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ABSTRACTS OF TITLE TO MINERAL LANDS

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(This is the text of an address delivered by Colonel Atwood before the New Mexico Title Association convention three years ago. It was recently distributed to the membership of the New Mexico Title Association and we feel it a timely inclusion in Title News in the light of increased activity in the mineral and oil fields throughout the country. Colonel Atwood is a reputable authority throughout the Southwest in the oil and gas lease field. He is a member of the bar of New Mexico and Texas and a member of the American Bar Association. He was admitted to practice in 1906 and was Lt. Colonel of the Infantry in World War I. We thank Colonel Atwood for the privilege of carrying his scholarly treatment of an interesting division of the title and abstracting business.—Ed.)

INTRODUCTION

This talk is limited to questions and problems pertaining to mineral titles. While many problems are common both to mineral and non-mineral lands, generally speaking, the examination of titles to mineral lands involves questions which are rarely presented in the ordinary examination of land titles.

Many of the observations which I shall make present nothing new to many of you abstracters whose experience has already taught you the absolute necessity of making your abstracts on mineral lands reflect everything pertaining to the title which the records disclose. I trust you will bear with me in presenting matters with which you are familiar on account of the reasons which I present in explanation of some of the requirements of mineral title examiners which some abstracters have considered unnecessary and unduly burdensome.

Generally speaking, instruments in a mineral abstract are required to be much more complete than is the case with ordinary titles, lest the instruments contain some obscure clause not shown by the abstracter which will be seized upon by a title jumper if the land should ever become valuable for minerals.

FORM OF ABSTRACTS

It is immaterial whether the abstract is made up on letter size paper or legal size. The caption should clearly show whether the abstract is a base abstract or supplemental. If possible an accurate plat of the land should be shown. The abstract should contain all matters of record pertaining to the land which may be disclosed by the records in the Office of the County Clerk, including the records of the Probate Court, the records in the Office of the District Court, and the records in the Office of the County Treasurer. Of course, the records of the County Clerk include the record of Federal Tax Liens which is very important because a Federal Tax Lien covers everything in the way of assets belonging to the taxpayer which are located in the county. The search will also cover the record of judgments in the County Clerk's Office. It should be borne in mind that a judgment does not become a lien upon the property of the judgment debtor until a duly certified transcript of the judgment

is filed. The recording in full of the judgment does not create a lien. A judgment of a court outside the state cannot become a lien by filing in the Office of the County Clerk in this State. Suit must be brought upon the foreign judgment and judgment obtained upon it before a lien can be established. In this connection you probably are aware of the change in the law whereby a judgment for the support of children does not become a lien until notice of same is filed in the county in the manner specified by the Act of 1951.

Abstracters should bear in mind that no one who requires an abstract of title on mineral lands desires economy in the preparation of the abstract. It is better to spend more money and obtain the additional protection.

In showing mortgages, deeds of trust, mechanics liens, etc., which have not been released of record, the instrument should be shown in full; but if the liens have been released of record, it is sufficient to brief the instruments but show the release in full.

A note of warning should be sounded with reference to acknowledgments. In many counties of this state it is customary for the abstracter to give a summary of the essential parts of the acknowledgment. In many cases we find that these abstracters are not entirely acquainted with the statutory requirements concerning acknowledgments. For example, the New Mexico statute requires that when a wife joins with her husband in acknowledging an instrument, she shall be described as such in the certificate of acknowledgment. Not all abstracters are familiar with this requirement and a very large proportion of the notaries in the state apparently are not familiar with it. It is my opinion that the failure to obey this requirement makes the certificate invalid as to the wife so that the instrument is not legally of record as to her. The purpose of an acknowledgment is twofold, to entitle the instrument to record and to make the record prima facie evidence of the instrument so that it can be introduced in evidence without proving the signatures.

The certificate, of course, is an important part of the abstract. The certificate should show that the above named records have been searched. If a base abstract, the certificate should not be limited to begin with the patent, as is the custom with many abstracters. If limited at all, it should cover the period from the inception of the records. Many instruments are found of record affecting lands which were executed and recorded prior to the issuance of the patent but nevertheless are valid muniments of title. If the abstract is a supplemental then the period covered by same should be clearly stated. In all cases the hour of the day should be shown.

A special problem is presented in Rio Arriba County, which all of you know, is a highly active center of oil activity. The amount of patented land in the county is not large so that no abstracter has felt justified in going to the expense of maintaining tract books. The county records are indexed as to grantors and grantees, as is the case in all counties. The result is that the abstracers in that county are compelled to limit their certificates to matters shown by the indices of the various records. I think all of you will agree that the effect is you have no abstract. If the patent is not of record, as is frequently the case, the abstracter has no name with which to start his search.

If there has been any activity in dealing with minerals in the particular county, it will not be very long before an abstract of any particular tract is a large volume. In that case, I recommend strongly that first a complete index of the abstract be inserted and second that abstracts of several hundred pages be divided up into volumes. It is quite a chore for an examiner to handle a 300-page abstract which is bound in a single volume.

ARRANGEMENT OF INSTRUMENTS

In fee titles the abstract usually opens with the patent from the Government even though some instruments of record antedate the patent.

This permits the examiner to check at the offset the question as to whether the land has been patented. Usually following instruments are shown in the order in which they appear of record but there should be some exceptions to this rule. For example, a mortgage or other lien instrument should be immediately followed by the release if a release is of record. This enables the examiner to check off the mortgage immediately in the preparation of his work sheet. Also if an instrument is not recorded for several years after its execution, it should be shown in the abstract in the order in which it would have appeared if it had been recorded promptly. An instrument kept from record for a long period of time always presents the question whether the instrument was delivered in the lifetime of the grantor. If it was not, of course, it conveyed no title.

The instruments in a probate case should be shown in the order of their filing. Many abstracters are quite careless in this respect due probably to the fact that the instruments are not in a bound file as is the case in the Office of the District Court Clerk. The important thing the examiner wants to know at the outset is whether the administrator or executor has duly qualified and given the notice of his appointment. The order of appointment should be followed by the oath and bond if one was filed and then the notice of appointment together with the proof of publication, thereafter the inventory and appraisal and claims if any, should be shown. In the case of a will, it should be shown immediately after the application for probate.
If the estate is removed to the District Court, then the order of removal should be shown followed by the proceedings in the District Court.

PHOTOSTATIC COPIES

Nearly all of the counties in which mineral activity exists have adopted the system of recording instruments by photography. In those counties the abstracter makes up his abstract as far as possible with reprints of these photographs. This removes some of the title examiner's worst headaches although he is likely to develop a headache from eyestrain because the photographs are not always as clear as they should be. You can realize that it is a distinct advantage to a title examiner to see the instrument as it really exists.

When I first undertook to examine mineral titles in 1920, I took advantage of every opportunity to discuss titles with experienced landmen of the oil companies. Their practical knowledge of title was most thorough. I shall never forget the advice given me in the early days by a landman of the Pure Oil Company, who had had years of experience in Texas in buying leases and curing defects in title. He pointed out that the most important parts of an oil and gas lease are the land description, the term of the lease and signatures. In those days photostatic copies were rarely used. Upon his advice I required the production of the original lease even though the lease in full should be shown in the abstract. The lease was examined closely for any evidence of alterations in the land descriptions and in the term of the lease. Also, if the lease was executed by a husband and wife their signatures were carefully scanned to determine whether they had been made by the same person. In my experience I have had cases arising where all of these things had been done. I recall a case where the land was, we will say, the SW¼ of the section. The abstract showed an erasure with respect to the description and the original lease also showed an erasure. The broker explained that the lease had been erroneously written as the SE¼ and that the error had not been disclosed until after the abstracter had made his take-off of the instrument. Without informing the broker that I was doing so, I communicated with the County Clerk and found that the lease on his records appeared as the SE¼. There was some embarrassment on the part of the broker. I recall another occasion when the original lease indicated a possibility that there had been an erasure as to the term of the lease. As presented for my in-

spection and as recorded in the county the lease provided for a term of ten years. The evidence of alteration was not clear and I passed the title. When my client deposited the rental for the sixth year he was met with an outburst from the lessor, a woman who insisted that the lease provided for a five-year term when she signed it. The lessee was required to pay all his profit to the lessor in order to get a ratification of the lease as a ten-year lease.

The matter of signatures is most important. If the instrument does not bear the genuine signature of the lessor then the burden is on the lessee to prove that the signature was authorized by the lessor. As you gentlemen know, a forged instrument, although of record, is no protection to one claiming under it. It is a nullity and unless the facts are such that the lessor can be estopped from denying the signature, he is not bound by the instrument. I recall a case where it was evident from an examination of the lease that the signatures of the husband and the wife had been made by the same person. The acknowledgment was regular but investigation disclosed that the couple lived at some distance from the town where the lease was signed and it was not convenient for the wife to make the trip so the husband signed her name as well as his own, and the notary public certified that they both had appeared in person and acknowledged the instrument. I rejected the title and required a new lease, much to the disgust of the broker who negotiated the deal, and who was entirely innocent in the matter. A few years later one of the companies lost a valuable lease in Lea County by a suit brought by the heirs of the couple, both of whom were dead. They proved that their mother could not write her name and there was no proof that she had authorized the husband to sign the lease for her.

Now with photostatic copies of the original lease on record, and included in the abstract, we no longer require the production of the original instrument.

FOREIGN ACKNOWLEDGMENTS

I have already referred to the common error on the part of notaries by which they fail to describe the wife as such in their certificate. Some excuse can be made for the Texas and Oklahoma notaries who are not familiar with our New Mexico statutes, but at least our own notaries should inform themselves concerning the law as pertaining to acknowledgments. However, lawyers in other states have no excuse for failure to use the New Mexico forms of acknowledgments because everyone of them has the forms in his office. The difficulty is too many of the attorneys in other states assume that the laws of the state where the instrument is executed should control when, as a matter of fact in the case of real estate, no other state has a right to legislate as to forms of conveyances of such lands any more than the courts of another state have authority to determine ownership and rights pertaining to lands in this state.

One of the common errors by foreign notaries is the failure to use the New Mexico corporate form of acknowledgment. It requires that the person making an acknowledgment be sworn to certain facts. I do not know of any other state which makes this requirement although the New Mexico form was probably copied from some other state. As I have pointed out, when the New Mexico statutory requirements, as to an acknowledgment are not met, there is always the possibility that the failure to do so prevents the instrument from being of legal record when filed with the clerk. It is true that only substantial compliance with the New Mexico statute is required but a title examiner cannot make guesses as to what our courts will hold to be substantial compliance. This situation has been a matter of much concern so that we find nearly every session of the Legislature passing a curative statute whereby previous faulty acknowledgments are treated as valid. We accept such statutes at their face value but we wonder from time to time when the lightning will hit us by

holding of our Supreme Court that the curative statutes are not valid.

INNOCENT PURCHASERS

All of you gentlemen are well aware of the New Mexico statute which makes an unrecorded deed void as against purchasers of the same property for value who are without knowledge of the unrecorded deed. Such purchasers are ordinarily referred to as innocent purchasers for value. To take advantage of the statute two things are required of the purchaser. He must receive title to the property and he must pay the purchase price for same without knowledge of the unrecorded deed and without knowledge of any facts sufficient to put him on inquiry. The purchaser is charged with knowledge of all facts which an examination of the land would disclose. For example, if the land is in possession of someone who does not have record title, his possession is sufficient to put any prospective purchaser on notice that the occupant has some rights with respect to the property and the purchaser must be diligent in making inquiry of the occupant to ascertain his status. The occupant could be in possession under an unrecorded deed or he could be in possession under a contract of purchase with the deed in escrow to be delivered when he completes the terms of purchase. In a recent case one of the oil companies purchased a lease in San Juan County upon land which was in possession of a third person. The leasee knew of such occupancy but the oil company purchased without making any investigation as to occupancy.

You abstracters have occasion frequently to include affidavits in your abstracts. The question often arises whether the affidavit, which clouds the title, is notice to a prospective purchaser. It is my opinion that if the prospective purchaser learns of the affidavit, he is put on inquiry. If, however, he does not know about it, it is my opinion that it is not constructive notice in that it is not an instrument affecting the title. Therefore, if the purchaser does not have his title examined, he probably will not learn about the affidavit but naturally the affidavit will show in any abstract covering the property so that the purchaser will obtain actual knowledge of the claims of the affiant. I hace a rule that I will not file an affidavit for a client merely for the purpose of clouding the title. If he has a genuine claim against the property he should make it a matter of record by filing suit and at the same time filing a Lis Pendens in the Office of the County Clerk. With reference to Lis Pendens, it is surprising how many are filed with the District Court Clerk instead of with the County Clerk. Naturally, the filing in the District Clerk's Office is not notice since the statute distinctly requires that the notice be filed in the Office of the County Clerk where it will be found by anyone searching the records pertaining to the lands.

We title examiners find a quite common fallacy to exist among persons interested in land titles with respect to the effect of recording an instrument. This fallacy is often expressed as "prior in time means prior in title." Such is not the law. The rights of a purchaser of land are determined as of the time when he pays his money and obtains title. If at that time an unrecorded deed is outstanding, of which he has no knowledge, then he gets good title even though the unrecorded deed should come of record before his deed gets to record. In like manner by delaying the filing of his deed until a third person purchases without notice of same, he will lose his title in favor of the third purchaser. Therefore diligence in recording his deed is required, not to perfect his title against the first purchaser whose deed is unrecorded, but to prevent the same thing happening to him that happened to the first purchaser. It may be expected that a person who will sell a second deed to his property, knowing that he has already conveyed to another, will in like manner sell to a third if he thinks he can get away with it.

STATE LEASES

My remarks up to this point are directed principally at titles to fee

lands. Many of the things I have said are of equal application to titles to State leases and Federal leases.

The State's title to a particular tract depends upon whether title passed under the Federal Act by which the land purportedly was granted. By far the greater part of State lands were granted for common school purposes prior to statehood. Sections 16 and 36 in each township were granted. The Enabling Act, which conferred statehood upon the territory, added Sections 2 and 32 in each township and confirmed the prior grant to the territory. There were certain exceptions to the granting acts which may be generally stated as excepting and reserving of any of the said designated sections as may have been previously disposed of, or withdrawn, or which may have been occupied by intended settlers at the time of the identification of the particular section by survey. This provision of the law has been construed as meaning approval of the survey by the General Land Office. Three sections in Eddy County were lost to the State by reason of the fact that before the survey was approved in Washington, a stock drive-way withdrawal of the lands was filed. The title to the State was not questioned for a number of years but when the land acquired prospective value for oil and gas, an individual filed an application for oil and gas prospecting permit covering the land and the State lost.

We therefore require in all cases where the four numbered school sections are involved that we be furnished with an abstract of the United States Land Office records showing the plat of survey and date of approval in Washington, and also the entries on the tract book pertaining to the section to ascertain whether the land was subject to the grant at the time the survey was approved or when the grant took effect.

There has been so much traffic in State leases for the past thirty years that we no longer require that the abstract contain copies of all instruments affecting the land which the files of the State Land Office disclose. We accept a brief outline by the abstracter showing prior transactions pertaining to the land and then we require that all of the proceedings connected with the issuance of the existing lease be shown. These are usually included in the abstract by use of photostatic copies. In that way we have access to the original assignments in the chain of title. There was a time when the land office was grossly careless in the matter of assignments with the result that there was considerable litigation over titles. For some time past the land office has been quite strict in the matter of erasures, etc., in assignments and now we have very little trouble by reason of happenings in the land office.

In addition to abstracts of the records of the State Land Office which pertain to State oil and gas leases, we also require abstracts of the county records on account of the fact that instruments of record in the county affecting the title may not be on file in the State Land Office. By statute the leases and assignments on file in the State Land Office are considered as having the same effect as if recorded in the county so that it is no longer necessary to record these instruments in the county. The records of the State Land Office in this respect constitute notice to prospective purchasers.

Under existing statutes, assignments of an undivided interest in a State lease or to more than two assignees cannot be approved by the Commissioner of Public Lands. Also the Commissioner will not approve any assignment which contains special provisions not provided for in the official form of assignments. Therefore in cases where the assignor reserves an overriding royalty or an oil payment, a separate instrument is executed between the parties which is recorded in the county. This is in addition to the formal assignment which is on file in the State Land Office.

FEDERAL LEASES

Many of the observations which I have already made concerning fee land titles and State lease titles are applicable to abstracts of records

pertaining to Federal oil and gas leases. A special problem confronts the abstracter in that the Federal Land Office is not an office of record as is the Office of the County Clerk. All instruments filed in all transactions pertaining to Federal leases are supposed to be noted on the tract book and the serial record of the particular lease. These notations, of course, do not show the instruments in full so that we require that these instruments be recorded in the county and included in the county abstract. I had occasion recently to require the production of an assignment in the chain of title which had been noted on the serial record and found that the assignment contained a special provision whereby it terminated if no production should be obtained on the land within a specified period.

As in the case of State leases we require two abstracts of title in connection with the examination of a Federal lease. One abstract, of course, shows the records of the United States Land Office which, as I have stated, are often incomplete. In many cases the abstracter finds the instruments which have been filed affecting the lease have been forwarded to Washington. We also require an abstract of the county records together with a certificate of the abstracter showing a search for unsatisfied judgments and tax liens against all persons appearing in the chain of title.

One of the most serious difficulties experienced by both abstracter and title examiners with reference both to State leases and Federal leases is the failure of the officials concerned to maintain a reception book. This is more serious in the State Land Office than in the Federal Land Office because there have been occasions when the lack of a reception book made it easier for dishonest persons in and out of the land office to perpetrate frauds. I have hopes that the present Commissioner of Public Lands, when he becomes sufficiently familiar with the workings of his office, so as to appreciate the need for a reception book, will proceed to install one.

CONCLUSION

Necessarily I have been able to hit only some of the high points in this discussion. If anyone present has any particular question he would like to propound, I will be glad to take the opportunity for further discussion privately. If the President of the Association desires, I will be glad to undertake to reply to any question which may be propounded now from the floor. Please understand, however, that I do not guarantee to be able to answer all of the questions. There is much about land titles which I do not know. Almost daily I learn something new. Land titles certainly constitute a fluid subject.

REMINDER . . .

ATA NATIONAL ADVERTISING CONTEST

Members should be well organized now to submit their entry to the American Title Association National Advertising Contest to be held in conjunction with the Annual Convention in Miami Beach, October 17-20. Ship your entry of advertising material to arrive by September 15. Ship prepaid to Fountainebleau Hotel, Miami Beach, Florida marked

"Attention of: Mr. H. D. Kerr, Jr.—
Hold for American Title Association Convention"

Let's make this the biggest and best advertising contest ever.

A LAWYER'S OPINION

(We are grateful to Mr. John Mays, Inland Abstract Company, Tavares, Florida, for sending the following letter to national headquarters. Mr. Mays obtained permission from the author and from the parties involved. Undoubtedly, there are many others similar in nature in the files of member companies. We hope this one will encourage other members to submit them for future publication.—Ed.)

CLAYTON J. WEIR
Attorney at Law
Groveland, Florida

May 22, 1956

Mr. John May
Inland Abstract & Title Company
Tavares, Florida

Dear John:

We received the Chain of Title (your invoice No. 4344) on Joe Giachetti, Jr., property, and there was a lot of extraneous material in this chain of title. Somehow or other there will have to be some kind of affidavit prepared that will clarify some of this. Joe Giachetti, Jr., is not Joseph Giachetti. Mary Giachetti, wife of Joseph Giachetti, who obtained a divorce, was not the same person as Mary Giachetti, the wife of Joe Giachetti, Jr., who also obtained a divorce. Neither was the Mary Giachetti, present wife of Joseph Giachetti that was adjudged insane, either one of the other two Mary Giachettis. In other words, Mary Giachetti, the wife of Joseph Giachetti was not the same as Mary Giachetti, the wife of Joe Giachetti, Jr. Then after the original wife of Joseph Giachetti obtained a divorce he married another Mary Giachetti, who was adjudged insane. I wish you would tell me how to straighten this out on the record. You can gather from this two Joes were married to three Marys. You figure it out and let me know what to do.

Also, Joe Giachetti, Jr., is not a junior at all. He merely uses the name junior to distinguish him from the other Joe or Joseph Giachetti. They are cousins of a sort. Locally, they are known as Joe and "Crazy" Joe, although "Crazy Joe" isn't crazy.

Very truly yours,
CLAYTON J. WEIR

A DISCUSSION OF OPEN-END MORTGAGES

E. J. McWILLIAMS, *Executive Vice President*
Fidelity Savings and Loan Association, Spokane, Washington

SUPPLEMENTARY REMARKS

RALPH H. FOSTER, *Chairman of the Board*
Washington Title Insurance Company, Seattle, Washington

(From the proceedings of the last convention of the Washington Land Title Association we feel fortunate to be able to render this interesting and learned presentation. Although specific attention is devoted to local state laws, the discussion has application to other areas also. We believe benefit can be derived by reading these comments of recognized authorities in the field.—Ed.)

Mr. Chairman, and Gentlemen of the Title Insurance Industry. It is a real privilege for me to be here, and to be given the opportunity to talk with you from the standpoint of our side of the business.

In the past ten years I have had quite a little opportunity to talk to Ed Courtney and Chum Funk, Carl Scheuch and others of the title companies in Seattle, and usually when I talk to them I would start out: "I have a problem." And, I'm always glad to report to anybody that when we do have a problem and submit it to the title companies, usually, we get an answer. It's always interesting from our standpoint to get up and talk about the mortgage business. Because, although we don't see the volume of mortgages that you do, and don't look at them from the technical aspects that you do, still, they are our bread-and-butter, our life's blood, and they provide us with all kinds of problems.

This business of open-end mortgages is more and more in the public eye, and more and more in the talk of mortgage men, title men and realtors, and the whole mortgage business. It isn't a new topic, but it is one that has become more popular and of greater interest in the past few months, and perhaps, even years.

An open-end mortgage is simply a contract between the lender and the borrower, providing that future borrowings after the original advance may be secured by the original mortgage. It has certain advantages. From the standpoint of the borrower, it permits him to modernize a house or to take care of needed expenditures or to perhaps send the child through college, or to take care of illness, all on the basis of easy payments, and a low down payment. And, by so doing using the original credit instrument to eliminate the refinancing cost which becomes more and more heavy each year. This has a great many advantages to him. It's also advantageous to the lender. Because it provided a source of additional loans, a chance to extend additional money on a known borrower, eliminating the problems of re-examining credit risk; and it allows him to go ahead and use the same security which has been in most cases improved and at the same time by not an unduly large advance in relation to the value of the property.

THREE TYPES

Future advances on open-end mortgages have three different types. The first of them is where the lender is obligated to make an additional advance in accordance with an agree-

ment that is entered into at the time the mortgage is entered into. The second is where the lender is not obligated by the nature of the instrument to make an advance; but, because of the chance that the security itself might be impaired, and, without the consent of the borrower is able to make additional advances. The third is where an agreement is entered into at a future date between the lender and the borower to extend money on the basis of the original credit instrument. An example of the first type of advance is, common construction loan; where a builder or owner plans to construct a building and a mortgage is then placed on record out of which construction funds are to come. It's been held universally, that the lien of that mortgage is prior to any subsequent liens; because, by nature of the arrangement between the builder or owner and the lender. It is compulsory upon that lender to proceed and disburse the funds. There has been litigation on that subject, as there has on every other part of the mortgage field, it is pretty-well understood and has been held in most jurisdictions that, where this lien is compulsory of nature, that the lender may proceed and disburse funds, even though liens may occur other than mortgage between specific advances under that original mortgage. The case was, primarily, in our area, here; determined in the case of Ziron vs. the Mutual Reserve Association, in which the Court held; that, there was no question, but that the advances under that mortgage could be made despite the existence of a lien by mechanics or by material men, or a second mortgage instrument, during the advance of the funds during the construction period.

The second type is just as clear. It occurs when the property has suffered waste, or where the borrower or the owner in fee of the property fails to pay taxes or assessments which can impair the priority of the lien of the mortgagee. These two types are not what we are considering today, they are definite types of future advances, and yet, what we most commonly speak of when we talk about open-end mortgages, and the subject of future advances is the third type.

In this third type, which is the advance at a future date, such as mentioned of money for sending children through college or for additions to the property, modernization and repair of the property. This type of advance is not new; under the Common Law of both England and this country from earliest time, you will recall that a deed could be given to secure debt, and that until all of the indebtedness that the borrower owed was repaid, that that property need not be re-conveyed to the original holder in fee. First mortgages properly drafted to secure these additional advances and properly described as to the amount, and as to the purpose of the advance have also been held valid, under the Common Law. Jones, on mortgages in Vol. I, Sec. 457, says that the rule of a recorded mortgage expressed to cover future advances has priority in all cases over subsequent conveyances and encumbrances has full support in recent decisions and, must now be regarded as a settled rule of law; notwithstanding all the refinements which have been introduced into the law on this subject by the many conflicting adjudications upon it. There is strong reason and authority for the rule, that a mortgage to secure future advances which, on its face gives information enough as to the extent and purpose of the contract, so that anyone interested may by ordinary diligence ascertain the extent of the encumbrance, whether the extent of the contemplated advances are limited or not, and whether the mortgagee be bound to make the advances or not, will prevail over the intervening claims of purchasers and creditors as to all advances made within the terms of such mortgage; whether made before or after the claims of such purchasers or creditors arose, or before or after the mortgagee had notice of them. So much for the types of future advances.

MUST BE DEFINITE

Some of the problems, as you probably are all aware, with regard to

these optional types of future advances, are real problems, as well as imagined problems. I was going over what I was going to say at home last night, and got to this point, and my ten-year-old boy was reading over my shoulder and he said: "Wow, what are you going to talk about when you come to that?" And, that is the subject that I talk about now, "Specificity." It has been pretty generally held that a fuller expression of the party's intention must be set out in a mortgage, clear enough so it will serve as notice to anyone exercising common prudence as to the nature and type of these optional future advances. It also should provide the upper-limit of these advances. In the Mid-West they have in Court Decisions discussed the subject that you probably didn't know was a matter of law. They call them "Drag-Net Clauses." And, my knowledge of drag-net was something different, until I started digging into this problem a little further. The drag-net clause, as it has been held in Iowa and in Kansas, appears to be the problem, whereby in a mortgage instrument it will be recited that any and all future advances, for any and all purposes can be made under this instrument. The Courts have held that that is just a wee-bit too broad. They say that you must have some definite expression of what the advances must be.

REGARDING NOTICE

Then, there is the problem of notice. There has been considerable discussion as to what constitutes notice. To the prior lien-holder in the making of future advances, the Courts in thirty-one States, which is a majority, have held that this notice must be one that is given specifically; it's actual notice, not a constructive notice that there is another lien against the property. Washington falls among that group of States. And I say that very definitely, knowing that any lawyer in the room will immediately object to it and say that it isn't settled, because there have been determinations both ways, as to what constitutes notice in this State. It's a pretty general rule of law, I understand, and, I'm no lawyer, that the notice implied by the recording of an instrument acts forward upon future creditors and encumbrancers, purchasers, but, does not act backwards against those who have liens prior to the recording of this second instrument. That seems to be the basis of the whole discussion. As to whether an optional advance occurs at the time the advance is made, or whether it occurs at the time the instrument itself is delivered to the mortgagee. Those who follow the majority rule are called those who follow the California rule. And, this was decided in 1951, more or less definitely, as all matters of law are decided more or less definitely, in the case of Oakes vs. Linegartner, and the Court held in these words that notice must be actual, although the lien of the mortgage does not operate to secure optional advances made under the mortgage after the mortgagee has acquired actual notice of an encumbrance subsequent in point of time to his mortgage, so, as to defeat or impair the rights of the subsequent encumbrancer. The mortgage does have priority over all liens subsequent to its execution and according to the extent of advances made without actual notice.

The rule which is followed in the minority of States is one that was determined in the State of Ohio, in the case of the Second National Bank of Warren vs. Boyle, in which the Court held that obviously where there is no obligation to make future advances a mortgage purporting to secure advances cannot secure such advances, until the advances have been made. Until then, so far as such advances are concerned, there is nothing for the mortgage to secure, and the provisions merely represent an expression of the intention that the mortgage shall operate as a security for the obligations of the mortgagor with respect to such advances, if and when such obligations arise. At most, those provisions represent an offer by the mortgagor to provide the security of such advances, if and when they are made. Another problem, which I mentioned briefly is the form

in which the notice must be given to the mortgagee in an actual notice; it can't be done through the recording statutes, in the States which follow the majority rule. It can be done in the States which follow the minority rule. Here, again, it's assumed that Washington follows the majority rule.

ACTUAL - CONSTRUCTIVE

Pomeroy, in Equity Jurisprudence, Vol. 3, Sec. 1199, says that when a mortgage to secure future advances reasonably states the purpose for which it is given, its record is a constructive notice to subsequent purchasers and encumbrancers. They are, thereby, put on an inquiry to ascertain what advances or liabilities have been made or incurred. The record of a subsequent mortgage or conveyance, or the docketing of a subsequent judgment is not a constructive notice of its existence to such prior mortgagee. The prior mortgage, therefore, duly recorded has a preference over subsequent mortgages or conveyance or subsequent docketed judgments, not only for advances previously made, but, also for advances made after their recording or docketing without notice thereof. As the record of the second encumbrance does not operate as a constructive notice, but, requires an actual notice to cut off the lien of the prior mortgage. And, the subsequent encumbrances are made by giving actual notice at any time to prevent further advances from being made to his own prejudice.

That, brings us to the problem of what the lender or mortgagee in this State has to worry about in making open-end advances. In all of our title policies we find the recitation that the mortgage that is placed of record is recognized as a mortgage which will secure future advances as such, but, that the priority of such advances is not insured. If I were in the title business, I would be darned-sure to put that in. I certainly can understand why the title companies do it. I think that that points out what must be done in the case of the lender in this State, when he does make an optional or future advance. The common practice, of course, is to get a line abstract, or to get an extension of the policy or whatever method is used by the particular insurance company to take care of that amount. In our own mortgages we use an instrument which provides that the mortgage is given to secure a debt of so many dollars plus additional advances not to exceed 10% of the original amount. And, for some time we have followed the practice in Seattle of obtaining our mortgage policy for 110%, the amount of our mortgage, and I would think that would be good business for the title companies, too; except in the case where it is a simultaneous issue and you get $10.00, whether it is for a $5.00 mortgage or a $50,000,000.00 mortgage. But, it takes care, from our standpoint, of the insurance of the total amount of the projected debt on that particular piece of real estate.

SEARCH THE RECORD

At the time the advance is requested by a borrower, of course, the lender has to do several things. First of all, he must again make a quick search of the credit-standing of the borrower; he must make through the title company a search as to the condition of the title as it stands at that time, and he must, of course, make sure that the security itself, the real estate is in proper proportion to the amount of extended loan.

I think, that the problem of additional advances is one that we are all going to see more frequently as time goes on. It's a logical and sensible approach to taking care of the needs of the borrower, and both you in the title business, and we in Savings and Loan Business, or in a Mortgage Business are primarily there to take care of the needs of the public. If we were to design all of our policies and practices and instruments in a form that would suit us best, probably, the mortgage as it is recognized today and the title policy as it is recognized today would be entirely different from what they are. But, that isn't our function. Our function is to provide a service to the borrower through a type of mortgage contract, through a type of title policy that will take care of his needs in the easiest and

most practical form. Now, the matter of open-end mortgages is one that has been discussed pro-and-con around the country for some time.

A friend of mine, who is in the Office of the United States Savings and Loan League in Chicago, had been spending a great deal of time going around the circuit talking on the subject and in one place he came into a town and about thirty minutes after he started talking, a gentleman in quite an inebriated condition walked down the aisle and sat in the front seat. He talked along for about five minutes more, and then, the man said: "Say, how long have you been talking on this subject?" And, he said: "Well, I've been talking for about three months." And, the drunk said: "Well, you ought to be just about through, so I'll stay." And, in case you think I've been too long, I'll quit, too.

REMARK BY
MR. RALPH H. FOSTER

We've been familiar with open-end mortgages for a number of years. Mr. McWilliams alluded to the fact that the title insurance companies have for a number of years (I know in the case of my own company, it has been our practice for a good number of year) when called upon to insure the lien of a mortgage, making provision for future advances, to insert a note in Schedule "B" to the effect, that the mortgage to secure future advances is insured as such, but, the Company does not undertake to insure the priority of the future advances, or words to that effect. Now, there has been a great deal of discussion, locally, and nationwide, as to the States in which optional advances are secured by future advance mortgages. If my memory serves me right, an article in "House and Home" placed Washington among the States in which future advances, even though not mandatory, were secured and had priority over intervening creditors' rights. Anyone in this room who knows definitely what the Supreme Court of Washington will hold with respect to an optional advance by a mortgagee as against the rights of an intervening creditor is better advised on the present status of the law of Washington than your speaker. I think it's safe to say that question is very much in the realm of the unsettled. We're indebted to our good friend the late Mel Ogden for a very effective answer to one of the articles in "House and Home," in which the implication was that future advances, even though voluntary, had priority over the rights of intervening creditors. Mel pointed out one situation in California where that would not be a safe assumption. That would be a case where a future advance was proposed to be made under a first deed of trust, when in the meantime there had been a second deed of trust, under which there had been a sale and transfer of the property had been made to the beneficiary of the second deed of trust. Manifestly an advance to the grantor in the first deed of trust would be hardly a safe advance to make in the light of the fact that at the time of the advancement title was lodged legally in the b e n e f i c i a r y of the second deed of trust.

REQUEST FOR SERVICE

Now, I'll recount to you something that I apprehend all of you know: The steps which have recently been taken by the Title Insurance Companies in Seattle, responsive to this well-merited demand for coverage of advances under mortgages containing optional provisions for advances. As Ed pointed out in his talk, many of the Savings and Loan Associations have in the past been content to accept what we have, for want of a better term, designated as "Line Abstracts," which as you know are very brief memoranda as to the changes in title which have occurred of record since the mortgage containing the provision for future advance became a lien upon the property. That type of coverage, of course, left the holder of the mortgage without insurance under the contract of insurance, and relegated the holder to the abstractor's liability in certifying the changes in the condition of the title subsequent to the time the mortgage containing the provision for future advances, became a lien upon the prop-

erty. That form of protection was not deemed adequate, by particularly some of the Life Companies, and other out-of-state secondary lenders, who insisted upon greater protection. We had a provision in our Schedule previously which contained provision for renewal insurance, which served quite well in covering future advances of sizable proportions. In other words, the premium for the renewal policy was frequently out of keeping with the amount at risk under the advancement.

SOLVING A PROBLEM

But, so many of the advances are small and the rate provided for in the Schedule applied to the amount advanced made the cost of the protection out of proportion to the amount advanced. It was inevitable, that, if the future advances were small and were to be insured by any kind of a policy whether it be a brand new one, or what we call a renewal policy, the cost as against the small advances would be heavy from the standpoint of the borower and the lender, but would call upon the Title Insurance Company for an amount of work not only in searching the record, but, in writing the policy which would be out of keeping with a premium commensurate with a small amount that was to be advanced. So with fear and deep apprehension that the practice of indorsements might lead to the practices of the California companies; we hit upon the idea of providing an indorsement to the policy. It's short, much of it printed or mimeographed, so that the labor beyond the actual search of the record of producing something satisfactory to the company was reduced to an amount enabling us to issue the indorsement at a premium more commensurate with a small advance. That practice is one we're very happy that we were able to arrive at because, my good friends, we in the Title Industry are service people; we want our product to serve our customers, and we want to bend every effort toward making available to our customers everything that they need.

Now, I might touch just very briefly upon one other subject which Mr. McWilliams has very correctly told you; that a **mandatory** future advance in a mortgage would have priority over the rights of subsequent creditors. If that were not the case we would be holding the ball very badly on construction loans, because very frequently it's some time before the mortgagee actually makes an advance to the borrower. Where the advance is **optional,** as I said before, I'm not prepared to say what the law of Washington definitely is until our Supreme Court has settled it. There are Decisions that lend support to a conclusion that even non-mandatory advances are secured. But I think that a careful study of the Decisions of the Supreme Court of this State will lead to doubt on that subject.

TITLE CLOUD

By Harry A. Cotter
Vice President, Title Guarantee & Trust Co., New York, N. Y.

A title to me meant dukes and earls
Or princesses with long blonde curls,
A cloud (and please forgive this pun)
Was moisture duelling with the sun.

I'd built me a house upon a rock
And raised my family, quite a flock!
And all in all was quite content
Before I found out different.

My eldest son with a thirst for knowledge
Within the year would be in college,
My funds were low, I faced a shortage,
And so decided to raise a mortgage.

My house was mine, all free and clear,
Had grown in value from year to year,
And so I went to the Savings Bank
To see the President, my old friend Frank.

He said of course they'd make the loan,
And when they were ready he'd telephone.
He said they'd have to search the title,
But in my case 'twould mean nothing vital.

I received that call in just two weeks,
A call that brought pallor to my cheeks.
We can't make the mortgage, Frank had to say.
Your title is clouded, we learned today.

You bought from the Estate of Robt. Brown,
A leading citizen of this town.
Who took such pride in his vigorous health
He left no will to dispose of his wealth.

It seems that many years ago
Robt. Brown had a son named Joe—
A n'er-do-well, whose actions base
Had brought his family great disgrace.

And then one cold and wintry night,
He dropped completely out of sight.
No word was heard all through the years
And his family shed no bitter tears.

The Brown attorneys tho' well intentioned,
Forgot poor Joe and he was never mentioned.
But Joe who'd been sailing the seven seas,
Is back again and has filed his pleas.

He claims to be his father's heir,
And insists on having his rightful share.
My heart was sick, my head was bowed,
I could hardly keep from crying aloud.

This house of mine built on a rock
No longer mine? An awful shock!
Slowly my head began to clear,
I was thinking back from year to year.

To the year that I had built my house
And my conversation with Charlie Douse,
"Insure my title?" I had wailed,
"It costs too much," but he had prevailed.

My heart was light, my head was high,
The clouds disappeared from my title sky.
My problems were now completely over
That title policy put me in clover.

They paid Joe off and got a release,
And my house is mine to enjoy in peace.
And now I've sung my roundelay
I have just one more word to say.

I was damned lucky to have that Title Policy.

SOME INTERESTING TITLE INSURANCE LOSSES

JOSEPH F. HUNT, *President*
Northwestern Title Insurance Company, Spokane, Washington

HUGH E. TULLY, JR.
Washington Title Insurance Company, Seattle, Washington

JOSEPH F. HUNT

I'm going to discuss today a little more of the serious side of the title insurance business from actual experiences concerning losses paid by the company which I represent. This is one of the best that we ever ran into and one of the costliest.

In June, 1904, the United States of America, issued a patent to an individual on 80 acres of land, which patent was duly recorded in the County Auditor's Office of the County in which the land was situated. From that date on, taxes were paid by that individual, or his successors in interest, and there were numerous transfers of that title. As the trees grew and became larger the land became more valuable. So, some four or five years later, he brought them to one of the larger milling companies on the Coast. In order to get to that land, it was necessary to cross over State owned land, and the representative of that company went to Olympia to apply for a right-of-way easement over certain lands that were owned by the State. He was, no doubt, asked why, and, he said: "Why, I have 80 acres that I am going to log." He did a little checking and he said: "What 80 acres are you talking about?" Well, he said this: "The North half of the Southwest quarter section 14, etc." He said: "You don't own that, we own it." The man said: "That can't be, I've got title insurance on it; I'm insured on it." Well, the result of that investigation brought out the fact that in 1899 a selection of land was made by the State of Washington under a grant of the United States for School purposes and this land was, supposedly, included. But, in all the searching of our records, we could not find where the law had been complied with, or where it had been in the original case. We later filed a second claim to that which we figured was not good, but, at any rate, we tried to make a settlement and almost made one, but, we couldn't quite do it. So, the only thing left was to bring suit to quiet title in favor of the present owner against the State of Washington. That suit was tried by the court. It rendered a very short decree, about one page, and said: "No, she belongs to the State." We took it to the Supreme Court; we got the same answer. Well, then, we started dickering for a settlement, and we dickered over a year and a half over that settlement; we finally settled that case for $36,000.00, on damages to the lumber company which owned the ground. Now, there's a case where there was absolutely no notice in the records of this county. I am sure quite a few of you know the case I'm talking about. There was absolutely no notice in the records to give a title company or anyone else any notice of the State's interest. The taxes had been assessed, and paid continuously, over all of these years. Now, I don't know whether that would be of any advantage to any title man or not, but it gives you an idea of what you might run into some day; and when you run into it and get snagged, why you're caught; you have to pay.

TAX SALE

I have another little interesting case that involved very little money. A man here from Spokane went up into a northern county and purchased at tax sale 160 acres of ground paying a small sum for it. And, he regularly paid his taxes for a good many years, and all of a sudden, he failed to get notices, so, he proceeded

to go up and find out what the trouble was: And, the County Treasurer said: "Well, another man is paying those taxes, you don't own that property." And, he got ahold of the title company, and he finds this: A man by his same name had been adjudged insane, and they checked the records and found the ownership of this piece of property, Ole Olsen, we'll say; so, he proceeded to administer this piece of property under his guardianship; sold it; another man brought it in, and our agent of this particular county insured the title. Well, this fellow said: "Well, it is all right, you have to account to me." Well, they finally dickered around and paid him what he wanted. Now, this gives you an idea. You absolutely have an identical name with the policy brought into the case, and still it wasn't the same man. I suppose, now, in California, that couldn't happen. But, I wouldn't be surprised, but that it has happened, regardless of all of their system of checking. By the time you get through answering questions and making affidavits and everything, they pretty well know you and who your grandmother was.

We had another case that is serious. The gentleman is sitting amongst you in the audience, and you might recognize him. We issued quite a sizable policy on this piece of property, and some very extensive improvements were placed on it. We were called upon to make a small search on that for a purchase by a Railroad Company. In getting into the title, they said: "My Got! What's happened here. That piece of ground was sold to the State of Washington along with a certain right-of-way, and the state had a good deed for it." Well, there was some dickering for three years; we tried all kinds of plans to get a settlement with the State and we had some opposition from the Highway Commissioners. Finally we hit upon a scheme, a suit to quiet title in which a certain amount of money was agreed upon and we put it up, small amount of $23,000.00, and quieted title against the State of Washington. We had a very interesting case, here.

You know, easements are my jinxes, and I'm just afraid of easements, and when I'm working on a title with easements, I try to be very careful, but no matter how careful you are, you are going to slip-up on one and when you insure a title free from an easement, somebody gets damaged awfully quick, and you'll have a terrific price to pay to get that title cleaned—buying out, you know, for a sum.

EASEMENTS

We insured title to the property down here which is now the Civic Building. They had started putting in their foundation walls; if they'd just been smart and waited a little while they would surely have stuck us good. The Spokane Club, next door, was in pretty bad shape at that time, and they felt they had a pretty good case. There was a 15-foot easement for an air-well immediately west of the Spokane Club property, that we had omitted in insuring this title to the Civic Building. Well, they just had their foundation in when they notified us of the fact that we had slipped-up, and we got busy on that one and through a lot of pulls and pushes we finally settled with the Club for $5,000, instead of $25,000; that's what they wanted to start with. Well, I could go on with cases like that, indefinitely; most of these things that I've said are what you know, ladies and gentlemen. I'm like the rest of the boys, my voice is getting a little dry, so, I give way to the next man.

HUGH E. TULLY, JR.

Several years ago, it occurred to me, that we have had a lot of interesting Indian Land Title problems in our office. I chose a few of those to mention. I didn't know, then, that the Indians would be on convention, concurrently, with us, so I only attempted to make a "package deal;" perhaps, it is just as well. As you can see, I'm scared of you, and the Indian would probably terrify me. Geneally speaking, Congress says their title policy, with respect to

Indian and their property, is aimed at preventing the Indians from improvidently disposing of their property. But, the details of that policy are lost in a maze of general and special Acts of Congress, often tacked onto revenue bills; for that reason when you have an Indian Land Title problem you can't just go to the book and get the answer with certainty. Title people aren't the only people with trouble, though.

We recall that there were two Indian Homestead Acts, one of 1875, which gave the Indian the right to enter under the White Homestead Entry Law, and upon fulfilling the requirements he would be under a fee simple patent, but, subject to a restriction, that for five years he could not alienate or encumber the property. In 1884, Congress passed another Homestead Act, which was applicable solely to Indians under the terms of which the United States would issue a Trust Certificate, with the Statutory Provision that title would be held by the United States for a period of 25 years in trust for the use and benefit of the Indian. In 1888, the Attorney General of the United States rendered an Opinion on the relationship of these two Acts and concluded that the 1884 Act was amendatory of, and supplemental to the 1875 Act. After that, I think, almost uniformly, patents were issued to Indians under the 1884 Act, although, in fact they had entered and qualified under the 1875 Act. Finally, in 1916, the matter went to the Supreme Court of the United States, which found that the Acts were completely independent, and that an Indian who was qualified under the 1875 Act, was free to make his entry under that Act, even though he might enter after the effective date of the 1884 Act.

HELD IN TRUST

There are the specific situations, which we have all had, which have occasioned a lot of research and correspondence, not only with our company, but with several title companies doing business in counties where there is a lot of Indian land, as to the insurance of mortgages upon allotted lands which are held by the United States in trust. In early 1954, the Acting Secretary of Interior published an Order, which purported to empower the Commissioner of Indian Affairs to approve mortgages on trust allotments. The Order provided that the approval of such a mortgage terminates the trust or restricted status of the land only with respect to such mortgage and, only for the purpose of permitting foreclosure or sale pursuant to the terms of the mortgage, in accordance with the laws of the State or Territory in which the land is situated. A lot of land prior to issuance of a fee simple patent is held in trust, as I mentioned before, for a period of 25 years, but Congress, subsequently authorized the President to extend that period at his discretion; and, that has been continuously extended so that the period has never terminated except possibly with respect to particular tribes. The Indian Allotment Act, under which the particular Indian in this case was claiming title, is an Act of 1887; it's different from the Homestead Act of 1884, although the trust status of the land is similar. And that Act provides that any conveyance of lands allotted to individual Indians under the Act, or any contract affecting the land made before the expiration of the trust period shall be absolutely null and void. Another section of the Act provides, that the Secretary of the Interior shall have full power, and authority to consent to and approve of the alienation of such allotments in whole or in part in his discretion by deed, lease, or any other form of conveyance. We are unable to find in that language, any clear authorization by Congress, which would permit the Secretary of the Interior or any other officer, to consent to or approve a mortgage of allotted land. Moreover, the United States as holder of the legal title to the trust land would be a necessary party in any action to foreclose the mortgage and there was in the Act no consent that

we could find to sue the United States. The Counsel for the Portland Area Office of the Bureau of Indian Affairs has submitted a letter citing the authority in support of the Secretary's position, and it was reconsidered by the several interested companies, but as far as I know, each company reached the conclusion that their first position was justified.

FEE SIMPLE PATENT

More recently, this situation arose. A trust patent covering land on an Indian Reservation had been issued to an individual Indian. The Indian died prior to the issuance of the fee simple patent, and his beneficial interest in the land descended to his heirs; certain of those died subsequently, and, by now the allotment is held in very small undivided interests. The Statutes authorize the sale of land upon petition of the allottee or his heirs; sales to be approved by the Secretary of the Interior, and a fee simple patent is to be issued to the purchaser. In this case several owners whose interests totaled 94/420ths of the whole could not be located, and, of course, did not join in the petition for sale. The sale appears to be very advantageous to the Indian owners. And, no doubt, all of the heirs would have signed if they had had the opportunity to do so. We reluctantly concluded that the Statute provided no method by which the sale could be made binding upon the interested Indians, who did not sign the petition. The ownership of trust allotments will, of course, progressively fan out into smaller and smaller undivided interests; and new legislation to meet the new situation is certainly called for in the interest of orderly administration of Indian affairs. In another county a very unusual factual situation was presented. The Congressional Policy with respect to Indians is, of course, directed only to American Indians whose land was taken upon settlement of the United States. In this case allotments involving several tracts of land were held by an Indian woman, who was not the original allottee of any of the tracts, but who had acquired an undivided interest in some by descent, and the full interest in other lands by purchase or exchange of land. Upon her death, this woman was survived by her husband, who was a native Peruvian Indian; as an Indian not within the protection of the Congressional Policy, he was under the terms of the Act, entitled to take title free of all restrictions. The fact that he was sole heir of the decedent and that he was a native Peruvian Indian had been determined in Probate Proceedings for the Area Office of the Bureau of Indian Affairs. The local record was very sketchy, and we could not determine the source of her title to all of the land involved. Several tracts which the United States held in trust under the general allotment Act were finally patented in fee to the surviving husband, and we then insured his sale of those tracts. Other tracts for which patents had been issued under an 1855 treaty with a particular tribe have not yet been cleared. The tracts in which this decedent held only an undivided interest will not be patented until partition of those tracts has been effected to the satisfaction of the Interior Department, and at that time a fee simple patent will be issued to the non-Indian heir.

ALL IN THE DAY OF A TITLE MAN

FRANK SODERLING

Lawyers Title Insurance Corp., Seattle, Washington

Mr. Chairman, Honored Guests and Ladies and Gentlemen of the Washington Land-Title Association. Just a moment, I have something that belongs in this act! Here it is! The Title Fraternity's Black Plague. A thing of sound and fury, but, it is more than a telephone to us! To you and me, in the Title Insurance Business, it represents a Title Insurance Problem. If you don't believe it, visualize this picture, if you will.

You're seated at your desk, your hair is mussed-up, you have a very difficult legal description to work on, you have ashes all over the place including yourself; your desk is cluttered with papers and you have a description which reads something like this: "That portion of the northwest quarter of the southeast quarter of southwest quarter of northwest quarter of northeast quarter of the northwest quarter of southwest quarter of Section 37, Township 36 North, Range 35, daf: This time daf means "doesn't always follow"; because "ting-a-ling-a-ling," what happens? This mechanical monster sounds off! As you reach for that receiver, there are three types of situations which may develop.

TRIPARTITE

(1) You may be asked to go to the counter: (2) someone at the other end of the line wants to speak to you; and (3) maybe the boss wants to speak to you. None of these alternatives are nice as you can imagine. However, you mustn't hesitate any longer, because the phone rings again, and you can see some dirty looks from your neighbors next to you. So, you pick up the receiver, you put it to your ear and sure enough, this is number (1) situation—you're wanted at the counter! So, you do this to your hair, you brush off the ashes from your shirt, you roll down your sleeves, you put your coat on, you go up to the counter. What do you see? Just what you expected! There's a gentleman feverishly walking up and down in front of the counter, and in front of this counter cluttered again with a lot of papers and sitting right in front of you is something that is very familiar—it's one of your Title Insurance Policies. And, the first thing that he says to introduce himself to you, and the problem, is this. "The County is building a road in front of my property; they've taken off all of my porch, and they've taken off a great deal of my living room and I'm afraid we are going to lose our TV set! What are you going to do about it? You've insured me! What's your answer?" Immediately, you can grasp the seriousness of the situation; these people are about to lose their TV set. So, what do you say? You feverishly thumb through the pages of your policy, hoping against hope that in those printed exceptions and in those typed paragraphs you might find something which will save you from an economic loss — these people are going to lose their TV set, you can realize all the mental anguish that they will suffer concomitant therewith! So, sure enough on Schedule B what do you find buried in Paragraph 8, is a slopes paragraph; you feel happier now. You try, diplomatically, to explain to this gentleman, that this Insurance Policy does not insure him against this type of thing, because the Company has already forewarned him. He's not satisfied; he's about ready to throw everything at you including his fist, when you hit upon a happy solution. You say this to him: "Why don't you move your set back further into your house?" He thinks that's a good idea;

he grabs the papers and the Policy and he leaves. That's number one situation—you've resolved it.

WATCHING THE OVERHEAD

Probably, it could have been one of the other situations. You might have picked up that receiver, and you might have found this answer on the other end of the line, a sweet young, not a sweet young, this is a sweet old voice that says: "Sir, I'm in trouble. I've got before me a policy of insurance, in which you insured me as owner against loss or damage." You ask her for the number of your policy, you get the number and go to the closed file then you return to your desk. As you sit down at the desk, you thumb through the policy trying to find out whether or not you wrote the instruction sheet for the stenographer — you're worried! Finding that you did not, you're sitting a little bit more comfortably, but you're listening to what she has to say. And, what do you hear next? She says: "Remember, that rainstorm we had the other day? Well, the wind took the roof off our house, and we've got rain all over the rooms. You've insured me. What are you going to do?" Again, you can appreciate the trouble that this lady is going through, but you feel happier from the standpoint of the company, because, again, you're not liable. You are tempted, however, in a childish-fit of frivolity, to say: "Why don't you just pick up things and go to the DAVENPORT?" But, you don't want to do that, because something prompts you—it reminds you that you have had some experience in the Boy Scouts at one time, so you should do a good deed. And you remember, that in her conversation, when she was giving her life history to you, she wanted to go into business. So, what do you suggest to her? "Here's just the opportunity you need: Forget about the fact that the roof is on your house, tear out the partitions, fill the house with more water, cut the sides, get a diving board, and provide a swimming pool for the boys and girls in your neighborhood and then charge them for using it. Apparently, that is just the thing she wants to hear, too, because she happily hangs up the receiver. Number two situation is resolved. How about number three situation.

ALL FOR THE CAUSE

You know that when you picked up that receiver the Boss may have wanted you! And, that's the case here! This time you don't comb your hair with your hands. You drop everything and you go to the men's room; you take out your comb this time, and you carefully comb your hair; you take out one of the towels and you brush your shoes; you take off your jacket and you shake it; and you pirouette in front of the mirror to make sure that you are all right; then carefully stepping out with your left foot, you march up to his desk; and upon getting a sign of recognition, you sit down! At this time, the Boss is about to say something, and here is what he says: "I would like to have you speak on a panel at the next convention." And, before you can think about it too seriously, you say, "Okay, I'll do it." Then, after you say it, and as you are thinking about what you are saying, you think, this is sort of stupid, isn't it? He's asking me to speak on a panel, and I say yes, and neither one of us knows if I can do it! And, that reminds me of a story. Perhaps you've heard it. We'll call one business man "A," and the other one "B." They are discussing the relative merits of their office boys; each one of them claiming that his office boy is about the most stupid thing that he has ever seen. They get to a point where it is a matter of principle. So, "A" says to "B": "All right, let's have a show down! I'll call Johnny in; Johnny, come on in here!" Johnny comes in (a lollipop in one hand) and "A" says to Johnny: "Here's a nickel, go across the street and buy me a Chevrolet." "Okay, Boss!" Johnny takes the nickel and he leaves, "Well," business man "B" says; "Well, so you think that dumb, wait until I get my office on the phone, I'll have Jack sent over." So, he calls his office, and pretty soon Jack comes in. "Jack," he says, will you go down to the Matador Room, and see if I'm there?" And, Jack

says: "Okay, Boss"; and, leaves! It seems that Johnny had delayed his departure just long enough so that he and Jack had gone down on the same elevator together, and both of them knowing each other they entered into a conversation about their bosses. Johnny said to Jack: "You know for a long time I've been thinking that my boss is a little tetched-in-the-head, and, now, today I'm sure of it. He gave me a nickel to go across the street and buy a Chevrolet, and he didn't even tell me what color to get!" Jack, says: "You think that's dumb. My boss told me to go down to the Matador Room to see if he was there, and that crazy guy had a phone right beside him and he could have called."

COMING EVENTS—

September 16-18	Missouri Title Association	Hotel Robidoux St. Joseph, Missouri
September 20-22	North Dakota Title Association	Grand Forks, North Dakota Ryan Hotel
September 20-22	Oregon-Washington Title Association—Joint Meeting	Gearhart Hotel Gearhart, Oregon
September 20-22	Wisconsin Title Association (50th Anniversary)	Lorraine Hotel Madison, Wisconsin
September 22-25	New York Title Association	Whiteface Inn Lake Placid, New York
September 23-24	Kansas Title Association	Allis Hotel Wichita, Kansas
October 1-2	Indiana Title Association	Sheraton Lincoln Hotel Indianapolis, Indiana
October 8-11	Mortgage Bankers Association of America (43rd Annual Convention)	Conrad Hilton Hotel Chicago, Illinois
October 12-13	Nebraska Title Association	Lincoln Hotel Lincoln, Nebraska
October 16-20	**National Convention—American Title Association (50th Anniversary)**	**Hotel Fontainebleau Miami Beach, Florida**
November 12-13	Ohio Title Association	Deshler-Hilton Hotel Columbus, Ohio

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