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TITLE NEWS

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THE PRESIDENT'S POSTSCRIPT

Repetition, as a general rule, is boring and therefore something to be avoided. However, my President's Post Script this month is going to be repetitious in that it again deals with the New York Convention. I am sure that most of you will agree that this is a subject that bears repetition.

Many of you have, I know, had your plans made for months. Transportation and hotels are already arranged for and you probablyhave reserved tickets for some of the current New York shows. Many of us, however, procrastinate in matters of this kind and have not as yet finalized our plans. May I suggest that you do so at once.

I feel sure that you will find the program worthwhile. Both of your Section Chairmen are planning outstanding programs, and with the speakers we are lining up and the reports of the various committees that have been active during the past year, I feel sure that the general sessions will also be rewarding.

Then, too, there is the matter of the growth and development of our Association. Only by getting together at national conventions and at our mid-winter meetings can we develop a clear picture of what is happening in the industry and what we can do jointly to make the ATA a more effective and serviceable organization. This effectiveness is important to each of us, and there is a direct relationship between the progress made and the number of our members in attendance at our annual meeting.

So, once again, I urge you to make your plans NOW to be with us in New York. Not only will it be rewarding from a business standpoint but you can depend on our New York hosts making our stay a most enjoyable one.

Ernest J. Lochbaum

TITLE NEWS

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Features

Departments

THE LIFE INSURANCE COMPANY AND TITLE EVIDENCE

By
Henry Polk Lowenstein

Everyone recognizes the influence that Life Insurance Company Counsel has exerted in the phenomenal development of the title insurance industry. Here we have the opportunity to review with Mr. Lowenstein, formerly Resident Title Attorney for the Prudential Insurance Company, the importance of a close understanding between these two great public service groups. Mr. Lowenstein's article is reprinted with permission of the "Missouri Titlegram."

You deal in title evidence. Why does the life insurance company need title evidence? It needs it because two hundred million policies of life insurance are in force in the United States, today. Millions of dollars are being received daily by the companies that have written this insurance. Life Insurance has had its greatest growth in the United States. It is peculiarly an American institution. It affects the life of every one of us.

The money which is being paid in premiums on life insurance constitutes a trust fund that must be conscientiously and wisely administered. The surplus of this money must be prudently invested for the benefit of the policy holders. It must be invested in many types of investments.

Insurance companies do not carry all their eggs in one basket. The investment of their surplus funds in real estate mortgages is the only one form of investment utilized by insurance companies, but it is the form of innvestment in which we, as title men, are particularly interested.

The first principle of prudent lending is to be assured that the money invested will be fully protected, and will ultimately be returned to the lender. The safety of the principal is paramount to all other considerations. The money must be loaned on a proper appraisal and on a good title.

We are very much concerned with the question of a good title and how that good title is established. The best appraisal is valueless if the title fails. The title evidence must be such that a disinterested examiner, unfamiliar with the locality and un-

familiar with the parties in the title, can intelligently ascertain from the evidence before him whether or not the title is good. The attorney examining for a national institutional lender in most cases does not know the local history back of the title, and can only judge the title from the evidence submitted to him. In turn, this title evidence is usually sent to the company's home office, and is subject to spot check examination by home office attorneys.

Government Supervision

Furthermore, life insurance companies, and for that matter, other institutional lenders are subject to supervision by governmental departments, and the examination of securities includes examination of title evidence. These examiners are still further away from local conditions.

I repeat, life insurance companies are subject to examination by State and Federal agencies and it is essential that the title evidence supporting their investments be full and complete. It might be well to keep this point in mind the next time an opinion is submitted which appears to be loaded down with over-technical requirements. If the securities is acquired by foreclosure or voluntary conveyance, the title evidence available must be in proper shape so that when a sale in liquidation is made, a proper title showing is available for the purchaser.

In the 1930's, the Prudential decided to begin to invest some of its mortgage funds in Wyoming, and it was my good fortune to investigate the requirements there before we began to do business.

Prior to that time, very little outside capital had been invested in local mortgages. On loans on city property made direct for our account, we usually had two examinations of the abstract prior to disbursement. One was made by the local field attorney who was approved on the basis of his local reputation in the examination of titles; and a second examination was made in the branch office by one of the staff attorneys. This second examination was made for the purpose of additional safety, and also to check on the skill of our approved attorney until such time as we knew that he was proficient in his work.

We also had other reasons for our second examination. One was to see whether or not the funds were being invested in the manner in which the state of our incorporation required. Another good reason for the examination was that it taugh the branch office attorneys something about the law of Wyoming. One can read all the law there is in the books; and unless he puts that knowledge to practical use, he does not retain it.

Only by doing, do we really learn how to do well. I had approved a local attorney upon checking with the Register of Deeds' office, and with the various abstracters there. I had inquired of them as to be attorneys within the city who did the greater portion of title examinations within the city, and who had the reputation of being the most proficient. I also tried to get a lead on any other companies for whom they examined.

My investigation pointed to two or three attorneys. I checked the attorney's ratings in Martindale, and checked on the location of their offices, and finally decided to interview a law firm consisting of father and son. The father had reached an age wherein he was turning most of his work to the son, and the son had by that time become proficient in the practice of law. It was an ideal hook-up for us.

We began getting some new loans to close, and soon found out that the examinations were r a t h e r sketchy, although they were in good form. Our examiners began to ask certain questions, and it became apparent after a while that the attorney was being somewhat nettled by our constant request for information that did not appear on the abstract.

Identity

The next time I was in Wyoming, the attorney in no uncertain manner showed that he was displeased with the added work load placed upon

him with our procedure. He cited a certain title that he had examined, and which we had re-examined and asked for an affidavit of identity. The title had been held by a young lady, and her name appeared a number of times in the title, and she had used at least three different names during that time. Our approved attorney was very much surprised that we should ask for an affidavit of identity.

He went to school with Miss "Blank". She was very wealthy and was known as the pickle heiress of that section of Wyoming. Everyone in the city knew her and knew that she owned this property and various other pieces of property in the community. He apparently did not consider that nearly everyone out of town did not know her nor did they know the extent of her realty holdings.

I might add that this attorney became one of our most trusted approved attorneys in the field, and that we have had for many years very pleasant business relationships with him.

Types of Title Evidence

Three types of title evidence are available in this area.

(1) The abstract of title supplemented by examination, and opinion by an attorney.
(2) Certificate of title based on an opinion of the record title.
(3) Title insurance.

These three types of little evidence are based on the American plan of recording instruments. This plan seems to be part of the "American Way" and it is a part and parcel of our scheme of conveyancing. In recent years a wide spread use of the photographic method of recording instruments has been a decided improvement over the old method of copying or typewriting the instruments, insofar as the record of instruments in the Court House is concerned, and also of great assistance in compiling the abstracter's books. This should make easier and more correct abstracting.

I will now consider the abstract of title, supplemented by the attorney's opinion. This method of title protection depends on the skill of the abstracter and the ability of the attorney. We have any and all types of abstracts in the middle west. Some of the abstracts submitted for examination are merely chains of title and are in reality, no more than indices of the record. Other abstracts are virtual copies of everything on the public records.

In my opinion, the ideal abstract is a cross between these two extremes. It is an abstract of the facts and information sufficient to base an intelligent opinion on the title.

There is a great need in this country for standardization in abstract work and for the standardization of abstract certificates. I know the standardization of abstract certificates is a touchy subject. Certain abstracters do not desire to conform to a standard abstract certificate in many cases because they feel that the information desired may not be entirely needed, or they may consider that it would require the compiling of more information.

I think, however, that we must approach this subject along with the democratic line of considering what is best for all concerned, and I think that the Missouri Uniform Certificate should be decided upon and approved by this association at an early date. The quicker we all learn to procure our abstract information along uniform lines and to fully cover the subject, the better. Time then can be spent in increasing the compensation for work performed.

I know of no line of work that requires more judgment and skill that that of compiling an abstract from the records, knowing what to set out and what to omit, and how to arrange the material. I desire to make this observation at this point. It has been my experience that abstracters, as a class, are extremely conscientious in their work, absolutely honest and the great majority of them are most accurate.

I have certain definite ideas about the construction of an abstract. I like an abstract to be chronologically compiled and put together in an orderly manner. I do not like exhibits

to be crammed into the rear of the abstract so that the examiner has to go through a fishing expedition to find his material.

The abstract should be a history of the title which unfolds as the examiner reads it page by page. It should begin at the patent and proceed directly through to the minute of certification. There has been a tendency to do things indirectly that cannot be done directly.

To digress on the policy of examination of abstracts by the Prudential and other companies, I am going to quote a portion of a letter that I wrote several years ago to one of our approved attorneys in the field.

"First, you state that the purchaser is probably relying on the Prudential's approving the title, and that is the very thing that we want to keep the purchaser from doing. We are investing policyholder's money, and our entire viewpoint with reference to the examination of title is protection insofar as the policyholders of this Company are concerned. We are not guaranteeing any purchaser's title, and the purchaser should know that it is up to him to make his own arrangements for his own protection. We are merely lending him money.

"He can depend on an attorney's opinion, and thereby have the protection of professional advice from those skilled in the law of real property; or he can have his title insured by a responsible title insurance company, which requires the payment of a fee which in most cases is reasonable for the service rendered. If he does not take one of these two courses of action, then he is taking a chance that ordinarily he can ill afford to take.

"In any event, there is no duty whatsoever on the Prudential to protect him on his title, and he should be so advised.

"With reference to the title requirements of this Company in connection with its mortgage loan investment program, we will say that we are governed primarily by the investment statutes of the state of New Jersey. These statutes provide for investment in first mortgage security or in Government insured or guaranteed loans as such was the case in the old second mortgage 505 GI loans.

"These loans must be first liens on good titles on unencumbered lands. This has been constructed to mean that we do not necessarily have to have a strictly marketable title as that is generally understood. We do have to have a title that will be considered good and safe by skilled examiners."

The second type of title evidence in this area is the certificate of title. I am going to pass over this very briefly because it has been my experience that companies that issue certificates of title also write title insurance, and life insurance companies, under the circumstances, insist on the use of title policies. I know, in some areas, certificates of title are taken by life insurance companies, but it has been my experience that they would prefer the fuller coverage afforded by the title insurance policy.

The third type of title evidence in this area is the title insurance policy. Life insurance companies, as a rule, prefer the use of this type of title evidence. The policy is usually based on a reliable examination of the title, and also affords the additional benefit of the insurance feature. Title insurance has had its development in the last eighty years, and mostly in the latter part of that period. There are still many imperfections that need be corrected.

Title insurance companies had their troubles during the depression period, but this was usually caused by

the title insurance companies taking additional risks not in the title insurance field. I know of no companies that have limited their activity to title insurance purely, that had any difficulty.

Growth Factors

The continued growth of title insurance depends largely on the future attitude taken by title insurance companies themselves. Certain factors should be considered: (a) Adequate plant; (b) Reliability of personnel and proper organization; (c) Financial responsibility; (d) Reasonable rates; (e) Liberality in reissue rates; (f) Payment of losses; (g) Uniformity of policy forms; (h) Full protection and no insurance of known bad titles; (i) Matters of publicity, advertisement and public relations.

It is apparent that in order to issue proper title insurance and have protection to the company that issues it, that such companies must have available an adequate plant, so that it has in its possession all the information necessary to completely examine the title and make itself aware of the various liabilities against which it is insuring.

Its personnel should be chosen from those skilled in the abstract business, and its title examiners should be lawyers, who by training are able to properly examine titles. The examining attorney should not be overloaded with work, and should be furnished with ideal working conditions and a good library.

The tendency of executive in business is to get the thing done and this does not always fit into the legal picture. Rome was not built in a day. Some people think it could have been, if they were on the job. Therefore, I emphasize that the attorney who is taking the responsibility for a company should not be overloaded, and should not be unduly pressed in order to satisfy some over-nervous client.

The company should have a proper financial standing. A title company should have a proper financial standing. A title company should not object to a client who limits his use of its policy to a certain amount, if the title company's financial background is not sufficient to protect a large number of losses that might occur within a short period of time.If any such limitations are placed upon a company by a client, it should be a "flag" to that company that it would be better for them to strengthen their financial background, so that acceptance of its policy will be unquestioned. You would not care to insure your life or to insure your property against fire in a company that has small resources. Why, therefore, should you expect to have title insurance accepted unless adequate financial stability is guaranteed?

Reasonable rates. This is a subject that is primarily for your consideration. Certainly none would expect a company to assume the many risks incident to the proper insuring of a title and not be properly compensated for the risk assumed. I can see no difference, in the long run, between title insurance and other forms of insurance. Cheap rates do not mean protection. Rates based on too high a schedule, however, will probably mean loss of business. Title insurance is not a necessity, but is a desirable protection.

As to reissue rates, it has always appeared to me that if substantially lower rates were charged for the subsequent coverage, that it would go a long way toward making the use of title insurance permanent.

Insurance companies, as a whole, have learned from experience that prompt payment of losses is the best business advertisement that they

can have. The losses incident to title insurance are of a vastly different character than the losses incurred in the other forms of insurance. In other forms of insurance, the losses are usually fixed. The man has died or the house has burned, but in title insurance, there may be a reasonable doubt as to the legal liability. No one can dispute the right of a title insurance company to litigate fully its questionable claims. Unless there is a legal doubt as to the claims, losses should be paid promptly.

It is very important that an effort should be made towards uniformity in title policy coverage. The more protection you give and the fewer exceptions you insert, the more your business will prosper. The American Title Association has accomplished a great deal along that line in the ATA form of title policy. I am not one of those who believe that there should be no Schedule "B" in policies, but I do believe that as complete protection should be given as possible.

Insurance companies and other institutional lenders have various requirements with reference to restrictions and easements. Many of them insist that such instruments be shown in full, and others insist on abstracted information or certificates with reference to forfeiture of title provisions, or insurance on the part of the title company as to breech of the restrictions. Every company has its own requirements, and I think that title insurance companies should do all in their power to satisfy such requirements. It has been my experience as the years go by that these requirements have a habit of mellowing, and many times burdensome requirements later pass out of the picture.

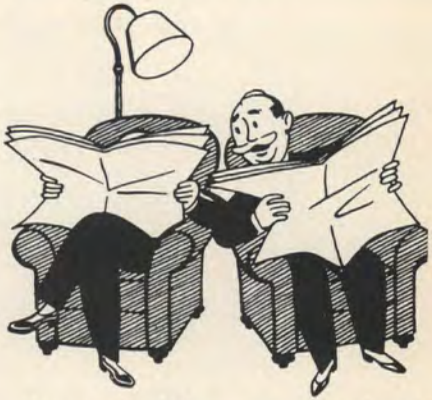
A title insurance company should never insure a so-called "bad title" even though the risk of loss is remote. The purchaser who has invested his money in the land in question desires to buy that specific land, and does not desire to have his money returned to him from a title company after the title company has gambled on the title. Let me explain, however, that I feel that a title company can many times be justified in issuing a policy, with the knowledge of the people who are purchasing it, covering against a technical defect to the title.

An example of this would be mechanic's lien coverage, if the title company has made a full and complete investigation, and are handling the disbursement of the funds. Another example, would be a title affecting the administration of a decedant's estate. I believe a title company under such a set of circumstances would be justified in issuing a policy after full investigation, and perhaps at an increased rate, with the knowledge of all concerned.

As to the matter of publicity, advertsisement and public relations, these subjects are closely related and are most important to success in any line of business. Much of our business is being transacted today on the basis of full faith and credit. The best publicity a business can have comes from satisfied customers. The public desires to do business with a concern that meets it with a cheerful, friendly and courteous attitude.

Title insurance is still in an undeveloped stage in this section of the country. Its use should be encouraged because it facilitates real estate transactions, and gives financial protection to the purchaser or investor.

This Could Be You



Sorry Ed. When my wife heard about the $3,000 fashion show, she decided to take in the October Convention.

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Is your reservation for the 53rd Annual Convention, October 19-22, at the Commodore Hotel in New York City.

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CENTER—Modern New York on the banks of the City's East River stands as a center of America's financial and cultural life.

BELOW—Skyline at night.

AND THE LADIES

BLESS THEM

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Want to see the City through the eyes of a New Yorker? A hostess will be on duty to quide you and your guest for theater tickets, sight-seeing trips, selection of restaurants, shopping tours, T.V. programs, visits to the United Nations and all other Metropolitan activities.

Music? Dancing? Entertainment? A 12-piece orchestra will supply the dinner music, a floor show will provide the entertainment following the banquet.

And this is only the beginning! Make this 53rd Convention a happy time for your wife. Make your reservations now.

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meeting timetable

September 20-22, 1959
Missouri Title Association
Mickey Mantle Holiday Inn
Joplin, Missouri

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

September 25-26, 1959
Utah Land Title Association
Andy's Prime Rib
Salt Lake City, Utah

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

October 2-4, 1959
Washington Land Title Association
Harrison Hot Springs Hotel
British Columbia

October 8-10, 1959
Wisconsin Title Association
Northernaire Hotel
Three Lakes, Wisconsin

October 19-22, 1959
American Title Association Annual
Commodore Hotel
New York, New York

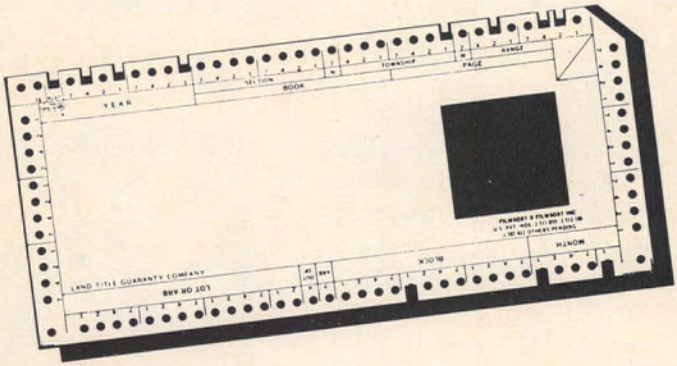
(**New York State Title Assn.**, October 20, 1959.) (One day meeting in conjunction with ATA Convention.)

November 7, 1959
Arizona Land & Trust Company
Tucson Inn
Tucson, Arizona

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

November 12, 13, 14, 1959
Florida Land Title Association
Fort Harrison Hotel
Clearwater, Florida

Time is



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ON ITS OWN

GROUP INSURANCE COMPLETES SUCCES FIRST YEAR

In the short period of just one year, the support given to the ATA Group Insurance Program has resulted in the establishment of an outstanding record of stability and growth. To launch the program, the National Association advanced $4,000 on a loan basis. So enthusiastic has been the response and so encouraging the loss record, that at a recent meeting of the trustees in Chicago the group insurance trust was able to repay the loan in full while at the same time reducing premiums from a $1.25 per thousand to .99c per thousand of insurance. In addition, a refund of 10% of premiums paid was made to all participants in the plan.

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ABOVE—Joseph T. Snyder, Vice-President of the Chicago Title and Trust Company, one of the trustees of the ATA Group Insurance Trust, observes as Chairman Morton McDonald, President of The Abstract Corporation, hands a check for $4,000, representing payment in full of the loan, to the third member of the fund's board of trustees, ATA's Executive Secretary, Joseph H. Smith.

CENTER—Bringing the big guns of the insurance world to bear upon ATA's Group Program, the trustees met in the office of Edward E. Mack, Jr., Fund Administrator. Left to right: Robert Mosley, Joseph J. Snyder, Joseph H. Smith, Morton McDonald, Wilma Panka, Edward Hatten, Edward E. Mack, and Clifford F. Gould.

BELOW—The Insurance Group Trustees met with Clifford E. Gould, C. L. U., Insurance Consultant.

uld, A.T.A.'s Insurance Con-
pressed his gratitude for the
cooperation he has received:
nal thanks are extended to Bob
ssociation specialist of John
or his able administration work,
vard E. Mack, Jr., C. L. U., and
nka and their office staff. I am
so for the brilliant counciling
H. Hatton, plus a board of
at are keen and alert to the in-
he trust as well as the ATA."

THAT'S WHAT THE JUDGE SAID

T. J. Mcermott

Author of Deskbook on Land Titles and Land Law

A major part of our life's work, at least so long as we labor at titles, is to pass judgment upon what the judge said. We are not the quivering culprits at the bar. We must decide whether what the judge said is binding, that is, whether the judgment of the court as set forth in the journal entry is valid. The judge may as well have kept his mouth shut or his pen still if the judgment is not authorized in law. In other words, a judgment is void unless the court had jurisdiction.

The occasions of lack of jurisdiction are of two kinds; as to the person and as to the subject matter. The consent of all parties does not validate a judgment if jurisdiction of the subject matter is absent. Lack of jurisdiction of the person usually arises from defects in service of summons or other process, or from omission of necessary parties defendant to to the action, or from institution of the action by a person not authorized to maintain it. Lack of jurisdiction of the subject matter usually arises from failure to observe statutory provisions conferring jurisdiction or limiting its exercise, or from insufficient description of the property, or from location of the property without the territorial jurisdiction of the court, or from absence of authority under statute or in equity for the court to decide the particular question or to grant the particular relief. Tonight we shall consider some of the specific matters within these categories.

Service of Process

The most common failure of title because of such matters is defects in service of process. Courts generally tend to uphold the rights of bona fide purchasers when no defect of service appears upon the record, especially when the court makes a finding that service was regular. However, in 1949

our Supreme Court set aside a judicial sale for lack of service although the record showed due service. A personal judgment is invalid unless the service is personal or residence; for example, an execution sale passes no title where the money judgment was based upon service by publication.

Service may be made by publication when the relief demanded consists in excluding a non-resident defendant from an interest in real property in this state. A defendant whose place of residence cannot be ascertained is treated as a non-resident in this respect. Statutes set forth the other circumstances in which such service may be used. Before service by publication can be made, an affidavit must be filed that service of summons cannot be made within this state; this provision is strictly construed and is jurisdictional. When the residence of the defendant is unknown and cannot with reasonable diligence be ascertained, that must be established by affdavit. When the residence of a non-resident defendant is known, a copy of the publication must be mailed to him at the address in the publication, and the mailing noted on the appearance docket. The publication is for six consecutive weeks, except where specific statutory provision is otherwise made. Unknown heirs and devise may be bound by the order of the court when it appears by affidavit that their names and residences are unknown to plaintiff and cannot with reasonable diligence be ascertained; notice to A **or** his unknown heirs and devisees does not confer jurisdiction. The provision that a judgment upon service by publication may be opened within five years does not operate against a subsequent bona fide purchaser.

Service by Mail

Service of summons by registered mail upon a non-resident defendant may be made where service by publication is permissible. Such service is frequently questioned by title examiners because of the requirements that (a) an affidavit for service by publication be filed, (b) such service be in accord with a rule of the court, (c) the mail be not returned as undelivered, (d) any person so requesting shall be served by the sheriff, (e) the return shall show that the summons was mailed to defendant at a given address, and (f) such address be the correct residence address of the defendant.

Service Out of State

Summons may also be personally served out of the state when service by publication is permissible. The requirements are that (a) an affidavit for service by publication be filed, (b) summons with a copy of petition be directed to the sheriff of the county where the action is brought, (c) such sheriff deputizes a person by endorsement on the writ, and (d) the service be proven by the affidavit of the deputy.

Answer or Appearance

Acknowledgment of service, answer or other general appearance is equivalent to service. A motion contesting the jurisdiction of the court may not be so equivalent to service. An appearance of a defendant by his attorney is sufficient to confer jurisdiction if the attorney was actually authorized by the defendant.

Persons Under Disability

Persons under disability are served in the same manner as adult except (a) in probate court actions, (b) on inmates of state institutions for the criminal insane or for mentally deficient offenders, and (c) when the defendant is a minor, service shall be upon him and also, in the order named, upon his guardian, father, mother, person having his care, or person with who he lives.

A judgment against a minor or insane person without an answer by his guardian, guardian ad litem, or trustee for the suit is voidable and may be set aside by the court upon a direct attack. The appointment of a guardian ad litem must not be before the service of summons. The defense of a minor in probate court, or the defense of an insane person in any court, should be by his guardian, if any, unless the guardian has an interest adverse to his ward.

Corporations, etc.

Special statutory provisions should be consulted for service on the State

of Ohio, United States, dissolved corporations, transportation companies, insurance companies, and partnerships.

A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees or other chief officer; or, if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk or managing agent; or, if none of such officers can be found, by a copy left at the office or usual place of business of the corporation with the person having charge thereof. Service upon a foreign corporation doing business in this state may be upon a managing agent in this state or, under the prescribed conditions, upon any employee, the designated agent or the secretary of state.

Service of summons is the same in probate court as in common pleas court except (a) when the defendant is under 14 years of age, service need not be made upon him, but shall be made upon his guardian, father, mother, person having his care, or person with whom he lives, in the order named, (b) when the defendant is an adult person under disability, upon him and also upon his guardian or custodian in that order, (c) constructive service may be had upon the guardian, etc.; and the guardian, etc. need not be served if his residence cannot with reasonable diligence be ascertained. Service may be waived in writing by the guardian, etc. Notice, other than summons, may also be served by registered mail or by publication for three consecutive weeks.

Divorce and Alimony

Additional requirements are made by statute in divorce cases. The validity of divorces are important to titles as in questions of dower, descent, devise, and of the effectiveness of decrees awarding land to one of the parties. A copy of the petition must be served with the summons at least six weeks before the hearing. These provisions apply to a cross-petition if the decree is granted thereon. Decrees are of doubtful validity where based upon personal service out of the state, service by mail, waiver of summons or entry of appearance. If the defendant is a non-resident of the state and the subject of a foreign nation in cases since August 27, 1951, a copy of the petition must be mailed to the consular representative of such nation.

When service is by publication title to real estate cannot be transferred by the decree unless the property is described in the petition.

When the land of one party is awarded to the other, not as alimony, but as a division of property, the equitable jurisdiction of the court should be considered. The domestic relations code, effective August 28, 1951, provides "In any matter concerning domestic relations, the court of common pleas shall not be deemed to be deprived of its full equity powers". Decrees prior to that date granting a divorce to the wife cannot award any of her land to the husband unless he was then the owner of little or no property; for example, jointly owned property cannot be awarded to the husband in such a case.

The principle of lis pendens applies to divorce and alimony cases; that is to say, a purchaser takes subject to a subsequent decree when the land is described in the pending petition.

A decree of divorce in a foreign state is presumptively valid; it may be set aside as to land in this state upon a showing that the court did not have jurisdiction.

A decree or judgment for alimony is a lien without the filing of a certificate of judgment when the court so orders under its equitable powers. If a decree for alimony expressly makes it a lien on land, the lien does not expire nor become dormant. I understand that the custom in Cuyahoga County is to consider an award of alimony to be a lien although no certificate is issued and there is no language of the court making it a charge on the land.

Judicial Sales

At a judicial sale in common pleas court, the real estate must be sold for not less than two thirds of the

appraised value. The exception is when the sale is subject to a prior lien, and then the court must find the amount due on the prior lien; this requirement ordinarily makes sale on execution impracticable when there is a prior lien. When premises are once offered and are unsold for want of bidders, the court may direct the amount for which the sale may be made. In execution sales the premises must be twice offered before the sale price may be fixed by the court. Notice of the sale shall be published for five consecutive weeks.

An order to sell and an order of confirmation are essential to a judicial sale, as distinguished from a sale on execution. Title does not pass until the sale is confirmed by the court. Confirmation cures irregularities in the proceedings but does not cure a lack of jurisdiction. A void sale is of no effect, so no title passes thereunder. A voidable sale will not be set aside in a collateral attack, for example, in a suit for an independent purpose; however, a voidable sale will be set aside in a direct attack, as in appeal and error proceedings. It is often difficult to say whether a particular defect makes the sale void or voidable.

A reversal after the sale is consummated does not affect the title of a purchaser who was not a party to the action. A perfected appeal stays proceedings on the judgment. An appeal may be filed within twenty days after the judgment or after overruling of a motion for new trial; and the possibility should be kept in mind that the entire proceedings may be set aside as void.

When a party dies after the decree ordering the sale, the court has jurisdiction to proceed with the sale. When the plaintiff or the defendant dies after jurisdiction is acquired by service of summons and before the decree, the decree can be set aside upon a direct attack.

Under the doctrine of lis pendens, after process is served a third party cannot acquire an interest in the property which will affect the purchaser's title. However, an examination should be made for a record, entered after service and before the sale, of an interest acquired before process is served.

The defendant owner is entitled to certain exemptions under the homestead laws when the lien is subordinate to such rights, as in enforcement of a judgment lien or of a mortgage not executed by the spouse. We do not often encounter any problems here.

Executors, Adminstrators or Guardians

An executor or administrator may maintain a land sale proceeding when the personal property is insufficient to pay debts of decedent, year's allowance, legacies and costs. He also may commence the action with the consent of all persons entitled to share in the estate upon distribution.

A guardian of the estate may commence an action to sell land whenever it appears that the sale will be for the benefit of the ward.

When the interest of the decendent or ward is fractional and undivided, a sale of the entire interest may be required by the plaintiff, by the owner of another fractional interest, or by a lienholder. If so sold, it is necessary that a new appraisement of the entire interest be ordered.

These actions to sell may be brought in the county where the plaintiff was appointed or where the land is situated. If not brought in the county where the land is situated, a certified transcript of the proceedings must be filed in such county.

When the market value of the real estate is less than $500, a summary proceeding to sell is provided. The court does not have jurisdiction under the summary procedure merely because the market value minus the encumbrances is less than $500. This statute should not be confused with the one providing that an estate may be relieved from administration if the gross assets of the estate are $1,000 or less.

All persons having an interest in the land must be made parties, excluding the spouses of heirs or devisees. Examination must be made in the names of the heirs or devisees, because holders of liens acquired

after the death of the decedent are necessary parties. As in other judicial sales, the interest of any person in the land is not barred unless he is properly made a party to the suit and served with process. In a guardian's land sale, the parties defendant must also include the spouse of the ward and the persons having the next estate of inheritance from the ward.

When a new appraisement is not ordered, the appraised value be the value set forth in the inventory. At public sale, the property may be sold for not less than the appraised value. At private sale, the price must be not less than the full appraised value. If no sale is made after one bona fide effort to sell at private sale under the statute, or if unsold for want of bidders at public sale, then the court may fix the selling price. The court may find that the original bond is sufficient. A public sale shall be advertised for four successive weeks. An order to sell and a confirmation of the sale are essential as in all judicial sales.

Disposition should be made in the administration of the year's allowance to the widow and children and of the exemption to the surviving spouse, if there was a surviving spouse.

When the property is not specifically devised, a surviving spouse, whether acting as executor or administrator or not, has the right to purchase the mansion house at the appraised value, and, if the property taken does not exceed one third of the estate, to purchase any other real property of the decedent at the appraised value. Since October 6, 1949, a petition and summons as in land sale proceedings are required. The right to take at the appraised value cannot be exercised unless the petition therefore is filed within one month after the inventory is approved.

Real estate owned by a bona fide purchaser is not liable for the debts of the decedent, other than liens of record, if suit is not brought to subject the real estate before the settlement of what purports to be the final account, nor of sold by the heirs and administration is not commenced within four years of decedent's death, nor if four years has expired since the granting of letters without a suit having been filed on the claim.

The standard of Title Examination in regard to the inventory in an estate is as follows:
"Problem:"

Does omission of the real estate from the inventory and appraisement cast a cloud on the title?
Standard:

"No, such omission standing alone does not affect marketability."

The court may authorize an executor or administrator to complete a land contract of the decedent and make a conveyance, with the consent of the purchaser, upon notice of the time of hearing to the surviving spouse, heirs, devisees, and legatees having an interest in the contract.

A sale, directly or indirectly, by a fiduciary to himself is voidable unless expressly authorized by statute or by the trust instrument. If the fiduciary is appointed by the probate court, an authorized sale must be approved by the court; the approval is not authorized when the appointed fiduciary is a corporation. A title is questionable when an executor or administrator sells land to pay debts and immediately receives a conveyance from his grantee.

United States Courts

Whenever a trustee of a bankrupt is appointed he acquires title, as of the date of filing the petition in bankruptcy, to all property of the bankrupt and also to all property which vests in the bankrupt within six months after bankruptcy by bequest, devise or inheritance.

Property not sold by the trustee not set aside as exempt can be disposed of only upon abandonment by the trustee. Abandonment is not established by the closing of the estate alone; it is questionable unless by order of the court. If non-exempt property was not abandoned nor sold, a new trustee may be appointed to sell it.

A sale by the trustee for less than three-fourths of the appraised value must be authorized by an express

order of the court. Absence of notice to an individual unsecured creditor of a proposed sale may be waived in some cases but it has been held that a lienholder without notice retains his lien. The sale is subject to liens unless the property is expressly sold free from liens. Confirmation is vital; it has been held to cure defects of description in earlier parts of the proceeding.

While a proceeding under the Bankruptcy Act for a composition, arrangement, or reorganization is pending, a state court judgment in enforcement of a lien is void. When the bankruptcy proceeding is under the ordinary provisions for liquidation, a proceeding in a state court (except in insolvency), commenced before the bankruptcy, may generally proceed unless the trustee or receiver in bankruptcy intervenes or unless a stay is ordered by the bankruptcy court.

Between state courts of concurrent jurisdiction, the one first acquiring jurisdiction has precedence as a rule. An exception to this rule is that a land sale proceeding to pay debts has precedence over a partition action previously commenced. This exception means that a good title cannot be acquired upon partition while such land sale proceeding may be commenced, unless the statutory procedure for such a case is followed.

Books have been written about some of the subjects I have touched upon tonight. My purpose has been only to call your attention to some of their more important aspects. I shall be glad to discuss in more detail any point which interests you.

Action

A splendid example of a united industry in action was the response of ATA members to the plea for a concerted drive to call attention of the nation's law-makers to the impractical and unfair provisions of the military construction authorization bill.

With the whole-hearted cooperation of state Association officers, members throughout the entire country quickly answered the call with telegrams, letters and personal contact among key legislators. As a result the harmful provisions of the proposed amendment which is now part of Public Law 86-149 approved Aug. 10, 1959 were watered down to provide, "That if the defense secretary determines that financing of a housing project is impossible unless title insurance is provided, he may provide for the payment of reasonable costs necessary to obtain title search and insurance."

223rd Consecutive Dividend

The board of directors of Title Insurance and Trust Company, at a recent meeting declared a quarterly dividend of 40 cents per share on its common stock, payable September 10 to stockholders of record September 1. This marks the 223rd consecutive dividend payment since the founding of the company in 1893, according to W. Herbert Allen, chairman of the board.

MBA Convention

NEW YORK—Gov. Nelson A. Rockefeller of New York will be the principal speaker at the forthcoming 46th annual Convention of the Mortgage Bankers Association of America at Hotel Commodore, New York, September 21 to 24, to run concurrently with the annual Exhibit of Building, Industry and Services, a national home show for institutions financing home building. The meeting will be the largest ever held by the organization with nearly 3500 mortgage, commercial and mutual savings bankers, life insurance and title and trust company executives, and other institutional lenders and investors attending.

A feature of the Convention will be premiere showing at the opening session of the Association's first motion picture, The Road to Better Living.

The rising cost of credit and the dwindling supply of mortgage money are likely to occupy principal places in the Convention discussion. Sharing prominence will be the 1959 housing legislation with its significant influence on home financing done under the FHA and VA mortgage programs. Another principal area of discussion will be urban renewal.

Pity the Poor Boss

Work faithfully eight hours a day; don't worry. Then, in time, you will become the boss and work twelve hours a day and do all the worrying.

Construction Soars

Construction during the next ten years in this country is estimated at well over twice the total national debt at the present time, or a total of $600 billion exclusive of the land, operating equipment and other services essential to this activity, according to a projection in the current Quarterly Economic Report of the Mortgage Bankers Association of America. Against this huge demand the country is faced with a continued shortage of savings to finance it, the report adds.

The projection was made in connection with an analysis of the presently rising interest rates and availability of money to finance all the demands at the present time. At the moment, the present high interest rates give every indication of going still higher before they reach a level of stability.

"On the basis of the outlook for the demand and supply of funds, the evidence points at least to the maintenance of what we have come to consider high interest rates," says the report.

Actually, says the report, the present high interest rates aren't high at all when viewed in historical perspective.

"From a long term view, interest rates are not inordinately high. If they are out of line at all by historical comparisons it is on the low rather than on the high side. At most times prior to the great depression, interest rates were higher than they are now, and they have always been higher than at present in previous periods when capital has been in great demand, such as the 1880s and the 1920s. It is the low interest phase from the mid-1930s to 1950 that is unique in interest rate history rather than the present ascent to moderately high levels.

"It is only because memories are short and knowledge of financial history is apparently not widespread, especially in certain legislative circles, that the conditions of the 1930s and 1940s are taken to be typical rather than anomalous. Yet this is the case; and it is safe to say that nothing short of a great depression would reproduce these conditions."

Principal reason, of course, why rates will continue up is the great future demand for funds.

"A heavy demand for funds over a long future period is assured by the vast capital investment that will be required to provide an advancing standard of living for our greatly increased population. For example, a probably moderate estimate indicates that construction in an amount of around $600 billion will have to be financed in the next 10 years, exclusive of the land, the operating equipment and the numerous services that are essential parts of such a volume of activity. More of every type of facility from houses to factories and schools and hospitals will be called for. Individuals, private business, and government, will all be heavy users of funds during the years of expansion in the decade ahead. The present comparatively high levels of house building and the now emerging rise in business investment are only the faint heralds of what is yet to come.

"Against this huge demand we have the threat of continued shortage of savings. For a generation, the effect to public policy has been to discourage savings; and this depression-bred attitude still widely previals. Our tax system has heavily penalized savers; our financial policy has terrified them. The present flight of investment into equities and the difficulties in obtaining funds for fixed payment obligations are plain evidence of this.

"As a result, interest rates not only will be at levels historically associated with periods of capital expansion but beyond this may go higher

than might otherwise be the case in order to convince savers that their promised rewards will compensate for risks of loss of the real value of their investments which are now all too possible.

"The only solution is to restore the attractiveness of fixed dollar investments by assuring savers that their dollars will not be eroded by the process of adding deficit to deficit year after year."

Publicity Scoop

The kind of publicity that money can't buy—an opportunity to sell title insurance in the news pages of the daily paper—That's everybody's dream. William H. Deatly, President of The Title Guarantee Co. recently achieved this goal in the New York World Telegram and Sun. The copy read like this:

"The need for buying title insurance when making a real estate investment is clearly understood in the Metropolitan New York area. What is not as well understood is the fact that not all title insurance policies are alike: some afford broad coverage, others limit liability to losses arising out of record title deficiencies. Yet, in Ttitle Guarantee's long experience, a substantial percentage of the claims we have paid to protect our insureds arose out of physical conditions not possibly discoverable by the most careful examination of the record title.

But you may ask: "Can rights not recorded in the public records actually affect title?"

The answer is **yes.** Suppose for instance, you observed a water hydrant near the street which later investigation disclosed to be on the edge of the property you had purchased.

You may be astonished to learn that a private water company is entitled to maintain its water mains underneath your prize front lawn even thought there is nothing in the public record to indicate the existence of such a third party right.

Neighbor Using Water

Another example involved purchase of a 90-acre rural tract. The purchaser had the title examined and obtained an engineering survey. Neither investigation disclosed any outstanding third party interest.

After title closed, the new owner discovered that a neighbor, operating a mill and several dwellings on property 400 feet away, was drawing his water from a spring on the purchaser's property.

The court dismissed an action to enjoin the neighbor from using the spring water even though the connecting pipe line and the neighbor's pump were concealed from view.

A visible power line leading from the mill to the spring house, the court held, would have charged the purchaser with constructive notice even though inspection of the spring house was locked, that the neighbor held the key, and that he was furnishing the power.

Fortunately, the new owner had purchased a title policy from a responsible insurer and received full compensation for his loss.

Title Policy Protects

A full coverage title insurance policy protects the investor against such adverse claims which may sometimes exceed the cost of the land. A title

Wm. H. Deatly

abstract or title search is not the answer. That can only be provided by a title insurance policy which includes coverage for matters which are not of record.

When you buy title insurance always make certain that you are being protected against loss arising from unrecorded interests adverse to yours, in, over or under the real property you expect to become your own."

New Brokers' Guide

Real property in the United States today represents investments of more than one trillion dollars—$1,000,000,000,000. With new construction and changing ownerships breaking all records, the real estate broker is a key figure in his community.

The Jack-of-all-trades salesman has no place in the real estate business. Potential buyers and sellers must have expert service in order to protect their investments—often the biggest of their lifetimes.

Malcolm C. Sherman of Boston, has just written a "Real Estate Broker's Legal Guide" (published July, 1959 by Spaulding-Moss Company, Boston, 99 pp., pocket size, $3.) which should go a long way in smoothing the pathway for successful transfers of real property.

Written in laymen's language the book goes from a prospect's initial interest in a particular property to transfer of the deed and the new financing.

Covering the 50 states and Puerto Rico, Mr. Sherman removes the mystery and doubts that often cloud such transactions in the minds of some brokers, sellers or buyers. Ways to protect the interests of all concerned and expedite the sale are of special interest to Mr. Sherman.

Potential home owners will find in this book many answers to important quesions that ordinarily do not occur to them. Realtors will have better customer relations if all parties are aware of their individual rights and responsibilities.

For the realtor, his role is made crystal clear in this guide. When is he entitled to a commission? Can he be by-passed after he has brought the two parties together? What if there is a defect in the title? Is the purchase and sale agreement binding if signed on a Sunday but dated the following Monday? What are 27 conditions that should be considered in drafting a purchase and sale agreement? What happens if one of the parties backs out after it is signed? Is there adequate assurance against a bad title? These are some of the questions answered.

There are also points for a mortgagee to watch. Basic for all potential home owners and a guide for relators is a table comparing annual income to the cost of a home and the monthly mortgage payments.

For example, with an annual income of $8,000 a family could afford a house in the $14,500 to $20,000 price range with monthly mortgage costs for interest, amortization, taxes and fire insurance totalling $99 to $133.

Procedure in large construction loans is discussed.

Such points are covered as the rights of a new owner if he has not

been provided a right of way to his property, what is the "seashore" and who owns it, leases and the provisions they should and should not contain, the benefits of "Multiple Listing" for sellers and the advantages of use of the "Real Estate Trust" in property ownership.

Although written as a legal guide for the real estate broker, it will serve also as a valuable introduction to his customers, indicating what they receive for their money when his commission is paid.

Mr. Sherman is also author of the Mortgage and Real Estate Investment Guide, 11th Edition, 536 pp., pub. May, 1959 by Spaulding-Moss Company, Boston ($22.50) and in use by real estate attorneys, banks, life companies, title companies and savings and loan associations in all states.

Merger

Directors of Security Title Insurance Company and Land Title Insurance Company have approved preliminary terms of a merger, William Breliant and F. D. Rose, chairmen of the respective companies, announced recently.

Under terms yet to be formalized, the holder of each share of Land Title would receive either one and two-thirds shares of Security Title issued after a pending 3 to 1 stock split or $29.17 for a limited number of shares.

Recently Security Title authorized a 3 to 1 split effective August 19, payable September 3, and Land Title declared a 20 pct. stock dividend to shareholders of record August 5, payable August 20.

The Old Order Changeth

Willis Royce, who began abstracting in 1922, in Creston, Iowa, has informed us that his company, the Union County Abstract Company, has been sold. The abstract company will be operating under the same name by the new owners, a law firm composed of Marshall F. Camp and James B. Harsh.

MBA Movie

The first motion picture ever made about the mortgage industry and the role played by the mortgage banker in the economy will have its premiere at the forthcoming 46th annual Convention of the Mortgage Bankers Association of America at Hotel Commodore, New York, September 21-24. It is The Road to Better Living, produced by the Association in Hollywood and is a 28-minute film with Lyle Talbot, well known motion picture and television actor, playing the leading role and Art Glimore, now appearing in many leading television shows, doing the commentary. It is a project of a special committee of the organization's public relations committee headed by Brown L. Whatley, a former Association president and president of Stockton, Whatley, Davin & Company of Jacksonville, Fla. Following its initial showing in New York the film will be released for television and showings before organizations and associations all over the country.

That Was Jim

Ralph R. Smith, Keokuk, Iowa, sent this story about the side of Jim Sheridan, not emphasized in the "Portrait of a Titleman."

Jim could "view with alarm" but he never panicked. I remember eating breakfast with him at the time when the sit-down strikes were beginning in Detroit and the business outlook was none too good. The other two members of the group, as I remember it, were Varick Crosley and Carl Johnson.

After we had discussed the situation, and looked at all of the discouraging angles we could find, Jim lit up one of those Irish smiles that went all over his face and remarked, "Well, now let's look over the really important things," and he turned to the comic page of the morning newspaper.

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