877) where "burgerally" was held not idem sonans with "burglary."

8 Tibbets v. Kiah, 2 N.H. 557 (1823).

9 Sparks v. Sparks, 51 Kan. 195, 32 Pac. 892 (1893).

10 The question of a variance in the first letter of a name will be treated at a later point.

11 Several such alphabetical lists have been compiled: 19 R.C.L. 1337 (1917); 100 Am. St. Rep. 344 (1905); 21 Am. & Eng. Ency. of Law, 2nd ed 313 (1902); Patton, Titles § 52 (1938).

12 Semon v. Hills, 7 Ark. 70 (1846). Held, fatal variance when an instrument was described in the declaration as signed by Henry E. D. Semons, but actually read Henry E. D. Semon; Neiderluck v. State, 21 Tex. App. 320, 17 S.W. 467 (1886). Indictment charged the theft of property of E. S. Woods, but evidence proved it to be the property of E. S. Wood. Held, fatal variance; Hodgkin v. Boswell, 63 Or. 589, 127 Pac. 985 (1912). Assessment against property of Hodgkin was entitled Hodgkins and sold as property of the latter. Held, invalid proceedings; Myers v. DeLisle, 259 Mo. 506, 168 S.W. 676 (1914). Notice by publication in a tax suit directed to J. A. Myer was not sufficient to support a judgment against J. A. Myers.

13 State v. Havely, 21 Mo. 498 (1855). Owens D. Havely was indicted as Owen D. Haverly. Held, Owens and Owen are "so nearly the same. . . that they may be taken as one and the same in sound ."; Willis v. U.S., 6 Ind. T. 424, 98 S.W. 147 (1906). Murder indictment gave name of decedent as Roberts while some evidence showed it to be Robert. Held, not a fatal variance; Stevens v. Stebbins, 4 Ill. (3 Scam.) 25 (1841). Note described in petition was payable to Steven Stebbins, the one offered in evidence was payable to Stevens Stebbins. Held, no fatal variance; Smurr v. State, 88 Ind. 504 (1883), Decedent named in indictment as Meyer and Meyers, while his actual name was Mayer. Held, idem sonans; Ciula v. State, 115 Tex. Crim. App. 193, 28 S.W. 2d 541 (1930), Indictment named injured party as Daniel, proof related to Daniels. Held, immaterial variance; State v. Booth, 46 Mont. 334, 127 Pac. 1017 (1912), Information charged larceny frrom Kirn, but evidence related to Kirns, "the names are practically identical."; Ex Parte Sawyers, 48 S.W. 512 (Tex. Crim. App. (1898), Sawyers was named as Sawyer in warrant for arrest; held, idem sonans.

14 4 Ill. (3 Scam.) 25 (1841).

15 100 Am. St. Rep. 322 at 325 (1905).

16 52 L.R.A. (n.s.) 937 at 940 ( ).

17 The effect of a variance which is likely to mislead will be considered at a later point.

18 Semon v. Hills, 7 Ark. 70 (1846).

19 Hendrix v. State, 21 Ala. App. 517, 110 So. 167 (1926); accord, Rux v. Rooks, 83 Ala. 79, 3 So. 720 (188).

20 Miltonvale State Bank v. Kuhnle, 50 Kan. 423, 31 Pac. 1057 (1893); Truslow v. State, 95 Tenn. 196, 31 S.W. 987 (1895), Johnson and Johnston; Elberson v. Richards, 42 N.J.L. (13 Vroom) 69 (1880), Elbertson and Elberson; Golson v. State, 15 Ala. App. 420, 73 So. 753 (1917), Golson and Gholston.

21 Davison v. Bankers' Life Association, 166 Mo. App. 625, 150 S.W. 713 (1912).

22 Gustavenson v. State, 10 Wyo. 300, 68 Pac. 1006 (1902), name of decedent given in information both as Larson and Larsen; Grand Lodge, etc. v. Fischer, 70 S.D. 562, 21 N.W. 2d 213 (1945), Peterson and Petersen.

23 State v. Lindsey, 150 Wash. 121, 272 Pac. 72 (1929).

24 Altschul v. Casey, 45 Or. 182, 76 Pac. 1083 (1904), Clarke and Clarke; Jackson v. State, 74 Ala. 26 (1883), Booth and Boothe.

25 State v. Williams, 68 Ark. 241, 57 S.W. 792 (1900).

26 Bennett v. State, 62 Ark. 516, 36 S.W. 947 (1896).

27 Chapman v. State, 18 Ga. 736 (1855).

28 Hayes v. State, 58 Ga. 35 (1877).

29 Pederson v. Lease, 48 Wash. 253, 93 Pac. 439 (1908), Action with subsequent execution against property of Peder Pederson was valid despite use of name Peter Peterson in action and execution.

30 Veal v. State, 116 Ga. 589, 42 S.E. 705 (1902). Indictment charged Witt Veal; true name was Wid Veal.

31 Short v. State, 98 Tex. Crim. App. 472, 266 S.W. 419 (1924).

32 Barron v. State, 155 Ark. 80, 244 S.W. 331 (1922).

33 Jockisch v. Hardtke, 50 Ill. App. 202 (1893), suit was brought in the name of Alwin Hardtke (as administrator). Letters had issued to Alvin Hardtke.

34 Conaway v. Hays, 7 Blackf. (Ind.) 159 (1844), defendant was named as Conavay rather than Conaway.

35 2 Nev. 112 (1866).

36 Dickinson v. Bowes, 16 East. 110, 104 Eng. Rep. 1030 (1812).

37 Jackson v. Cody, 9 Cow. (N.Y.) 140 (1828).

38 Bergman's Appeal, 88 Pa. St. Rep. 120 1878), no small amount of confusion was injected into the record as to Mr. Hackman's true name. He testified that he pronounced his name in English as Hackman, but his spouse said that she was the wife of Henry Heckman, although everybody knew his as Hockman in Germany. Henry's son testified that his father's name was Hackman, but it was generally pronounced Heckman. Another witness thought it was Hackman, but pronounced Hawkman. Indeed judicial eyebrows must have been raised when the final witness said he had heard it called Hartman!

39 Kerr v. Swallow, 33 Ill. 380 (1864), Anna and Anne; Kahn v. Herman, 3 Ga. 266 (1847), Herman and Harman (dictum); Commonwealth v. Brigham, 147 Mass. 414, 18 N.E. 167 (1888), Jefferds and Jeffards; Webb v. Lawrence, 1 C.&M. 806, 149 Eng. Rep. 624 (Ex. 1833), Lawrence and Lawrance.

40 Bosse v. Cadwallader, 86 Tex. 336, 24 S.W. 798 (1894).
41 Myer v. Fegaly, 39 Pa. St. (3 Wright) 429 (1861).
42 Rux v. Rooks, 83 Ala. 79, 3 So. 720 (1888).
43 52 N.D. 290, 202 N.W. 855 (1925).
44 Appeal of Heil, 40 Pa. St. 453, 80 Am. Dec. 590 (1861).
45 Akins v. Adams, 256 Mo. 2, 164 S.W. 603 (1914).
46 Jaczyszyn v. Paslawski, 147 Pa. Sup. 97, 25 A. 2d 116 (1942).
47 Laclede Land and Improvement Co. v. Creason, 264 Mo. 452, 175 S.W. 55 (1915).
48 Scarry v. Bunker-Culler Lumber Co., 233 Mo. 686, 136 S.W. 294 (1911).
49 Sligo Furnace Co. v. Hogue, 229 S.W. 190 (Mo. 1921).
50 Boyd v. Boyd, 128 Iowa 699, 104 N.W. 798 (1905).
51 Thomas v. Desney, 57 Iowa 58, 10 N.W. 315 (1881), judgment entered and indexed against Ellen Desney was not notice that it was a lien upon lands of Helen Desney; Zellers v. State, 7 Ind. 659 (1856), fatal variance between Sedbetter in the indictment and proof as to Ledbetter; Jenne v. Jenne, 7 Mass. 94 (1810), notice by publication to Saunders is not notice to one named Launders; Henderson v. State, 38 S.W. 618 (Tex. Crim. App. 1897), naming Hall in an indictment is a fatal variance with proof relating to Wall; Uppenkamp v. State, 89 Tex. Crim. App. 131, 229 S.W. 544 (1921), Oppenchamp and Uppenkamp are not idem sonans so as to avoid a variance between one name in a proceeding on a forfeited bail bond and another in the indictment.
52 State v. White, 34 S.C. 59, 12 S.E. 661 (1891). As an exercise for those who insist upon reconciling cases compare this holding to the Thomas case, supra, note 51, where Ellen and Helen were held to not be idem sonans.
53 2 N.H. 557 (1823).
54 121 Mass. 47, 23 Am. Rep. 249 (1876).
55 Kuhn v. Kilmer, 16 Neb. 699, 21 N.W. 443 (1884).
56 22 Tex. App. 137, 2 S.W. 538 (1886).
57 McCash v. Penrod, 131 Iowa 631, 109 N.W. 180 (1906).
58 233 Ill. App. 53 (1924).
59 Ensley v. Coolbaugh, 160 Mich. 299, 125 N.W. 279 (1910), a conveyance to Ansley is sufficient to vest title in Ensley; Napa State Hospital v. Dasso, 153 Cal. 698, 96 Pac. 355 (1908), in an action to recover costs for the care of an insane person the order committing Tasso was admissible although the correct name was Dasso; Dennis v. State, 71 Tex. Crim. App. 162, 158 S.W. 1008 (1913), an indictment charged burglary of the house of Geton, the record referred to Jetton.
60 39 Pa. St. 429, 80 Am. Dec. 134 (1861). Cited with tacit approval in Coral Gables, Inc. v. Kerl, 334 Pa. 441, 6 A. 2d 275 (1939).
61 Tibbets v. Kiah, 2 N.H. 557 (1823).
62 Regina v. Davis, 2 Den. 231, 169 Eng. Rep. 486 (C. C. 1851).
63 State v. Johnson, 26 Minn. 316, 3 N.W. 982 (1879), "the courts . . . cannot take judicial notice of the . . . pronunciation of names in the Polish language."; Beneux v. State, 20 Ark. 97 (1859), ". . . (H)owever this might be to the ears of a Frenchman, the names would seem to be idem sonans, according to our language."; Gilbert v. Gale, 50 N.D. 414, 196 N.W. 314 (1923), purchaser of land not chargeable with "knowledge of the manner in which a foreign name might be or should be pronounced in English."
64 4 Minn. 325 (1860).
65 89 Cal. 144, 26 Pac. 759 (1891).
66 Breyer v. Gale, 53 N.D. 439, 207 N.W. 46 (1925), "We believe it is the contemplation of the recording statutes, with regard to docketing judgments, that the docket thereof shall impart notice to the eye and not to the ear. . . ."; Appeal of Heil, 40 Pa. St. 453, 80 Am. Dec. 590 (1861), "The act of assembly which requires that judgment dockets and indexes shall be kept, provides for notice to the eye not to the ear." This case seems to be limited by later cases to a variance in the first letter of the name, see Bergman's Appeal, note 38.
67 Gleich v. Earnest, 36 Ohio App. 326, 173 N.E. 212 (1930), idem sonans applies to the recording of mechanic's lien; Downer v. Bermingham, 71 Colo. 245, 205 Pac. 948 (1922), chattel mortgage filed under Bermingham was notice to one taking from Birmingham; accord, Bloomer v. Criestler, 22 Colo. App. 238, 123 Pac. 966 (1911); Green v. Meyers, 98 Mo. App. 438, 72 S.W. 128 (1903).
68 Green v. Meyers, 98 Mo. App. 438, 72 S.W. 128 (1903).
69 90 Cal. 444, 27 Pac. 356 (1891); Henderson v. DeTurke, 164 Cal. 296, 128 Pac. 747 (1912).
70 Kelley v. Kuhnhausen, 51 Wash. 193, 98 Pac. 603 (1908), Tilter as used in the summons in a tax sale proceeding was idem sonans with Tiller, the correct name; Burrows v. Hagerman, 159 Fla. 826, 33 So. 2d 34 (1947), appeal dismissed 334 U.S. 817, an assessment against Walter Burrows was idem sonans with Waters Burrows; Felker v. City of New Whatcom,, 16 Wash. 178, 47 Pac. 505 (1896), an assessment and sale for street improvements in the name of S. D. Henning rather than S. W. Herring, the true owner, was valid; King v. Slepka, 194 Okla. 11, 146 P. 2d 1002 (1944).
71 Peoples National Bank v. Manos Bros. Inc., 84 S.E. 2d 857 (S.C.1954).
72 Hubner v. Reickhoff, 103 Iowa 368, 72 N.W. 540 (1897).
73 Burge v. Burge, 94 Mo. App. 20, 67 S.W. 703 (1902), notice by publication to Emma Burge insufficient to confer jurisdiction over Emily Burge; Grober v. Clements, 71 Ark. 568, 76 S.W. 555 (1903).
74 See note 51.
75 See note 52.
76 Webb v. Ferkins, 227 Iowa 1157, 290 N.W. 112 (1940).
77 Jones v. State, 115 Tex. Crim. App. 418, 27 S.W. 2d 653 (1930); accord, People v. Callahan, 324 Ill. 101, 154 N.E. 463 (1926).
78 Guaranty Abstract Co. v. Relf, 280 S.W. 616 (Tex. Civ. App. 1926); Fidelity Acceptance Corp. v. House, 210 Minn. 220, 297 N.W. 705 (1941).

TITLE PLANT

WAYNE SPEELMON

Midland Empire Title Company, Billings, Montana

Our plant here is quite new and I'm really getting an education in the problems which can and do confront a new abstract plant. Our plant was built on a geographical indexing system, with file folders made for each tract of land in each Section and each lot in subdivisions. Photostated copies of recorded instruments were filed in the folder which corresponded to the description given in the instrument, and indexed on the cover of the folder. Theoretically, this system was supposed to facilitate the title search and examination of title, and also save time in indexing and filing. Possibly this system might be practical somewhere where there are few changes in descriptions, and where the transfers, mortgages, etc. would describe the same tract each time. However, we find that instead of saving time in indexing and filing, our work in this department is greatly increased, because of the fact that so many new subdivisions are being created and other tracts of land divided. For example, let's suppose that plat and building and use restrictions on Jones subdivision was filed last week. Now we have a deed from the subdivider to a contractor covering 10 lots. We make a file for these 10 lots, and index thereon the plat, restrictions and deed. The contractor probably starts building 6 houses and gives a mortgage covering six of these lots. Sometime later the mortgage is satisfied. The contractor next sells the lots individually to new purchasers. Now it becomes necessary to make six new files, indexing all these instruments on each file. Therefore instead of indexing these instruments once as we could do on a tract index, we index them 6 times. Quite often there are several instruments which affect the whole subdivision, in some cases necessitating indexing them eventually 100 or more times.

Indexing Problem

If we were still attempting to maintain our plant in this manner, we would be unable to keep up with our indexing, to say nothing of putting out any work. We therefore began making a tract index, indexing all new tracts subdivided, and working back on other subdivisions one at a time.

We found also that our arbitrary tract system was far from satisfactory. In too many cases the arbitrary tract covered more or less than it should have, resulting in our corresponding files for such tracts containing either an incomplete chain of title or containing several chains of title, quite often not related. In setting up a tract index we are redrawing all these arbitraries to correspond with the ownership, so that we can file them in an individual file for each such tract. In making our tract index for such arbitraries, we also took into consideration the geographical filing system, and the problem of not only indexing against the tract, but of indexing in such a manner that the instruments could be filed in the proper files with a minimum of duplications. We also had the problem of making such a filing and indexing system progressive. With some variations, we finally proceeded as follows, which seems to be working out fine as far as we have gone, but which could no doubt be improved upon.

Vary Map Scales

We make our arbitrary maps to various scales, depending on the size or number of arbitrary tracts in a section. Our tract index sheets are 14 x 17 and our maps are drawn on sheets this size. For an entire section we draw them on a scale of 1"-200'. In some cases we make our maps covering 40 acres on a scale of 1"-100'. We make arbitraries of all tracts

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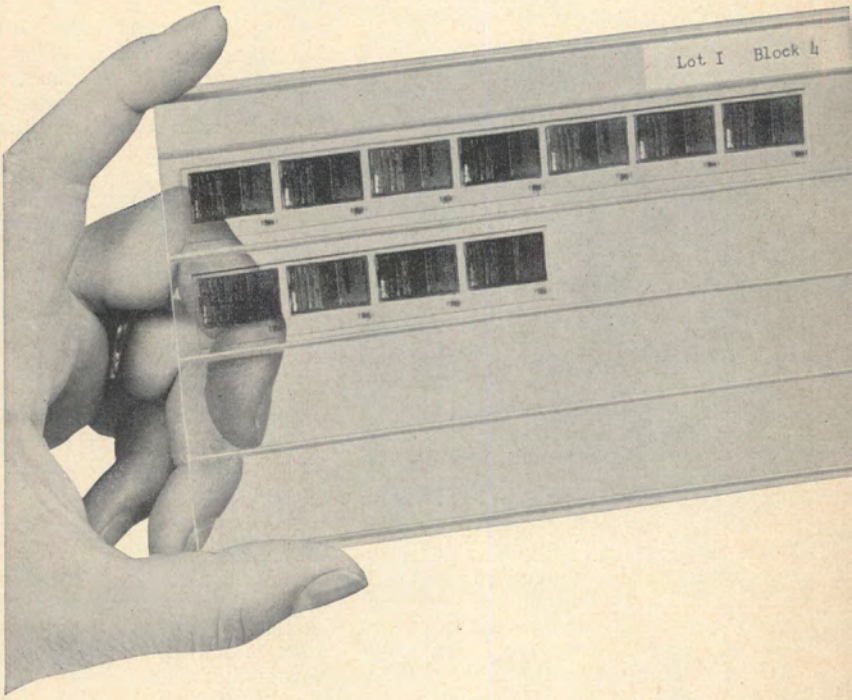

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Of course, we show all distances and directions whenever possible. The arbitrary tracts are designated by number, beginning with number 1 in each section. We post the arbitrary number on the tract index in the same manner as if it were a regular plat or instrument, checking it against each subdivision of the section which it affects. All subsequent instruments which coincide to the arbitrary is indexed against the arbitrary number. When an arbitrary tract is divided, we draw in the dividing line on our map, thus making two new arbitrary tracts. We give each of the two new tracts a new number, and also indicate on each of them the old number or the number of the tract which was divided. We circle this old number on each of the tracts to indicate that it has been discarded. We index the two new numbers on the tract book against the old number. When one arbitrary is joined with another, we usually continue indexing against both numbers, although sometimes, depending on circumstances, we make a new arbitrary to cover two or more old arbitrary tracts which have joined. We try to avoid making a new arbitrary out of two or more because it then becomes necessary to draw a new map.

Special Adjustments

I mentioned before that we used some variations to this system. In some cases we have an arbitrary tract which lies partly in two or three sections. In such cases as this, we draw our map to cover the arbitrary giving it the same number in each section. We index the arbitrary number under each section, and make a reference on the index of each section to the sectionn with the smallest number. We then index the instruments against the arbitrary on this section only. Also in some cases rather than indexing against the arbitrary when it breaks out of a regular portion of a section, we find it more convenient to index everything against the arbitrary beginning with the inception of title.

This system of indexing seems to work out pretty well, enabling us to locate quickly any instruments which affect any particular tract of land, and at the same time enabling us to use our geographical filing system to advantage.

I don't know whether or not I have outlined it in a manner that can be readily understood, but I would be willing to answer any questions of anyone interested and, of course, I am open to suggestions or comments.

A fellow told me the other day that in addition to being a lawyer, an abstracter should also be a surveyor, draftsman, stenographer and diplomat. I think he should have added "work-horse."

TITLE PLANT

WM. H. RASEY

Garfield Title & Insurance Company, Jordan, Montana

I would like to review what we had to go through in creating a Title Plant rather than taking one over and improving it.

The main objective, as all title people know, is to assemble tract units in a manner that permits entry of them in an orderly way in the Tract Index. For material to do this we use slips of fairly stiff paper large enough to carry in abbreviated form the (1) kind of instrument, (2) Book and Page or File Number and (3) legal description involved. In putting down the data on each slip it is important to set out the township and range or the town of the description so that it is seen instantly. Also the number of the section or the Lot number should be segregated where it will likewise be seen at a glance. This will enable one to take

each Book's slips in page order and, first, assort them in township and, secondly, range order, so that you are ready to sort them into section number, using the smallest as the key number for this preliminary filing purpose. As to the town property descriptions, a similar method is used. The name of the town is prominently set out, likewise the Addition or subdivision, the Block and the Lots, so that assembling of the slips can be accomplished promptly without hunting for any phase of the description. It is really surprising how readily the slips assume their tract unit position under this process. However, Satisfactions of Mortgages, usually having no description of real property, must be provided with same through reference to mortgages satisfied, as will all other instruments showing only book and page or filing number of instrument effected.

Miscellaneous Index

Slips for which no description can be procured one way or another, but which obviously involve real estate, naturally fall into the list which must go into the so-called G. I. or Miscellaneous Index, whether it be a book index into which entry of names in alphabetically arrangement is made, or simply a filing drawer into which the slips are filed in such arrangement. Preservation of the slips in their properly filed order is found to be of considerable usefulness as a cross-check of records established through their use in compiling the Tract Index Books themselves.

Not only all Books of Records in the office of the Clerk and Recorder, but all files in any way affecting real estate have to be accounted for on respective slips, and this pertains especially to Tax Proceedings, Liens, Leases, Lis Pendens, Sheriff's Certificates of Sales and Attachments, as well as Commissioners Journal entries pertaining to real estate. Also, where the original tax sale certificates are given neither a document nor filing number, as is the case here in Garfield County, we have to get the tax sale data from the copy of the certificate left in the county treasurer's office.

Entry and Description

The actual indexing from the slips is done in Tract Index Books, not only fully tabbed for prompt reference purpose but, even more essentially, provided with ever available authentic map and/or plat, as well as arbitrary ones where required, so as to tie up each and every entry in the books with the description established by them. We have found it very advantageous, for instance, in meeting the demands as to acreage involved in our Mineral Memorandums to have the copies of government maps for reference with their acreage given as to each lot. Although we have the forty fractional area designated on our tract index as the Lot that it is, still we make it a point not to simply use a check mark in indexing as to it but to place the lot number down, just as we do in indexing town lots so that it stands out for what it is and eliminates the otherwise necessity of referring to the head of the column in checking out titles for any purpose.

Usefulness Proved

As we were completing our plant here the Williston Basin Oil Boom was already on, and we had wonderful opportunity for proving the usefulness of our plant. The thing that appealed to us mostly in working for the major oil interests was and is that they and their counsel are interested only in orginal records of instruments in a title, and a list of instruments by Book and Page or File number is all they want to assure them that the instruments abstracted from such a list represents the title to be considered, providing, and this is all-important,—that the abstracting is not done from anything but the recorded instrument itself. What they and the majority of the Public seem to desire is simply the material represented by a title company's TAKE-OFF, namely, what goes into the Reception or Fee Book of the Clerk and Recorder, and a carefully compiled index of same also is a very consoling satisfaction to those whose responsibility it is to keep carrying on in "TITLE SERVICE."

ABC's OF LAND TRADING

FRANK K. STEVENS, President

Brazoria County Abstract Co.,

Angleton, Texas

A Quiz Program for prospective Home Owners, which should help them to understand about deeds, mortgages, abstracts, our recording system, and many other things—questions which we are asked by many people with plain answers.

How is the ownership of real estate protected?

By the recording system.

How is the ownership of real estate transferred?

By writtten conveyance of the title.

What is a Deed?

A written conveyance of title to real estate.

Is any certain wording required in a Deed?

Yes. The form is prescribed by law.

Is there only one form of Deed?

No. There are several kinds. The two common forms are The Warranty Deed and the Quitclaim Deed.

What is the difference between a Warranty and a Quitclaim Deed?

In a Warranty Deed, the grantor (he who sells and conveys) guarantees or warrants that he owns the property and that he conveys a good title.

In the Quitclaim Deed, the grantor conveys whatever interest in the title he may have without any guarantee. If he has a good title it is conveyed. If he has no interest he conveys none.

How is the specific real estate conveyed identified in the Deed?

By legal description. In towns and cities by lot and block numbers and by survey field-note descriptions. Street numbers on houses are **not** legal descriptions and should not be used in Deeds.

Who writes up a Deed?

A Deed should always be drawn up by a lawyer.

Who signs the Deed?

The grantors (sellers). The grantee (purchaser) does not sign it.

When does a Deed become a valid transfer of title?

When it has been properly signed and acknowledged it becomes a valid transfer on delivery.

What should be done with the Deed by the grantee after delivery?

He should immediately file it for record.

What is the effect of recording a Deed?

Everyone is immediately charged with notice of its contents.

If a Deed which has been recorded is lost will the owner lose his land?

No—the record protects him.

Are Revenue Stamps required on Deeds?

Yes—Federal Law imposes a stamp tax on real estate conveyances based on the amount of consideration. It is the seller's duty to buy and affix stamps.

What proof of ownership can be furnished by a land owner?

An abstract of Title to his land, commonly called an Abstract, or a Title Insurance Policy.

What is an Abstract?

A complete history of the record title. A compilation of all the important parts of all public records affecting a certain piece of real estate.

Is there an Abstract on every piece of real estate?

No, but one can be made on any tract.

When does a land owner need an Abstract?

When he needs to prove his ownership of his land to a prospective purchaser, mortgagee or lessee.

If I have an Abstract, do I have a good title?

Not necessarily. A good abstract may disclose a bad title.

Should I file my Abstract for record?

No, it is not a muniment of title and does not affect the title in any way.

If I do not wish it to be known that I am considering a deal on my real estate, can I have my Abstract continued without it being known?

Certainly. The Abstracter's relation to his consumer is confidential, and he may not use information to the prejudice of the customer. No good Abstracter will permit any information of any kind about his customer's business to get out of his office.

What is a mortgage?

A written instrument which subjects property to a certain claim obligation, generally given to secure the payment of a note given by the mortgagor (maker) to the mortgagee for the repayment of borrowed money.

Should it be filed for record?

Yes—every instrument conveying an interest in or creating a charge against real estate must be recorded.

What is a "Tax Lien?"

A Statutory Mortgage to secure the payment of your taxes.

It is the obligation of the property owner.

What happens if the note secured by the mortgage is not paid when due?

The mortgagee may foreclose and have the real estate sold by the Sheriff and the proceeds applied on the debt.

Does the purchaser at such Sheriff's Sale get a good title?

If all the foreclosure proceedings conform to statutory requirements, he gets only such title as the mortgagor had. If the mortgagor had good title and the foreclosure proceedings were good, the purchaser gets a good title.

A deed of trust is also used in Texas. They are commonly referred to as mortgages. In a deed of trust the title is conveyed to a third party, called a trustee, for the benefit of the lender, with the right, in event of default in payment of the obligation, for the trustee to actually sell the property at the courthouse door of the County wherein the property is situated, and to apply the purchase price at such sale upon the indebtedness secured by such deed of trust.

What should the mortgagor receive when he pays off his mortgage?

His cancelled note and a recordable Release of Mortgage. The law requires the mortgagee to furnish such Release. It is the owner's responsibility to record same.

Can a mortgage be transferred?

Yes, by a recordable Assignment of Mortgage.

Should the mortgagor pay the Assignee or the original Mortgagee?

In Texas he should pay the last assignee of record.

If I am the buyer, how can I find out if the seller's title is good?

By examination of the abstract.

Who furnishes the Abstract?

The seller.

Who can examine the Abstract?

A Title Lawyer.

Can I examine it?

Yes, but you could not do so intelligently unless you are trained in such matters.

Who should pay the lawyer for the examination?

The buyer.

If my lawyer finds something wrong with the title — what happens?

It is customary for him to point out the defects and suggest curative procedure. The things he requires to be done to perfect the title before he approves it are commonly called "Title Requirements."

Whose duty is it to perfect the title?

The seller's duty and his expense.

Should I have a survey of my real estate made?

A Survey made by a Registered Surveyor or Engineer furnishes valu-

able information not otherwise obtainable. If there is any question about the location of boundaries or of improvements in relation to property lines, a survey should be obtained.

If a loan company has a mortgage on the property should I have the abstract examined?

Yes—the loan company may have considered the security sufficient although the entire title was not owned by the mortgagor.

How can I know that the Abstract is complete?

Investigate the equipment, professional standing and reputation of the abstracter who made it. Go to his office and ask to see his Plant. If he is a member of the Texas Title Association he has a complete independent set of Indexes as required by the Association. Good Abstracters are proud of their Plants, for they represent a tremendous amount of personal painstaking work. Without a good Plant even a good Abstracter is helpless to render good service.

If I rely on the Abstract and it is erroneous so as to cause me a loss, am I protected?

Yes. the Abstracter is liable for loss caused by his error. All good Abstracters are particular about maintaining a reliable reputation, and are glad to have you investigate accordingly.

What if I need the service of a reliable abstracter in another County or State?

Get the name of an abstracter in the proper county from the Directory of the American Title Association. You will find it in the office of your Abstracter.

What is meant by "Continue" or "Extend" an Abstract?

A continuation or extension of an Abstract is a certification covering the period of time since the date of the last certificate in the Abstract, down to the present date.

What is the Certificate in an Abstract?

The signed statement of the abstracter that the abstract is correct and complete. The abstracter is liable on his certificate.

What is a Supplemental Abstract?

Certification since a stated date, but not attached to an original Abstract.

What is meant by "Recertification?"

Some Abstracts are continued many times. In cases where some of the certificates are by abstracters no longer doing business, examiners might require a certificate of the present date covering the entire Abstract from the beginning.

In doing this the Abstracter assumes liability for the entire Abstract and therefore must recheck all of the work and make corrections, if necessary, b e f o r e executing his certificate.

My Abstract was continued when I bought my land. Why should I have it continued again when I am selling?

The purchaser wants, and is entitled to have, full information right up to date. Hundreds and possibly thousands of records have been made since you bought the land. How many of them affect your land? That is what the certification shows to the purchaser.

Does the Abstract show the exact amount due on a mortgage?

No. It shows the original amount, but information covering payments of interest and principal must be obtained from the owner of the mortgage.

What is a Mineral Deed?

It is a conveyance of all or a specific fractional undivided interest in the minerals in and under the land described.

Oil men frequently use a term such as "a five acre royalty interest." Is that a proper description to use in a Mineral Deed?

No. "Acre" is a measure of land, not a fraction. If it is a "five acre interest" in a forty acre tract it is properly described as a one-eighth interest.

Why do Examiners require release of Expired Oil and Gas Leases?

Because most leases run for a primary term "and as long thereafter as oil or gas is produced therefrom." Since it is not possible to determine from the record if there is a producing well on the land and a marketable title must be "fairly deductible of record" the title is not marketable without the release. The customary "Affidavit of Non-Production" is not a judicial determination of fact, but is simply a statement by the maker of the Affidavit.

If all the minerals under a tract of land have been previously conveyed, should the deed to the purchaser describe "the surface" of the land?

No. It should fully describe the land with an exception of the mineral interest previously conveyed.

Does the Abstract show excepted mineral interests?

In Texas an Abstract of Title purports to present an Abstract of everything appearing in the public records affecting the title to the specific real estate to which it is limited. Each abstract of a recorded instrument must accurately reflect every fact concerning the instrument which is needed to determine its exact effect on the title.

If the Abstract shows a Judgment against another man of the same name as mine—what should I do?

In the first place don't get mad at the Abstracter—remember he does not make the record. Tell him facts about your identity and tell him how he can readily verify those facts.

If the Abstract shows something which it should not, does it hurt my title?

No. The actual effect on the title of the abstracted instrument is neither determined by the Abstract nor affected by it. The purpose of the Abstract is to so set forth the facts that the effect of the recorded instrument may be determined by the Examiner.

If there is a question as to whether a matter of record affects a certain title, it is the duty of the abstracter to show or note it in the Abstract, so that the Examiner will be put on inquiry to make further investigation, if he deems it necessary. The mere showing of such matters in the Abstract does not and cannot affect the title in any manner.

If there are two persons named as grantees in a Deed, do each get half of the property?

Yes, each gets an undivided one-half interest, unless the Deed contains specific wording which makes it convey a different estate or a different division of interest.

What if it names more than two as grantees?

The same principle controls. If there are three grantees, each takes on undivided one-third interest.

What happens if I don't pay the taxes on my land?

A tax suit may be filed, judgment taken for the amount of taxes, penalty, interest and costs, and the property ordered sold.

What does the purchaser at the Tax Sale get?

A Tax Deed.

Is a Tax Deed a conveyance?

It is a conditional deed, and subject to the right of the owner who is foreclosed to redeem the land within two years.

May I redeem my land by payment?

Yes, any time prior to end of two year period after sale. When Writ of Possession is issued your right to redeem by payment of taxes and penalty is extinguished.

Is it safe to mail a check to the Tax Collector with instructions to pay all my taxes?

The better plan is to send him an accurate list of the legal descriptions on which you wish to pay, get a statement and then send the check.

Should I check the description in my tax receipts?

Yes, immediately. If an error has been made your land may be sold for taxes which you thought you paid.

Should I keep my tax receipts?

Yes—in a safe place.

Do taxes have priority over a mortgage?

Yes.

Who should pay the current year's taxes, buyer or seller?

In the absence of contract concerning taxes the dividing date fixed by Statute is January 1st. If sold during the year it is customary to pro rate the taxes.

Are there any taxes against real estate other than ad valorem tax?

Yes. The prospective buyer should always find out if there are any special assessments against the property, such as paving, school, sewer or drainage tax, payable in future installments.

What is an Escrow?

The deposit of a written instrument with a third party, not a party to the instrument, to be held for delivery to the grantee on the performance of a condition or the happening of a certain event.

How is Escrow used?

It has come to be widely used for the closing of real estate transactions. The Escrowee, under authority of an Escrow Agreement, can handle all details and make deliveries at the proper time.

In buying real estate, when should I pay for it?

After the Title has been approved and the Deed is ready for delivery.

If I own a farm and sell a part of it, what should I do about my Abstract?

Go to your Abstracter and have a new Abstract made on either the part you are selling or the part you are keeping.

If I subdivide a tract of land into town lots, what should I do about Abstracts?

Consult your Abstracter.

Does the Abstract show that all parties were legally competent when they conveyed, or that none of the signatures were forged?

No—it can only show what appears of record. There are many such.

What protection against such risks is available?

A Guaranteed Title—Title Insurance.

What is the difference between Title Guaranty and Title Insurance?

None. In some states the supervision thereof varies, but in Texas the two are synonymous and are under the supervision of the State's Insurance Department and are authorized to "Insure" titles.

What is Title Guaranty (Insurance)?

A contract between the issuing Company and the party to whom issued, agreeing to defend the title if attacked, and to pay loss in accordance with its provisions, if the defense is unsuccessful.

Are there different kinds of Guaranties?

Yes—Owner's Guaranty issued to the real estate owner, and Mortgage Guaranty issued to the mortgage lender.

How can a purchaser or lender find out if he can get Title Guaranty before he closes the deal?

By making application for Guaranty to a Title Company or one of its agents. A Preliminary report will be issued, binding the Company to issue when the requirements set forth are properly met, according to its provisions.

If the title is not insurable will the entire fee for Guaranty be charged?

No. Only a cancellation fee to partly cover cost of Title examination.

Should abstract be submitted with application?

Yes—if you have one.

Is there an annual premium charge?

No—one premium.

For what amounts are titles guaranteed?

Owner's Guaranty is written only for the value of the property (generally the sale price). Mortgage Guaranty for the amount of the mortgage.

If the lender has a Mortgage Guaranty does it protect the land owner?

Not directly. He cannot make a claim for loss against the Title Company. He should obtain an Owner's Guaranty which gives him full protection.

COMPLETE AND MODERN TITLE PLANT

The $500,000 structure houses the records of the DuPage Title Company, a division of the Chicago Title and Trust Company. The new building provides the most modern facilities for real estate title insurance and trust services to be found anywhere in the state.

The entire plant located in Wheaton, Illinois, has been laid out in an "open design," with all production and customer facilities available in one large room. Tract books are conveniently accessible along the west wall of the large customer area and to the right of the entrance of the building is a counter where revenue stamps can be purchased, bills paid and other business transacted.

Byron S. Powell, Manager of the DuPage County operation and Vice President of Chicago Title and Trust Company, reports that the building space was designed for practical use and the plan has worked out very satisfactorily.

Constructed of Wisconsin Lannon stone, the building covers an area 185 feet by 196 feet and can accommodate 150 employees. It consists of one floor, which is devoted entirely to office space, and a full basement. In addition to ample storage space for records and mechanical squipment, private dining rooms and recreational facilities for employees are located in the basement area.

Air-conditioned throughout, the new title plant has the latest kind of diffused lighting and is wired for Musak. The roof has two inches of fiber glass insulation, with acoustically treated ceilings. Interior trim is black walnut with asphalt tile floors.

The installation of the most up-to-date equipment — including new vaults, files for tract books and automatic typewriting machines — will help speed production operations and step up title insurance service for DuPage County.

A drive-in window with a two-way speaker system has been placed on the south side of the building for the convenience of customers who desire to transact business without leaving their cars. A large parking area has also been provided at the rear of the building.

Another important feature of the new Chicago Title and Trust Company division offices in Wheaton is a beautifully furnished law library and reading room, which is presently being completed. This addition has been set aside for the use of the DuPage County Bar Association.

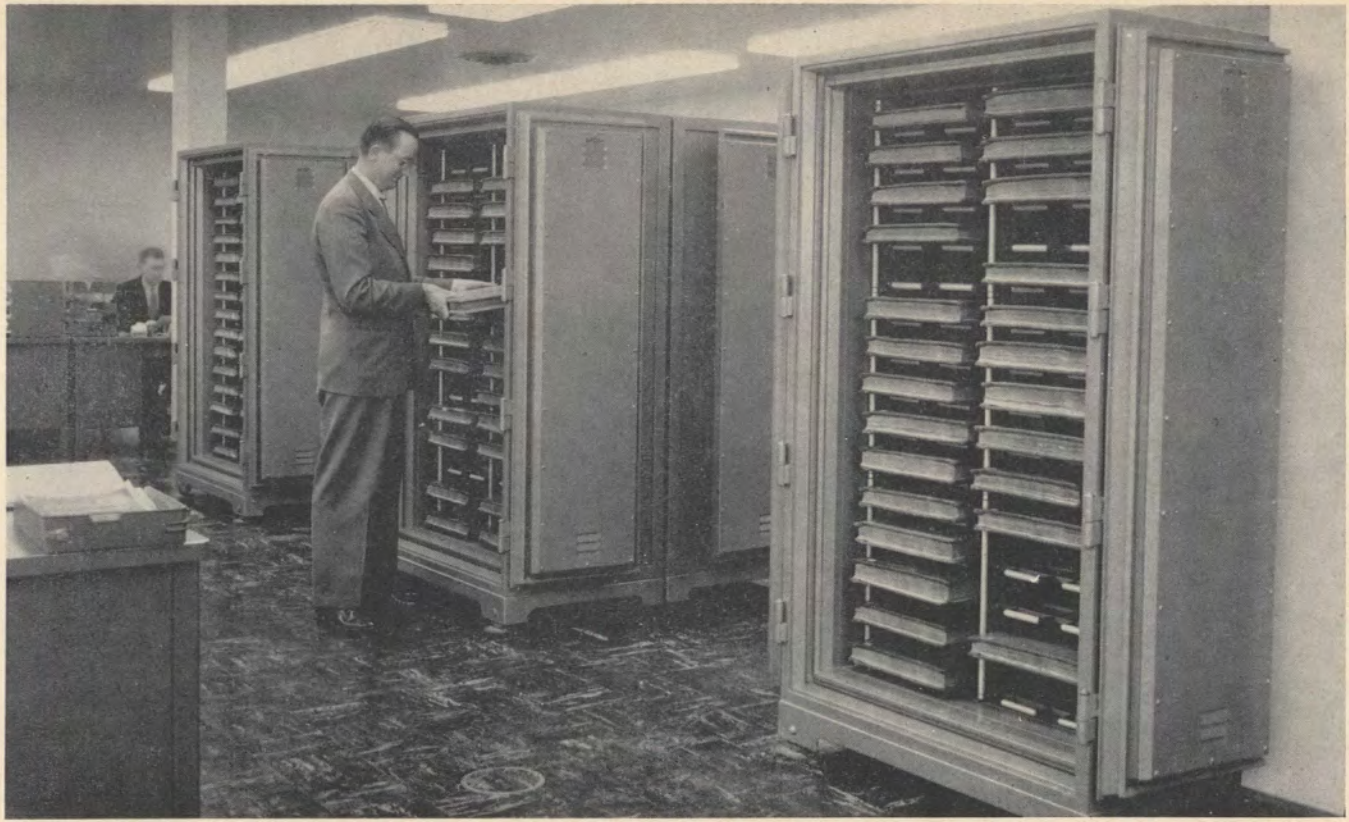
A drive-in window with a two-way speaker system has been installed on the south side of the building for the convenience of customers who desire to transact business without leaving their cars.

This general view shows the "open design" of the entire plant. The three private offices at the left are the only enclosed areas of the floor.

Automatic typewriting machines are part of the modern equipment, which has been installed to speed operations and step up title insurance service.

All production and customer facilities are available in one large room. Shown here is a close-up view of one of the company's examining units.

Another important feature of the new offices and title plant is the law library and reading room, not yet completed, which have been set aside for the use of the DuPage County Bar Association.



Tract books are conveniently accessible along the west wall of the large customer area.

COMING EVENTS

DATE	MEETING	WHERE TO BE HELD
Aug. 26-27	Montana Title Association	Old Faithful Yellowstone Nat'l Park, Wyoming
Sept. 2-3-4	Washington Land Title Association	Davenport Hotel Spokane, Washington
Sept. 9-10	North Dakota Title Association	Gardner Hotel Fargo, North Dakota
Sept. 10-13	New York State Title Association	Lake George Sagamore, New York
Sept. 16-17	South Dakota Title Assn.	St. Charles Hotel Pierre, South Dakota
Sept. 25-29	National Convention—American Title Association	Statler Hotel Cleveland, Ohio
Oct. 9-10	Kansas Title Association	Allis Hotel Wichita, Kansas
Oct. 13-14-15	Wisconsin Title Association	Northernaire Hotel Three Lakes, Wis.
Oct. 17-18	Indiana Title Association	Lincoln Hotel Indianapolis, Ind.
Oct. 31-Nov. 1	Missouri Title Asociation	Statler Hotel St. Louis, Missouri
Nov. 6-7-8	Ohio Title Association	Netherland Plaza Cincinnati, Ohio
Nov. 17-18-19	Florida Title Association	Tampa Terrace Hotel, Tampa, Florida

OTHER MEETINGS OF INTEREST

Aug. 22-26	American Bar Association Convention	Bellevue-Stratford Hotel Philadelphia, Pa.
Oct. 31- Nov. 1-2-3	Mortgage Bankers Association of America	Statler Hotel Los Angeles, California