OFFICIAL PUBLICATION

AMERICAN TITLE ASSOCIATION

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TITLE NEWS

VOLUME XXXVIII APRIL, 1959 NUMBER 4

THE PRESIDENT'S POSTSCRIPT

In local matters affecting our industry if you have a state association, that is an easy way to do it. As you know, this is a legislative year and in practically every state there are one or more bills proposed affecting the title industry. This can be of the utmost importance to you. So lend a hand to your fellow title men who are taking an interest in these bills. Most state associations have a legislative committee. However, it is a hard job for just a few people to carry the entire load. Sometimes bills slip through because there were not enough people keeping an eye on them. This can result in legislation detrimental to the industry, and you, along with everyone else, may suffer by it. It's easier to prevent the passage of a bill than it is to repeal it once it has been placed in the statute books.

This is only one of the reasons why title men should pool their efforts on an industry basis by joint action. In some of these matters your national office can help. Do not hesitate to contact Joe Smith if such is the case, for that is the reason we maintain a national headquarters.

Just a word of caution. Title men from every part of the country are reporting a strong upswing in business. This is fine. But may I remind you that we have just been through a period of recession during which most of us did a lot of work in cost reduction programs. Don't quit now just because business is better—remember, as an industry, we have a responsibility to render good service at the lowest price commensurate with profitable operation.

Ernest J. Loebbecke

TITLE NEWS

The official publication of the American Title Association

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Current Developments

by

JOHN MANN, Law Division
Chicago Title and Trust Company

In the following article Mr. Mann makes a valuable contribution both to the inexperienced lawyer and the old timer who wishes to keep abreast of title law. The Association staff expresses its thanks to the Editor of Illinois Title Record in which publication the article first appeared.

One of the problems of the busy lawyer and abstracter is that of keeping up with the many changes in the law.

It seemed, therefore, that it might be worth while to consider some of those current changes and developments in the field of real estate law. We cannot hope to discuss them all, so I have selected five which I thought might be of special interest to abstracters and lawyers.

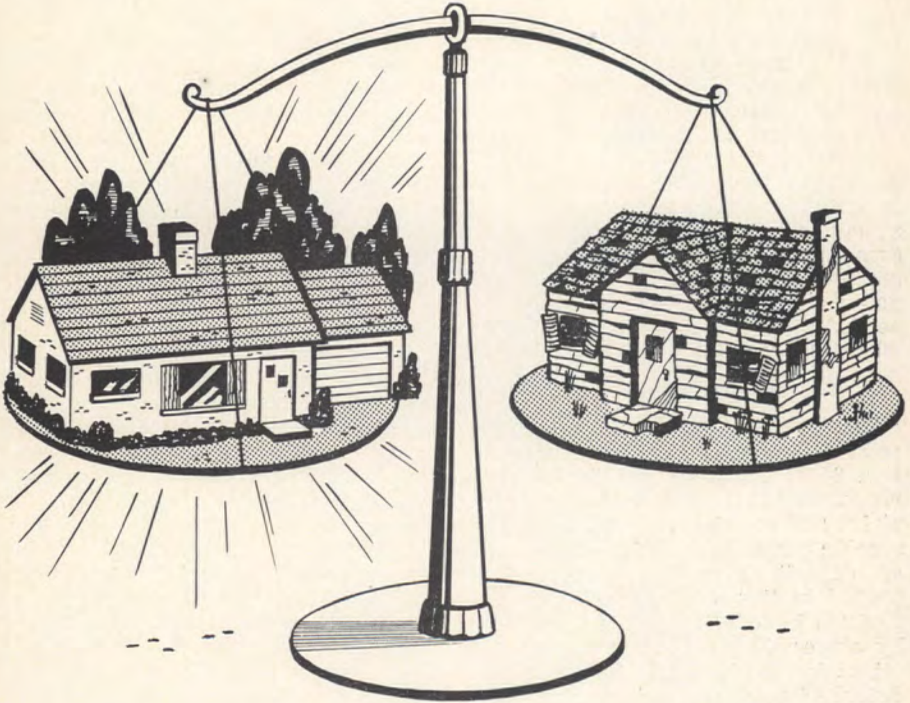
This seemed better than to attempt to cover too much ground. Amended Section 34 of the Civil Practice Act.

The first development which I would like to mention is the amendment of section 34 of the Civil Practice Act,[1] made as a part of the general revision of that Act which became effective January 1, 1956.

Before taking up the provisions of Amended Section 34, I would first like to refer to some general principles which had become well settled at the time that amended section went into effect. One principle was (subject to a few exceptions) that where a complaint stated a case belonging to the general class over which a circuit court had jurisdiction, defects and insufficiencies in the complaint did not affect the jurisdiction of the court.[2] Defects in pleadings were required to be taken advantage of by motion to dismiss, or in any event, by appeal. They were not ground for setting aside collaterally a final decree and a title based on that decree.[3]

Furthermore, it was an equally well-settled general rule that where a complaint had been filed and the court had acquired jurisdiction over the parties, the court did not thereafter lose jurisdiction because of amendments to the complaint made during the course of the proceedings. An illustrative case was Ruppe v. Glos, 251 Ill. 80, decided in 1911. There a plaintiff filed a complaint to set aside a tax deed. The defendants were served with summons. One defendant, Arnold, defaulted and a decree pro confesso was entered against him. Thereafter the plaintiff amended his complaint and a rule was taken on all the defendants

In Real Estate Law



to answer the amended complaint. No notice was given Arnold. He again defaulted and the amended complaint was taken as confessed against him. The case went to a decree and Arnold thereafter contended that the amended complaint could not properly have been taken as confessed against him without due notice to him that it had been filed. The Supreme Court denied this contention. It said in part:

> "* * * Arnold was compelled to take notice of the fact that by leave of court appellee might make any amendment necessary to sustain the cause of action for which his suit was intended to be brought. By the service of summons he was brought into court, where it was his duty to be and appear until the case was disposed of, and he was entitled to no further notice or service under the practice in this State."

Furthermore, under the former practice, when a cross-bill was filed, it was necessary to serve new process or notice on cross-defendants already in court. The old Chancery Act expressly provided that it was sufficient in such a case for the cross complaint merely to take a rule on

the cross-defendants already in court to plead to the cross-bill.[4]

These rules of practice were important foundation stones to the attorney who examined titles and to the abstracter. I have seen partition suits abstracted where there was merely a notation that a complaint for partition was filed, without any attempt being made to copy in detail all the provisions of the complaint. The decree was abstracted in detail and most examining attorneys were satisfied since defects in the complaint, if any existed, would not in any event have been ground for collateral attack on the decree and the title based thereon. Amendments to complaints were often not abstracted in detail for the same reason. No attempt was made in the case of such amendments to show service of new process on parties in default because new process in such a case was not needed. The same principles applied where a cross-bill was filed.

Radical Change

This former practice has been radically changed by amended Section 34 of the Civil Practice Act. It now provides, in part, that every complaint and counterclaim shall contain specific prayers for relief and in case of default, if relief beyond that prayed in the pleading to which the party is in default is sought, whether by amendment, counterclaim or otherwise, notice shall be given the defaulted party as provided by rule.

Supreme Court Rule 7-1 supplements amended section 34 and prescribes the notice to be given in such a case. In general it requires the following:

(1) A summons served in the same manner as summons is served at the commencement of the suit.

(2) Publication in like manner as publication is had at the commencement of the suit.

(3) Notice by registered mail, return receipt requested, delivery limited to the addressee only. The Rule further provides that service by registered mail is not complete until the notice is received by the defendant, and the registry receipt is made prima facie evidence thereof.

It has not been yet decided by an Illinois court of review whether this new process or notice required by section 34 and Rule 7-1 is jurisdictional. Certainly the safe course for the lawyer or abstracter to take is to assume that it is jurisdictional until such time as our courts have definitely told us that it is not.

Let us take an illustration of how amended section 34 works. A plaintiff starts a suit in equity affecting real estate. He files his complaint; all the defendants are duly served; and the court acquires jurisdiction of the parties and the subject matter.

Two of the defendants, we will call them John Doe and Richard Roe, make default. Afterward, the plaintiff amends his complaint.

Now, amended section 34 says that "if relief beyond that prayed" in the original complaint is sought by the amended complaint, the new process or notice must be served on John Doe and Richard Roe, the defendants who are in default.

You can see that a nice question for the examining attorney may be presented in determining whether an amended complaint, in the words of the statute, seeks "relief beyond that prayed" in the original complaint. If it does, and if the new process or notice is not served on John Doe or Richard Roe, the court may well lose jurisdiction over those parties at this halfway stage of the proceeding.

Abstract in Full

It would therefore follow, it seems, that the abstracter should in such a case abstract in full both the original complaint and the amended complaint so that the examining attorney will be in a position to determine whether the amendment seeks relief beyond that prayed in the original complaint. If it does then new process or notice, as provided by Supreme Court Rule 7-1, is required and the abstracter should, of course, show it. If new process or notice is not served, per-

haps the abstracter should go so far as to note this because otherwise the examining attorney might say that he assumed, in the absence of anything appearing in the abstract to the contrary, that the required new process or notice was served.

It is also to be remembered that the same situation just discussed arises where relief beyond that already prayed is sought by a counterclaim filed during the progress of a suit.

Suits in chancery affecting real estate may have many defendants. They run over a considerable length and time and frequently involve amended pleadings. It is important, therefore, that both attorneys and abstracters keep in mind the rather sweeping changes made by the recent amendment to section 34 of the Civil Practice Act.

The second development which I would like to mention is the amendment of Section 72 of the Civil Practice Act,[5] which was also a part of the same general revision of that Act previously mentioned. It became effective January 1, 1956.

Other Remedies

Prior to the effective date of this new section, there were various remedies by which decrees or judgments could be reviewed and set aside by the trial court. One was a bill of review, under which a decree could be set aside or modified for (1) errors of law apparent on the face of the record, (2) fraud, or (3) newly discovered evidence.[6] Another familiar remedy was a motion in the nature of a writ of error coram nobis by which a judgment at law could be set aside for errors of fact unknown to the court which, had they been known, would have prevented entry of the judgment.[7] A third remedy of the type under consideration, not so well known, was a petition in the nature of a writ of audita querela, under which relief could be obtained from a judgment at law because of matters transpiring after the entry of the judgment, such as payment.[8] Each of these remedies was a new suit docketed under a new case number. New service of process was required as in the case of any new suit.

Remedies Abolished

Amended Section 72 of the Civil Practice Act abolishes each of these remedies and provides that any relief which could have been obtained under any of them may now be had by a petition filed in the original case. Notice is given by summons, publication, or registered mail in the same manner mentioned in the preceding discussion of amended section 34. Amended section 72 provides that "unless lack of jurisdiction affirmatively appears from the record proper" the vacation or modification of a judgment or decree does not affect the title to real property acquired by a third person for value before the filing of the petition. The petition under amended Section 72 must be filed not later than two years after entry of a judgment or decree, although the time during which a petitioner is under legal disability or duress, or the ground for relief is fraudulently concealed, is excluded from the two-year period.

Let us see how this new Section 72 operates. The abstract shows a suit in equity to quiet title with a final decree quieting the title as prayed. A year and a half later a prospective purchaser of the real estate orders an abstract continuation. Time for appeal has, of course, expired and formerly the abstracter would probably not consider it necessary to go back into the original quiet title proceeding to examine for further possible developments. If a bill of review had been filed he would have picked that up as a new suit. Now, however, in view of amended Section 72, it would seem that he should go back into the quiet title proceeding to make sure that a petition has not been filed to vacate or modify the decree. A prospective purchaser is vitally concerned, of course, because if such a petition had been filed at the time of his purchase, he would not be protected. Furthermore, it would seem that the necessity for going back into prior

proceedings is not absolutely terminated by the expiration of two years. The two-year period for filing a petition can, as you will recall, be extended by disability or one of the other grounds mentioned. This new procedure, therefore, is something which the abstracter will no doubt want to take into account in setting up his methods of search. Suppose the records show a conveyance of the real estate to a third-party purchaser following entry of the decree. Does this relieve the abstracter from future examination of the prior proceedings? It will be noted that a third party who purchases after entry of the decree and before a petition is filed, is protected only in event lack of jurisdiction does not affirmatively appear from the record proper and that he is a purchaser for value. The examining lawyer would probably want to know about the petition even if the real estate had passed into the hands of a third party because he would still be required to determine whether the record proper showed a lack of jurisdiction. He might also want to advise his client to check to see whether the third party was, in fact, a purchaser for value.

How Can Abstracter Be Sure?

How can the abstracter be sure that he has covered possible attacks which may be pending against prior final decrees under amended Section 72? He could, of course, go back and re-examine the files in each prior proceeding which affected the real estate. Another possible procedure would be to check each day every petition or pleading filed in cases docketed in the circuit or superior court of his county. Then if he runs across a petition which operates like a former bill of review, writ of error coram nobis or petition in the nature of a writ of audita querela — and which may effect title to real estate— he can enter that petition in his tract book just as he formerly would have entered a new suit of that character. Then when he afterwards makes up an abstract or abstract continuation, his tract book will serve as a warning that the proceeding in which the petition was filed must be re-examined.

Implications Important

The implications of amended Section 72 seem important both to the abstracter and lawyer.

The third change in the law which I would like to mention is amended Section 73, 9, of the Civil Practice Act, another part of the general overall revision of the Practice Act which became effective January 1, 1956. The problems which it presents are somewhat similar to those just mentioned in connection with amended Section 72.

Before the amendment to Section 73, the ordinary remedy by which a creditor reached equitable interests in real estate or other property, not subject to levy and sale by ordinary execution, was through a creditor's bill. This was a new suit in chancery, docketed under a new number. Process was served as in the case of any new suit.

When Section 73 was amended, effective January 1, 1956, it enlarged a procedure provided for by former Section 73 — but not widely used — to permit relief ordinarily obtainable by a creditor's bill to be had, in most cases, by a citation to discover assets, issued in the same cause in which the judgment or decree was originally entered.[10] The citation may be issued by the clerk of the court upon oral request. The provisions of Section 73 are somewhat long and I will not attempt to restate them here. However, it is provided, among other things, that a person may be the supplemental proceedings, which it authorizes, compel "any person cited to execute an assignment of any chose in action or a conveyance of title to real or personal property, in the same manner and to the same extent as a court of chancery could do in any proceeding by a judgment creditor to enforce payment of a judgment or in aid of execution".

Here again a proceeding affiecting real estate might originate in a case which formerly would have been considered terminated by a final judg-

ment or decree. Suppose that a judgment at law is entered in the circuit court against A. B, a relative of A, lives in the same county. The judgment creditor commences a supplementary proceeding in the same case in which the judgment against A was entered, claiming that B holds certain real estate in trust for A. The creditor seeks to subject that real estate to payment of the judgment against A.

Here there was nothing in the original judgment against A to put the abstracter on notice that title to the real estate—which appears in B's name—was at all involved. He can find that out only by following subsequent proceedings in the case in which the judgment against A was entered.

Daily Search Desirable

This lends support to the view that it may be a desirable procedure for the abstracter to make a daily search of all petitions or other proceedings had in the courts of his county. That would alert him to a supplementary proceeding involving real estate. He could then enter that proceeding in his tract book and such an entry would put him on notice if an abstract involving the particular real estate were afterwards required.

It can also be seen that amended Section 73 presents implications important to abstracters and lawyers.

The fourth current development in real estate law which I would like to mention involves judicial proceedings commonly known as actions in rem. The rules governing such proceedings were recently clarified by our Supreme Court in certain important respects by the decision of Failing v. Failing, 4, Ill. 2d 11.

The Failing case was a suit for separate maintenance brought by a wife against her husband in the circuit court of Cook County. The husband was a nonresident of Illinois and it was necessary to serve him by publication. The wife's complaint alleged that the parties owned real estate at a certain address in Cook County as joint tenants, but there

was no legal description of the property in the complaint and no prayer that a lien be established against it. In other words, the wife's complaint referred to the real estate generally but alleged nothing to indicate that a proceeding against the real estate was contemplated.

The husband, after being served by publication, defaulted and thereafter the court entered an order awarding the wife temporary support and attorney's fees and purported to make those amounts a lien on the real estate owned by the parties in Cook County. This was the real estate referred to but not legally described in the complaint.

The question was whether the trial court had jurisdiction to enter such an order.

The Supreme Court pointed out that a decree for alimony, support and attorney's fees is a decree in personam and cannot be based on service by publication. The question, therefore, narrowed itself down to whether the order making the award a lien on Illinois real estate could be sustained as a decree in rem. The Supreme Court explained that where real estate is located within the jurisdiction of the court, orders and decrees can be made affecting that real estate and service by publication is sufficient to support such an order or decree. Such a proceeding is known as one in rem;—that is, one affecting property within the court's jurisdiction. The question in the Failing case was whether the decree

making the support money and attorney's fees a lien on the Illinois real estate could be sustained as a valid decree in rem.

The Supreme Court pointed out that some cases hold that in order to have a valid decree in rem, there must be an actual seizure of the real estate by the court through an injunction, attachment or similar writ. The opinion further stated, however, that in Illinois a valid decree in rem can be entered without specific seizure of the property, but that in such a case:

(1) There must be a legal description of the real estate set forth in either the complaint or the publication notice, or both; and

(2) The complaint should pray for relief with respect to such real estate.

The Supreme Court pointed out that in the case at bar, there was no actual seizure of the property; the legal description of the real estate was not set forth either in the complaint or the publication notice; and the complaint did not pray any specific relief with respect to the real estate in question.

The Supreme Court held, therefore, that the decree in question could not be substained as one in rem, and that the trial court was without jurisdiction to impress a lien on the Illinois real estate.

Service by Publication

Many of the proceedings affecting Illinois real estate in which lawyers and abstracters are interested rest, in part at least, on service by publication and in such a case the jurisdiction of the Court must, as in the Failing case, be sustained on the theory that the proceeding is a valid action in rem. This type of suit may include actions for partition, to quiet title, to foreclose mortgages, and to obtain various other common forms of relief with respect to Illinois real estate where some or all of the defendants are brought before the Court through service by publication.

In such a case the examining attorney will want to know, in view of the Failing decision, whether the complaint contained a legal description of the real estate and prayed for specific relief with respect to that real estate. It would seem to follow that the abstract should, in such a case, set forth the terms of the complaint with sufficient particularity to give the lawyer this information.

It is not entirely clear from the Failing decision, that the publication notice must also contain a legal description of the real estate where the complaint itself contains such a description and a proper prayer for relief. The opinion makes it clear, however, that it is certainly good practice for the publication notice to contain a legal description of the real estate and hence the abstracter in showing a proceeding in rem will no doubt want to abstract the publication notice with particularity so that the examining attorney can determine whether it does or does not sufficiently describe the property in question.

The Failing case is a valuable decision to lawyers and abstracters because it clarifies some important rules governing jurisdiction in actions in rem.

Federal Liens

The fifth and last current development which I would like to refer to, relates to the matter of federal tax liens.

This is a subject, of course, which has already been much discussed. You are all familiar, I am sure, with the booklet dealing with federal liens prepared by Harold L. Reeve. It reviews developments in this field down through August, 1956. Mr. Peterson of our Company has written an article entitled "Federal Tax Liens" which appeared in the January, 1956 issue of the Illinois Bar Journal and he has recently prepared further article on the subject which will appear in a forthcoming issue of the same publication.

I will not attempt to retrace the ground covered in these articles, al-

though it might be interesting to point out, in passing, that the problem of federal liens originated back in 1893 when the decision of the United States Supreme Court in United States v. Snyder, 149 U.S. 210 was handed down. A federal statute then, like present federal statutes, made unpaid taxes due the United States a lien on real estate. A third party purchased real estate in good faith without notice, through the public records or otherwise, of an existing federal lien. The purchaser claimed protection under state recording acts. The United States Supreme Court held in the Snyder case that state statutes could afford no protection. The opinion pointed out that if "the United States . . . in the collection of a tax admitted to be legitimate, can be thwarted by a state statute prescribing that such a tax must be . . . recorded . . . it would follow that the potential existence of the government of the United States is at the mercy of state legislation".

At the time of the Snyder decision, federal tax liens were so few that the matter had little practical importance. Federal taxation has, however, since grown so in magnitude and federal tax liens have become so numerous, that today the protection of innocent third parties who deal in real estate against such liens has become a vital matter. Congress has passed legislation giving some measure of protection against federal tax liens to parties who deal in real estate, but these federal statutes are so narrow in their application that they fall far short of meeting the problem. And as Mr. Reeve points out in his booklet, the situation has been made more critical by reason of the narrow construction which the United States Supreme Court has placed on those already narrow statutes in favor of the government and against the party dealing in real estate. The result is that in many instances anybody who deals in real estate today in any of the states must so far as federal liens are concerned, do so at his peril.

The cases decided after the date of Mr. Reeve's booklet have continued the same trend.

For example, in United States v. Morrison, 247 F. 2d 285, the United States Court of appeals for the 5th circuit held that a federal tax lien filed against an installment purchaser of real estate, after the contract of sale had been entered into, took priority over the vendor's lien under that contract. The vendor's lien, it will be noted, arose prior in point of time to the federal tax lien. This decision was handed down in June, 1957.[11]

Priority Over Assignment

The latest decision of the United States Supreme Court on the subject is United States v. Ball Construction Co., 355 U.S. 587. There a subcontractor undertook to do certain painting and decorating work on a large housing project. In order to secure a surety company which executed its subcontractor's bond, the subcontractor gave to the surety company a formal assignment in writing of all sums due or to become due it under the subcontract. After the assignment was made, $13,000 became due the subcontractor. It was not until a month later that the Director of Internal Revenue filed a tax lien against the subcontractor for $17,000. Nevertheless, in a 5-4 decision, handed down March 3, 1958, the United States Supreme Court gave the $17,000 tax lien priority over the $13,000

due the surety company under the assignment.

It is apparent that this late case poses some further serious questions. Suppose that a mortgage was made and recorded a week ago. The proceeds are not disbursed until today. After the recording, but before the disbursement, a federal lien attaches against the mortgagor. Under the Illinois statute,[12] the mortgage would take priority over such intervening encumbrances. But would that be true with respect to a federal lien under the Ball decision?

Or suppose that a construction loan is secured by mortgage. The proceeds of the loan are to be disbursed from time to time as the work progresses. A federal lien is filed against the mortgagor after the mortgage is made and recorded, but before the proceeds are disbursed in full. Does the federal lien take priority over the undisbursed proceeds of the mortgage, under the principle laid down in the Ball case?

These questions, and many other questions presented today by federal liens, make it clear that there is a pressing need for modern and up-to-date legislation by Congress providing a federal recording act and other appropriate legislation under which parties dealing in real estate in good faith can obtain protection. This legislation should extend to judicial proceedings and include the right to make the federal government a party and bind it in any action affecting real estate. It should also make the federal government subject to the doctrine of lis pendens. As the Snyder case points out, state statutes are powerless to give this protection. Relief must come through act of Congress.

Certainly no one can doubt that it is vital to our economy that real estate of all types in all states — business properties, industrial sites, homes — should move freely on the market. At the present time, the federal rules and decisions are unfortunately a force working in the opposite direction. The American Bar Association has become acutely conscious of this problem in recent years and it now has several committees working on a draft of remedial legislation to submit to Congress. The Committees plan to have this draft completed prior to the annual meeting of the Association in August of this year.

Meanwhile, it would seem that we should remain aware of the seriousness of the problem, talk to our friends about it, and do all that we can to build up an informed public opinion in support of federal legislation which will make it possible for an innocent third party to deal with real estate, in good faith, without danger of his investment being swept away by a secret and undisclosed federal lien.

REFERENCES

1. Ill. Rev. Stat., 1957, Ch. 110, par. 34.

2. Knaus v. Chicago Title and Trust Company, 365 Ill. 588, 592; People v. Shurtleff, 353, Ill. 248, 264; Figge v. Rowlen, 185 Ill. 234.

3. Regner v. Hoover, 318 Ill. 169, 174; O'Brien v. People, 216 Ill. 354, 363; Baker v. Brown, 372 Ill. 336.

4. Callaghan's Ill. Stat. Anno., Vol. 1, Ch. 22, pars. 30-34. See Kingsbury v. Buckner, 134 U.S. 650.

5. Ill. Rev. Stat. 1957, Ch. 110, par. 72.

6. Wood v. First Nat. Bank of Woodlawn, 383, Ill. 515, 520-1.

7. Mitchell v. King, 187 Ill. 452; Claflin v. Dunne, 129 Ill. 241. Compare: Ellman v. DeRuiter, 412 Ill. 285.

8. Harding v. Hawkins, 141 Ill. 572, 583.

9. Ill. Rev. Stat., 1957, Ch. 110, par. 73.

10. Ill. Rev. Stat. Ch. 110, par. 101.24 (3) (a). Proceedings against a third party are required to be commenced in a court of record in a county where the party resides. Ill. Rev. Stat. Ch. 110, par. 101.24 (4)

11. Another recent case is Aquilino v. United States, 3 N. Y. 2d 511, 146 N.E. 2d 774 (Dec., 1957).

12. Ill. Rev. Stat., 1957, Ch. 30, par. 37a.

meeting timetable

MAY 8, 9, 1959
New Mexico Title Association
Desert Aire Motor Hotel
Alamogordo, New Mexico

MAY 14-17, 1959
California Land Title Association
Fairmont Hotel
San Francisco, California

MAY 15, 16, 1959
Atlantic Coast Regional
Mayflower Hotel
Washington, D.C.

MAY 22, 23, 1959
Pennsylvania Title Association
38th Annual Convention
Claridge Hotel
Atlantic City, New Jersey

JUNE 1, 2, 1959
Southwest Regional Conference
Adolphus Hotel
Dallas, Texas

JUNE 4, 5, 6, 1959
Wyoming Title Association
Gladstone Hotel
Casper, Wyoming

JUNE 10-12, 1959
Illinois Title Assn. (52nd. Annual)
Drake Hotel
Chicago, Illinois

JUNE 12, 13, 1959
South Dakota Title Association
Lawler Hotel
Mitchell, South Dakota

JUNE 17-20, 1959
Oregon Land Title Association
Timberline Lodge
Timberline, Oregon

JUNE 25-27, 1959
Colorado Title Association
Hotel Colorado
Glenwood Springs, Colorado

JUNE 27-28, 1959
Idaho Land Title Association
Shore Lodge
McCall, Idaho

JUNE 28-30, 1959
Michigan Title Association
Belvedere Hotel
Charlevoix, Michigan

JULY 10-13, 1959
New York State Title Association
Saranac Inn
Adirondacks

SEPTEMBER 13-15, 1959
Ohio Title Association
Cleveland, Ohio

SEPTEMBER 20-22, 1959
Missouri Title Association
Conner Hotel
Joplin, Missouri

SEPTEMBER 21-24, 1959
Mortgage Bankers Association
Hotel Commodore
New York, New York

SEPTEMBER 27-29, 1959
Nebraska Title Association
Town House
Omaha, Nebraska

OCTOBER 2, 3, 4, 1959
Washington Land Title Association
Harrison Hot Springs Hotel
British Columbia

OCTOBER 19-22, 1959
American Title Assn. Annual
Commodore Hotel
New York, New York

(New York State Title Assn.
October 20, 1959)
(one day meeting in conjunction with
ATA Convention)

NOVEMBER 9, 10, 1959
Indiana Title Association
Lincoln Hotel
Indianapolis, Indiana

St. Louis Executive in Seminar

The cause of the title industry will be well presented when the American Right of Way Association holds its fifth annual national seminar at the Chase-Park Plaza Hotels in Saint Louis, Missouri on May 27 and 28. Ralph Hunsche, Vice-President of the Title Insurance Corporation of St. Louis, will discuss PROBLEMS OF THE ABSTRACTER at the first morning session.

"By Any Other Name"

Seventy-six years after its incorporation, the name of TITLE GUARANTEE AND TRUST COMPANY has become THE TITLE GUARANTEE COMPANY. Chartered in 1883 in the state of New York, the firm will continue to provide a complete title insurance service in New York, New Jersey, Connecticut, Massachusetts, Maine, Vermont and Georgia.

Home Title Courts Lawyers

An excellent example of how to cement relations with the important law fraternity is the impressive guide for attorneys "Pitfalls of Zoning," distributed to lawyers by the Home Title Guaranty Company, 180 Fulton Street, New York, New York. The pamphlet covers such matters as "Purpose and Legal Authority for Zoning," "General Character of Zoning Ordinances," "Effect of Violations Upon Marketability of Title," "Losses Resulting from Zoning Violations," "Ascertaining of Zoning Status," and "Recommendations."

Hampton to Lead Texas Association

The new officers of the Texas Title Association, Inc., assumed their responsibilities on April 4. All Communications regarding association matters should be address to:

Charles C. Hampton, President
or
Mrs. Carol Vann, Secretary-Treasurer
1309 Main Street, Dallas, Texas

Page 90 of the 1959 directory should be corrected to read as follows:

Pike	Pike County Abstract Company John W. McIlroy, Pres.	A	KCT TSL	Bowling Green
Platte	Murdock & Newby Abstract Company R. B. Miller, Jr., Pres.	A	KCT	Platte City
Polk	W. M. Palen Title Company	A		Bolivar

Past President Binkley Named C T & T Director

John D. Binkley, vice president of Chicago Title and Trust Company, was elected to the board of directors of the company at the annual meeting of shareholders on April 13.

Binkley joined the staff of Chicago Title and Trust Company in 1925. He was appointed assistant secretary in 1938, assistant vice president in 1945, elected a vice president in 1947 and in 1951 was made responsible for the company's title operations outside of Cook County. Since 1953 he has held the position of vice president and head of the Title Division.

President of the American Title Association in 1956-57, he has served on the governing boards of both the national association and the Illinois Title Association. He is a member of the Chicago Association of Commerce and Industry, Chicago Bar Association, Chicago Real Estate Board, Illinois State Chamber of Commerce, Chamber of Commerce of the U.S., and Chicago Metropolitan Home Builders Association. His memberships also include Economic Club of Chicago, Union League Club, Sunset Ridge Country Club and Executive Program Club.

Binkley received an LL.B. degree from Loyola University and an M.B.A. degree from the University of Chicago School of Business Administration.

JOHN D. BINKLEY

OOOPPS!

The 1959 directory fails to properly show the capital, surplus, reserve and undivided profits of the Title Insurance Company, Mobile, Alabama. The correct listing is as follows:

Capital $300,000.00; Surp., Res. & Und. $412,722.38.

Mortgage Bankers Denounce Inflationary Housing Bills

The congress will soon be faced with a challenging test to determine the extent of its willingness to curb extravagant spending and cooperate with the President in his fight for a balanced budget by the action it takes on the too highly inflationary housing bills, Walter C. Nelson, President of the Mortgage Bankers Association, declared recently.

"Almost no single action which the congress could take at this time would be more inflationary than enacting the housing bill cleared by the House Banking and Currency Committee," Nelson said in a statement urging vigorous support for the Administration's proposed housing legislation and pledging the mortgage industry's cooperation.

"The time is unmistakably here when every other consideration in the field of housing and housing credit must be subordinated to the national interest which clearly lies in achieving a balanced budget—an absolutely necessary step to halting the inflationary movement", he said. "Builders and lenders must recognize that no other consideration is half so important as complete support for the President in achieving this necessary national objective."

New VP for Lawyers Title

The Executive Committee of the Board of Directors of Lawyers Title Insurance Corporation, has elected Joseph C. Hughes, formerly of Richmond, a Vice-President, it was announced by George C. Rawlings, President.

Hughes, presently State Manager of Lawyers Title's Ohio operations, will move to Richmond on June 15 to assume new duties in the home office of the Richmond based company. He began work with Lawyers Title in 1940 as closing officer, handling the final details of consumating real estate transactions. After serving over four years in the service he returned to Richmond in 1946 as Field Representative. He transferred to Lawyers Title's Columbus, Ohio, Branch Office in June of that year, and in 1948 was made Senior Field Representative. In 1949 Hughes was named Acting State Manager of Lawyers Title's Ohio operations, and in that same year was elected Ohio State Manager.

A native of Waynesboro, Virginia, he attended the Fishburne Military School. In 1933 he entered the Wharton School of the University of Pennsylvania, graduating in 1937. After spending some time with B. F. Goodrich Company and the Basic-Witz Furniture Industries where he gained office and field promotion experience, he joined Lawyers Title.

His wife and two children, both girls, will accompany him to Richmond in June, where his new duties will include supervision of Lawyers Title's operations in a number of Northern and Western States.

Congratulations

.... to Ralph L. Horine, President, and all his staff upon the completion and opening of the new PIONEER TITLE INSURANCE COMPANY building at 340 Fourth Street in San Bernardino, California.

Shift in Slum Clearance For Single Family Homes

A shift in the thinking of urban renewal experts may soon result in the construction of more top-quality, semi-luxury and luxury single-family homes on cleared slum land.

This is the view of C. R. Mitchell, president of the United States Savings and Loan League, who recently told a League-sponsored Management Conference in White Sulphur Springs, Va., that whereas in the past, urban renewal experts contemplated that cleared slum areas would be used almost solely for public housing or large FHA-financed apartment buildings, today there is a tendency to think in terms of devoting a greater portion of the cleared slum land for the building of single-family homes.

"This new concept will have far-reaching implications for the nation's savings and loan associations in that large amounts of conventional mortgage financing will be required," said Mitchell. "It will enable savings associations to share more fully in the rebuilding of the nation's blighted urban areas."

In his address, Mitchell noted that Congress was becoming increasingly interested in urban renewal, and that
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there would be "literally tens of billions of dollars" spent in city rebuilding in the next decade. He said: "Not long ago, most of the original publicity on urban renewal indicated that cleared slum areas would be used for public housing or large FHA-financed multiple apartment buildings.

"Fortunately, however, there is now a tendency in urban renewal centers to think in terms of turning over some of the cleared slum land for the construction of top-quality, semi-luxury and luxury single-family homes. This would have the effect of encouraging many families who might otherwise flee the city to remain—to enjoy the benefits of both home ownership, and the conveniences of city living."

A Moral Goal for Business

GAYLORD A. FREEMAN, JR.

A refreshingly honest appraisal of legitimate business aims is set forth below by Mr. Gaylord A. Freeman, Jr., Vice-president of the First National Bank of Chicago. It is an excerpt from his address before an Instalment Lending Conference sponsored by the Illinois Bankers Association and was printed in the March issue of "The Freeman."

It seems unbelievable today that with our large industrial corporations, many with thousands of employees and hundreds of millions of dollars of capital, there could be any uncertainty as to the basic purpose of such organizations—yet there is.

What is the purpose of a business?

I was interested when the builder of one of the country's greatest corporations declared that the purpose of his company was service to its customers. I was interested but not convinced. I could not imagine that practical-minded leader commencing his annual report: "This has been our most successful year; we served an additional million customers. Incidentally, we lost $20 million, but we consider this our finest year."

I have listened to some of my more idealistic friends say that the purpose of a business corporation is, or should be, the common good of customers and employees. I have listened and been disturbed.

I was also impressed by reading in two recent publications of a management association the statements of the corporate goals of several of our leading businesses. The most frequently mentioned aims were:

1. Making the company a good place to work.
2. Serving the customers well.
3. Being good citizens, and, incidentally,
4. Making a profit.

Although several mentioned profits, it was only a necessary condition to the continuation of employment and service. Of those which considered profits as one of several goals, most referred to a "reasonable" or "fair" profit, or one "sufficient to finance our normal healthy growth," or provide "a fair return on investment," or "safeguard our investment in order to enable the company to attract new capital in order to expand its services." Many failed to make any reference to profits.

Yes, I was impressed by those statements of corporate goals—but still unconvinced. Do investors (the actual owners who risk their capital in organizing or purchasing the stock of a hazardous business) make such an investment in order to provide a nice place to work for some unknown employees, or to provide a good product to unknown customers, or to earn a return only sufficient to obtain additional capital from other investors?

The Profit Motive

I have talked to many business leaders, and to them I have expressed what seems to me to be the very obvious single goal of business. I have been told afterwards by some that I was wrong and by others that I was right but that I should have said it another way.

What I said is simply that the **only goal** of a business corporation is to make a **profit.**

Expressed more fully, this means: the only goal of a business corporation is to make the **maximum possible profit.**

And said completely: the only goal

of a business corporation is to make the maximum possible profit **over a long period.**

Our economic and social system, whether referred to as a capitalistic system, or a system of private enterprise, or a system of free enterprise, is based upon the concept of competing units seeking maximum possible profits. We know that! Indeed, we have always known it; but, buffeted over the past twenty or thirty years by the philosophy of the "new deal" and its many offshoots, we now feel that to acknowledge such a goal is somehow immoral or at least selfish. We have lost confidence in the original bases of our economic system and feel that perhaps profits should be subordinated to some other goal that would be socially more acceptable, more moral, or somehow "higher." Some do this with their tongue in their cheek; some do it confusedly but honestly.

Are we so timorous that we will permit ourselves thus to be misled? Do we give up our known goals merely because someone criticizes them? The expenditure of effort for profit has done more good for our society than any other effort, except that expended directly for education. Yet because an articulate few imply that this is a selfish goal, are we to give up the compass that has led us so far and follow the will-o'-the-wisp they propose to substitute?

In the Long Run

If we said that short-range profits or immediate profits were our goal, then the morality of such a purpose might well be challenged. Maximum short-range profits, achieved at the expense of our employees or of our customers or of our community, would not be a **proper** goal, for it would sacrifice the interest of others. But it would not be a **wise** policy either, for such a course, by injuring others on whom the company is dependent for future profits, reduces the opportunity for profits in subsequent years.

Maximum possible profit **over a long period** of time is neither moral nor immoral, but the effect is beneficial to the community. To achieve this end of maximum profits over a long period (of 100 years or more, and the life span of a corporation should be measured in no shorter periods) requires that we treat our employees in such a way that they are happy both at work and at home; that their minds are relieved of fear, that their working conditions are pleasant, and their status and contribution are respected. Without these conditions present, they cannot be as productive as they must be if a business is to achieve maximum long-range profits.

To achieve such a goal requires that we treat our customers well; that we provide the goods or services which they want at a price which they are willing to pay, and that they be delivered under satisfactory conditions.

A Just and Equitable Society

Beyond that, to achieve profits over a long period of time requires that business operate in a society that is just and equitable, for if the majority of the people are dissatisfied with the economic or political system, they will change that system. There is no divine guarantee of private ownership or the permissibility of profits. If business management wants to preserve a system of private property and the right to make profits, it should see to it that the rewards, the living conditions, the status and the dignity of our people—**all** of our people—are such that the great majority are happier in the "private property, profit system" than they believe they would be in any other system.

Thus to achieve maximum long-range profits, a corporation must treat its employees right, it must treat its customers right, it must make a continuing contribution to society. It is therefore only in this indirect sense that the goal of business can be said to be social betterment. Its direct goal is properly maximum long-range profits, and to substitute any other for it is to fail to understand the essential nature of business or the society which it ultimately benefits.

Transmitting Handwritten Messages By Wire

This timely description of modern techniques in title plant maintenance is exactly the kind of material that is welcomed by abstracters and title insurance men. Written by Walter E. Cox, Manager, Memphis Abstract Company expressly for "The Mortgage Banker," it is reprinted here with permission of the editor.

Three devices that transmit handwritten messages by wire constitute the first truly fast and accurate method we have found to order photocopies of instruments recorded at our County Courthouse. This system, which links our offices with the County Recorder's Office and the Court Department, assists us in giving the type of fast service we like to deliver.

In the past, one of the most annoying problems we faced in compiling title searches or abstracts was that of the 'missed instrument." When a compiler (the person who completes the search or abstract) discovered that a chain clerk had neglected to list an instrument—say an indefinite (a miscellaneous instrument from the general index) for example, a will, a bankruptcy, etc.—a three day delay would usually result before the compiler got a photocopy of it.

This system depended on messenger service both to take the requests over to our employees at the Courthouse and to bring back the photocopies they made. But it was so slow and unsatisfactory that we made a change. We began phoning the information for "missed instruments"—giving the number of the book and page, etc. This method was so fast that in an unbelievably short time we had a stack of erroneous information a foot high. One number sounds too much like another over the telephone.

TelAutograph System Works

Then we saw a TelAutograph system of handwritten message transmission in a local bank, which looked as though it might solve our problems. So we gave it a try, and it has been excellent.

This equipment automatically gives us a written record of all messages sent and received, which insures the accuracy we must have. Yet, these messages are transmitted instantaneously, which gives us the speed we have long sought.

Now, we not only use the equipment to order "missed instruments," we also order the original photocopies for the title search. And we even transmit all the information for brief instruments, like marginal releases of trust deeds, directly over this longhand network.

This equipment consists of three transceivers—devices which both send and receive handwritten messages in ink. The one in our office is equipped with a key box which permits us to communicate with either of the other two at will.

When we get a request to make a title search or abstract, we enter the legal description of the property, the date, etc., on an order form which is given a number and placed in an order book.

Working from the order form, a chain clerk checks our office tract book in which the property is listed. On a chain work sheet, the clerk lists the instruments in brief—filing date, grantor, grantee, type of instrument and book and page number of the record books at the Courthouse.

After these have been listed, a clerk checks our general index; then checks a card index which lists instruments already recorded in microfilm in our own office. A major portion of those we need are in our office. For those that are not, the clerk sends a request to the courthouse via our transceiver.

Using the machine's pen-like stylus, the clerk writes the order number, date, and brief information about each instrument—just the book and page number and type of instrument —"T.D." "W.D." "Asgmt" etc. Exactly what is written on the transceiver is instantly reproduced on the transceiver receiving the message.

In most cases, of course, these transmissions go to the transceiver in the recorder's office. But if information concerning a court proceeding is needed, the clerk first pushes the key box button to connect his transceiver to the one in the Court Department. Then the message he writes is duplicated on the machine there.

Although we have three clerks at each of the two courthouse offices where the transceivers are located, none of them need be at the machines when a message comes in. It is received entirely automatically and the paper advances so that if another message is sent before the first is torn off the machine, there is no danger of the second message being written on top of the first.

In addition, the two machines are equipped with signal lights which notify the clerks that a message has come in.

Messages Used As Worksheets

Our clerks in the courthouse use the messages they receive as work sheets. They get the proper record books, make photocopies of the instruments requested and check each item on the transceiver work sheet as they finish with it. When all instruments requested for the same chain order number have been copied, the photocopies and the transceiver copy are clipped together and sent to our offices by messenger.

The messenger delivers the work to the compiling department where a compiler, using the order number listed on the transceiver work sheet as a guide, combines the photocopies with the chain sheet of the same number, so that the abstract or search can be completed.

What if an instrument is missed? Well, if the compiler discovers this before the packet arrives, he or she immediately requests the photocopy via transceiver, and 99 per cent of the time it is delivered along with those originally requested. Even on the few occasions when it is not, it is still sent over much more quickly than ever before possible.

In the case of a short form which we want in a hurry—like a marginal release of a trust deed—we transmit our request to the recorder's office via transceiver. The information is transmitted back to us on the same equipment, and typed on the preprinted marginal form. Here again, we have achieved the ultimate in both speed and accuracy, thanks to the written record at both ends.

On an average day, we transmit anywhere from 80 to 110 requests to the recorder's office, and a smaller number—of which no record is kept—to the court department.

Because people who want a title search or an abstract always seem to be in a tremendous hurry, fast accurate service is vital. This new equipment plays an important part in giving it to them.

No. You don't have a complex. You are inferior.

A certain title insurance company retained outside counsel for a defense against a claim. The trial was held in a city located in a different part of the state from the home office. About noon of the eventful day the president of the company received a telegram from the lawyer. It read, "JUSTICE TRIUMPHS." The president wired back, "APPEAL AT ONCE."

Ten Little Escrows

Ten little escrows, business looking fine;
One got cancelled,
Then there were nine.

Nine little escrows, waiting for their Fate.
Parties didn't tell the truth and—
So there were eight.

Eight little escrows (no such thing in Heaven)
Buyer hadn't got the funds, and
Now there are seven.

Seven little escrows, nothing much to fix;
Litigation started, and—
Now there's six.

Six little escrows, active and alive.
Seller committed suicide,
So now there are five.

Five little escrows, wish we had some more;
The checks came back marked "N. S. F."
And that leaves four.

Four little escrows, taken in by me;
The documents were forgeries,
We're left with three.

Three little escrows, CERTAIN TO GO THROUGH.
The buyer went to Patton—and
Now there are two.

Two little escrows; the buyers' getting "done";
Unfortunately found it out; so
That leaves one.

One little escrow;
Work is nearly done.
Flaw in the title—
Now there's none!!!

—H. A. Durham.

The Other Side of the Coin

For so long most of us have sat on the one side of the desk, observing the helpless floundering of the bewildered purchaser that it is with interest that we review the plight of Mr. B. M. Atkinson as he describes his first homebuying experience to the editor of "Missouri Titlegram."

"I've just gone through a mysterious ritual known in real estate circles as 'closing the deal.' In other circles it's known as 'knotting the noose.' I'm not sure about what transpired but I gather that in 20 years I will own a house, if I'm not careful. The only change in my status is that I can stop worrying about the landlord and start worrying about the sheriff.

"There were five of us seated around this table peeking at one another over the mountain of legal documents that were going to make me the exclusive property of the F.H.A. for a couple of decades. From the amount of paper on hand it looked like we were going to renegotiate the Louisiana Purchase instead of transfer a house and lot.

"My agent, Gordon Denny, wasn't much help. He has been suffering from mental ulcers ever since he tried to explain to me how a thing called 'interest' worked; so rather than have his condition aggravated we agreed beforehand just to ignore one another during the ceremony.

"The presiding lawyer seemed to be representing the Title Insurance Co., the F.H.A., the United States of America, the Commonwealth of Kentucky, the welfare of Jefferson County, the natives of Clarendon Ave., and the people opposed to the peddling of malt beverages and vinous liquors in residential areas. I represented the housing shortage.

"After Denny assured the attorney that I would be able to sign my name despite the dazed expression on my face, we got down to mortgages. Just as a gesture they let me look at the papers before I signed them. Of course, if you read every paper that you have to sign the mortgage will be overdue before you get through.

"The best thing to do is just go ahead and sign anything they shove at you—unless it has a dollar sign on it some place.

"But even after you've read it, you have to have eight years of law school and an apprenticeship under Frankfurter to know what's going on. No document is legal unless 'wherefores,' 'therefores' and 'pinafores' are playing leap frog across the page. If the document comes out so that a layman can understand it, its author is disbarred.

"My average was one out of 50. I understood the one that asked whether I was an American citizen. If some of the previous papers I signed didn't deprive me of my citizenship, I answered that one right.

"While the discussion involved sums of four figures, I managed to curb my stupidity. When it got down in the two-figures bracket—the fees involved in 'closing the deal'—I asked 'why' despite frowns from my intellectual superiors.

"All I got for my answer was something about if an Indian would show up and claim I was on his land I would be backed to the hilt by the Government. Provided, of course, the Indian didn't belong to the United Mine Workers.

"When it was all over, everybody seemed to get papers to take home except me. I wound up with a certified check for $1.20. I don't know what it's for and I'm not stupid enough to ask."

Matters Not of Record In Register of Deeds Office

We can always rely upon Clarence M. Burton, Vice-president and Secretary of the Burton Abstract Company, Detroit, to present, in an interesting and understandable fashion, matters of concern to abstracters and title insurance men. The following is a paper prepared for the Michigan Chapter of the American Right of Way Association.

In the preparation of this paper, I have proceeded under the assumption that most everyone here today is in some way interested in the aquisition of the title to real estate or some interest therein by way of easement or right of way.

I have also assumed that we are talking about acquisition by purchase, since any acquisition by condemnation will certainly be done by competent legal counsel, and I don't pretend to have anything to say here today that will come as any great revelation to any attorneys that may be present.

Mr. Josman has told you all about evidence of title as to matters of record in the Register of Deeds Office. Certainly this is the basis for information of all real estate titles, but, that is only a point of beginning.

There are many other things that may have a bearing on the method you employ in purchasing land or an interest therein; I would, therefore, like to discuss with you for the next few minutes, matters that may have a significant effect on the title to real property and in the determination of the legal or equitable interests therein but still not a matter of record in the Register of Deeds Office, being briefly as follows:

- I. Mechanics' liens rights not of record.
- II. Any matters that would be disclosed by a personal inspection of the property and/or by a survey.
- III. Probate matters (Probate Register's Office of the County).
- IV. Matters on file in the County Clerk's Office.
- V. Zoning Ordinances.
- VI. Matters in the United States

District Court Clerk's Office.

Now to go back and explain, if I can.

Any mechanic or materialman furnishing labor or materials for building or altering a structure on the land is entitled to file a lien on the property if not paid within 90 days after the last work or material has been furnished. He must, however, file in the Register of Deeds Office within 10 days after the last material or labor has been furnished, a "Notice of Intention to claim a Lien." But, you can see there is a 10 day lapse when if you rely on record title only, you can get stuck. So to eliminate this hazard you inspect the premises and if any recent work has been done, the laborer or materialman must furnish the owner a "Waiver of Lien" upon payment of the bill. The purchaser should be supplied with this by the seller or if no improvements have been made in the last 90 days, the seller should supply a sworn statement to that effect.

Inspection Important

In the purchase of real estate, the purchaser or his agent should always make an inspection of the premises and question the occupants who may upon such interrogation, be revealed as land contract purchasers or lessees and in either instance they would have to be dealt with in case of purchase. If in the course of inspection of the property, it looks as though there may be a fence, garage or any other encroachment onto the land in question, it would be advisable to request a survey from the sellers made by a registered surveyor. Fences or in some instances even a hedge, allowed to stand for a period of 15 years could in effect re-establish the boundary line and you could lose a piece of the land this way.

You are also charged with notice of any open drains, ditches or visible easements even though notice of same are not a matter of record. Only a personal inspection of the land would reveal these matters, yet they all could have a tremendous effect on the price to purchase and from whom.

Matters on file in the Probate Register's Office could also be very significant. Suppose your last owner of record in the Register of Deeds Office is now deceased. You must determine now who are the heirs in order to purchase from them. You must also be sure all debts of the deceased are satisfied and all Federal Estate and State Inheritance Taxes have been paid. The inventory of the estate may even reveal the fact that the deceased was selling the land on contract.

In another instance you may actually enter into negotiations with the last owner of record without realizing that he or she has been adjudicated a Mentally Incompetent or a Spend-

thrift. Only the Probate records would disclose this and such person would be under a disability to sell his own property. In such case you would have to deal with the duly appointed guardian, who can sell only pursuant to proper order of the court. The same would hold true of a minor.

At this point, if you don't mind, I would like to digress momentarily to say a little about dower. I feel that this is within my topic anyway since such is not a matter of record.

You've all been taught over the years that you must always have the wife sign the deed along with the husband, when he alone owns the land, for the purpose of barring dower. But, to examine the question of dower a little further, we find there are two kinds of dower—resident and non-resident. Resident dower is that interest a woman has in any lands owned by her husband during coverture in which she has not specifically barred her dower by agreement, individual deed out or by joining with her husband in the execution of a conveyance out.

Non-resident dower is that interest a woman, whose legal residence is outside of the State of Michigan, has in any lands owned by her husband **at the time of his death.** Hence, if a man owns land in his own name (not a homestead) and it can be determined that the wife is not a resident of the State of Michigan, you are safe in taking a deed executed by him alone since she will only have a dower interest in any land he does not dispose of during his lifetime. I would strongly urge, however, that the caption of the deed recite that his wife is not a resident of this State and to say where she does reside.

One further point of interest to you may be the fact that by statute a woman only need be 18 years of age in order to bar her dower, it isn't necessary that she attained her majority.

County Clerk's Office

Now to get on to matters in the County Clerk's Office.

A divorce action and decree only to be found here could make a lot of difference in whom to pay the money and from whom to get a deed. Suppose the record title shows John Doe and Mary Doe, his wife, as owners of the land you wish to acquire and they have since been divorced and the land awarded to May. This would be nice to know before you pay the full purchase price to John.

Also, there could be partition proceedings and a subsequent decree in partition awarding the land in question to one of many former owners.

Further, you might find proceedings to establish a lost or destroyed deed and a decree pursuant thereto, or a decree quieting title in an ad verse possession case. In this case the record in the Register of Deeds would mean exastly nothing. In a Chancery anything could happen to a title.

Articles of Association and Certificates of Co-partnerships are also filed in the County Clerk's Office. In order to hold and convey title by a corporation or a partnership it must be either duly incorporated in the case of a corporation or duly organized in the case of the partnership. Co-partnerships must file annual reports in the County Clerk's Office. Failure to do so for 3 successive years renders the corporation defunct and unable to continue in new business; however, they have two years after that to wind up old business so you can purchase and acquire title from a corporation for a period of 5 years after the last annual reports are filed.

In the case of both corporations and partnerships only the County Clerk's Office will tell you who can convey on behalf of the organization. I haven't gone too much into detail on this matter, I merely call it to your attention to impress upon you the importance of these matters even though not in the Register of Deeds Office. So many are under the impression that the Register of Deeds Office alone will tell you who owns land.

Zoning ordinances play a very small part as far as you people in the Right of Way Association are concerned. The only instance I can think of is the case of the Edison or Telephone Company acquiring a piece of land upon which to erect a building. In which case it would be necessary to examine the zoning ordinance of the municipality in the City Clerk's Office.

Federal Matters

The last danger point I can think of now is matters in the United States District Court Clerk's Office such as bankruptcy proceedings (or United States Internal Revenue liens during a certain period that I'm sure Mr. McShane, the next speaker on this panel, will discuss). A bankruptcy adjudication puts a person or corporation under a legal disability to sell or encumber his or its' own land. In order to purchase this land you would have to deal with the court appointed Trustee in Bankruptcy.

I have only scratched the surface on this subject. Time and these hard chairs does not allow for a more comprehensive treatise on the subject, but I hope I have adequately alerted you to some of the pitfalls of title evidence.

Those Printed Exceptions

Not with apology, but with refreshing honesty, Lem P. Putnam, Manager, Beaverton Office, Title & Trust Company, Portland, Oregon, tells the Marion County Realty Board, Salem, Oregon, about those printed exceptions in a title insurance policy. Mr. Putnam is also president of the Oregon Land Title Association.

I should like to discuss with you today some of the more common dangers, inherent in a sale of real property—matters which will be of interest to you as realtors because by joining your realty board you have indicated your desire to accept your moral responsibilities to your clients and to your community.

You are interested in learning more about the real estate business. You expect to remain in business for many years to come and therefore you need repeat business. You'll get repeat business only by closing each deal to the satisfaction of all parties.

This means anticipating those danger spots ahead of time and taking positive action to ward off unnecessary troubles.

In order to say to you that which I have in mind—I must first adjust my thinking to a terrifying preliminary presumption. Here it is—"Title Insurance doesn't protect against everything." "There are some exceptions in every Title Policy." I should be surprised if those printed exceptions meant the same thing to any 3 persons here. We all have a different point of view. If this white haired gentleman down here were asked whether I'm old or young — he no doubt would say "young." However, if you asked my 7 year old son how old I am—he'd say I'm an "old" man.

I dislike discussing exceptions because I'm used to puffing my product —that's the American tradition. I'd much rather bring a customer through the front door and into my parlor, but you're not customers of mine in the true sense of the word. Very seldom is a broker or a salesman the insured in a policy. For that reason, and because of your close association with the title industry—I think it's a good idea for me to take down my hair, invite you to come around to the back door and into the kitchen. That's where the important matters of policy are decided. The front page of a title policy is like the parlor of a home — it's elegant and imposing, but the back pages are tremendously important.

The fundamental precept, underlying most of the printed exceptions is this—Title insurance is based upon an examination of the public record. It insures the validity, the authenticity and the result of instruments and matters of record. The title company makes no inspection of the premises. Its premiums are predicated upon an examination of the public record only.

He does this affect you? How does it affects your customers—the ones you are depending upon for your repeat business? The more you understand about the function and coverage of title insurance, the less problems your customers will have and the more confidence you will have in closing your deals. Without confidence — you develop an inferiority complex. I had one when I first entered the title business and it was so bad that I went to see a psychiatrist —I told him I constantly felt that I was inferior to everyone else. He examined me for 2 hours, then told me—Putnam you are inferior. After that it didn't bother me any more—apparently it's an asset for a title man.

Let's go through some of the printed exceptions and see what you can do to help your customers avoid the pitfalls.

No. 1—"Easements, liens or incumbrances, including material or labor liens—which are not shown by the public records;"—For example—if a neighbor is using a portion of the described land for a driveway, it's

quite possible there is an unrecorded easement or a prescriptive right existing. The Title Company bases its examination on the record, they won't pick up that easement unless it's recorded. It's the purchasers responsibility to inspect the premises, then inquire from the neighbors as to the extent or source of the driveway use he discovers. If remodeling has been done in the last month or two—it's possible that a materialman's lien may yet be filed. Mr. purchaser can see that work has been done, he inspects the premises—the title company cannot, they make no inspection and they do not insure against unrecorded lien rights. You as listing Broker or as a salesman—inspect the property also. If remodeling is apparent, ask some questions from the seller. Who did the job? Have they have paid? Would he mind showing the buyer the paid receipts. This steers your customer around the pitfalls.

—"Water Rights Claims or Title to Water"—Water rights are personal rights and records are kept by the State Engineer. If there exists a small stream on property listed, suggest to the buyer that he check with the State Engineer as to the use of that water.

—"Rights or claims of persons in possession or claiming to be in possession, not shown of record."

This means that the purchaser has a responsibility to ask anyone living on the property—what their rights are. With nothing recorded—the title company doesn't even realize they are there. Yet our laws hold that possession is just as effective as recording your deed or contract. The attitude of the courts is that any reasonable person should ask an occupant of a house he may be buying, "What are you doing here?" He would then be told that there exists an unrecorded contract.

—"Any state of facts which an accurate survey and inspection of said land would show"—Here is a defect which can only be discovered by an inspection or survey. For instance the location of the building on the land. If any part of the building or driveway is catawampas on someone else's land—damages resulting therefrom are not covered by title insurance. Before any real estate broker operates more than a few months he becomes an amateur surveyor. He has to. He carries a tape and learns how to use it. If you find in checking your corners that a building or driveway is going to come fairly close, you had best consider whether or not it might be wise to have the parties split the cost of a survey.

—"Assessments, which are not shown as existing liens by the public records" — Included here might be this situation—the city installs a new sewer main in the street after notifying the adjacent owners there would be an assessment. One owner sells before the work is completed and before a lien is entered. If the seller is dishonest, this situation spells trouble—because the buyer's title policy will not protect against this unrecorded lien. Now I know the tendency is to believe your fellow man speaks the truth, but it's only businesslike to check the items which can be expensive. Take a tip from the judge who was instructing a jury—he said; "If you believe the plaintiff has told the truth—your verdict must be for him. If you believe the defendant, your verdict must be for the defendant. However, if you agree with me — that they're both liars, frankly I don't know who your verdict should be for." Mr. Purchaser should examine the sidewalk and street for signs of recent work—and consult a neighbor or two and the City Engineer's Office if he finds evidences of work. You as a salesman can help. You can check matters of this kind as a routine—and perhaps prevent a nasty lawsuit at a future date. This will mean repeat business. Good salesmanship calls for selling all the way through the closing. I am told a top salesman even goes back 6 months or a year later, asks if they're still pleased with the deal, and incidentally asks whether they'd be interested in finding a larger house for their growing family. Selling can be a one shot affair or it can be a profession—you're here today because you believe it should be a profession.