TITLE NEWS

THE OFFICIAL PUBLICATION OF THE
AMERICAN LAND TITLE ASSOCIATION

"OUR 62nd YEAR"

APRIL, 1969

VICE PRESIDENT'S MESSAGE

APRIL, 1969

It is rather difficult to find something cheerful to write about during late February for the April issue up here in the snow belt. The piled up stuff is 'way up to here. We usually spend the winter talking about the Packers but that is not a fit subject this year. And Lombardi is going to Washington, so we will have practically no one in Wisconsin who can walk on water. The Wisconsin football team has been out of our conversation for two years.

And around the world things don't look much better. The good old USA seems to have gained more minuses than pluses with faint hearted or false friends and troubles breaking out all over. Even though the war is dragging to a close, it sure is dragging.

Guess we will just have to force things into a more cheerful mold. The weather will have to improve with spring, the Pack will come back and Wisconsin will win a few this year. The war will end sometime—the rest of them did. And one of these years will be a 2,000,000 housing start year.

The Mid-Winter Conference is now behind us. It was a successful meeting both from the program standpoint and the progress of the committees' work. Our committee members and their chairmen are carrying a tremendous load. And the attendance was up. We seem to have moved onto a new plateau in attendance at both the Conference and the Annual Convention. This is a good sign in a voluntary trade association. It means we carry more clout. Also it is nice to meet more nice people.

The ALTA-ABA Conference was unable to meet as we hoped in Chicago though the ALTA Conferees were most eager to do so.

The period of state conventions is about to start. Good state meetings are the grass roots strength of the title industry. All of your national officers and staff are looking forward to attending some of them.

Let's look forward hopefully also to a good year.

Sincerely,

Thomas J. Holstein

THOMAS J. HOLSTEIN

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FEATURES

DEPARTMENTS

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On The Cover: Graduates of TI's audiovisual sales training course, "How To Sell Real Estate Successfully," display certificate of completion. For details regarding the program see page 2.

GARY L. GARRITY, *Editor*
DONAILEEN C. WINTER, *Assistant Editor*

TI HELPS PROMOTE REAL ESTATE SALES

By JOSEPH J. LA BARBERA
Director of Advertising and Publicity
Title Insurance and Trust Company
Los Angeles, California

The TI Corporation has initiated an effective and unique audiovisual sales training course to help promote real estate sales and salesmanship. The program has received enthusiastic responses from real estate people. TI's Public Relations Department is now hard at work developing another audiovisual package dealing with the most effective use of listings —a natural sequel to "How To Sell Real Estate Successfully."

The Corporate Public Relations Department of The TI Corporation (of California), parent company of Title Insurance and Trust Company, Pioneer National Title Insurance Company and The Title Guarantee Company, has found an effective way, especially during periods of reduced activity in the real estate industry, to help the industry make the most of its sales opportunities by offering a unique, advanced audiovisual sales training course, "How To Sell Real Estate Successfully" to meet the increasing demand for a more sophisticated and professional approach to real estate salesmanship.

TI, an "innovator" in public relations in its field, has traditionally pioneered in providing the real estate industry with timely contributions to its progress. Its continuing efforts have been devoted to elevating the standards of knowledge and conduct within the industry.

It was within this context that Carroll R. West, TI vice president, corporate public relations, has in the past provided the real estate industry with such programs as the motion picture, "This Is My Land," the "Understanding Property" series of films, other visual aids, and many useful publications. All of these were well received by Realtors, brokers and teachers in real estate.

There was no question that the real estate industry needed a helping hand. TI had traditionally supplied that help. Its relationship with the Realtors and brokers had been built upon the strong support TI had been able to supply in the past.

The Public Relations Department also realized that this time "help" might come in a form not usually associated with Public Relations. However, it felt as it always had that the best public relations was based on real and lasting help to the people whose job it was to find homes for buyers—and buyers for homes.

After studying and analyzing the market situation, many plans were studied to determine which would best support and serve the best interests of the industry. The decision was for a highly professional sales training course which would offer the industry the best opportunity of growth—and contribute to that growth for many, many years.

Better Selling of Burbank, California, specialists in audio-visual sales training programs, was selected.

The research, the consultations with the many in real estate who generously gave of their time and knowledge, the evaluations, the writing and re-writing before going before the cameras took over two years.

What was important also was the decision as to "how" the program was to be used so as to provide the maximum benefits to the industry. And although usage might vary somewhat from area to area because of circumstances, basically TI and PNTI would conduct classes at regular intervals and all sales personnel who wished to participate could enroll for the course at their convenience.

The program consists of twelve one-hour sessions, six built around

GRADUATING CLASS POSES FOR PHOTO

The TI program concludes with mass graduation ceremonies and class photos.

sound color filmstrips and six as workshop practice sessions. The method of programmed instruction, with a class leader or moderator, was built around the four basics of successful learning developed by Better Selling Bureau: (1) Motivation, (2) Participation, (3) Application and (4) Measureable Progress.

For the class leader or moderator, a manual carefully programmed in detail was produced which would easily g u i d e him step-by-step through every session.

For the participant, a working kit was prepared which included pad and pen, a synopsis of every filmstrip, a Home Buyer's Profile Sheet Pad, a Pro and Con Sheet Pad, and a questionnaire, which were to be used at the practice session and in real selling situations.

Six subjects would form the contents of the program, with two sessions for each of the subjects, one with the filmstrip and one as a workshop practice session. They are:

Make Them Want You . . . Selling yourself and your service

Finding What They Want . . . Qualifying the buyer

Show Them What They Want . . . Showing property

Making Everyone Happy . . . The offer and the counter offer

Selling Benefits . . . Handling objections

Happy Days . . . Closing the sale

The program had been structured so that TI and PNTI would have an immediate playback from both real estate salesmen who took the course and from the brokers and Realtors—and accurately measure the response from the field.

At the end of the course, everyone who participated was asked to fill in and sign a short questionnaire which was to be mailed to Better Selling Bureau for tabulating and evaluation.

Although TI and PNTI obviously had high hopes for the program the enthusiasm from the field was way beyond expectations. It seemed to whet the appetite of all who took the course. They wanted more of it—wanted periodic reviews—with the responses simulating the bursting of a gigantic water dam.

The responses were much the same, such as "The finest program ever presented to the real estate industry" . . . "The best I've seen in 25 years in the business."

Strangely enough, the most enthusiastic responses were from the experienced men, which completely destroyed the myth that experienced salesmen feel themselves above "training" and resent being exposed to it.

But did the program create among the real estate industry the state of mind it was designed to? The answer came from one Realtor who put into words what everyone else reflected. He ended his letter of high praise with the following: "Thanks again—and we will make every effort to reciprocate."

What's new is that no one knows what form Public Relations will take next. Creatively it can take any form provided it helps people and solidifies good public relations with the group you're trying to help.

The Public Relations Department is now hard at work developing a natural sequel to *How To Sell Real Estate Successfully*—a series dealing with the most effective use of listings. Under present plans, completion of production is set for the first half of this year.

The Public Relations Department evaluates its projects so that its efforts continue to support and service all their friends in the real estate industry.

Chicago Title Forms Employee Transfer Corporation Subsidiary

Chicago Title and Trust Company has formed a new subsidiary, Employee Transfer Corporation. Theodore D. Bell, former president

BELL

of First Trade-In Homes Corp., has been appointed executive vice president of the new company.

An estimated 500,000 employees are relocated annually by their companies, and this yearly total is growing significantly. Employee Transfer Corporation (ETC) has been created to relieve both employers and employees of the many problems involved in selling homes as part of a transfer. ETC has developed a flexible program for employers under which it will make appraisals, buy the transferred employee's home, and then sell these homes through established Realtors.

Employee Transfer Corporation has its principal office at 111 West Washington Street, Chicago, Illinois.

OHIO HONORS THREE PAST PRESIDENTS

The Ohio Title Association, at its Annual Convention in October, 1968, honored three past presidents. They are Thomas J. McDermott, Walter J. Morgan and Fred R. Place. The men were named life members of the association.

A resolution was prepared and presented October 25 in the City of Toledo. The declaration that, "All who have been associated with them know that: each honorably accepts the heavy burden of his remarkable talent; each honorably answers the demanding call of conscience; each honorably serves mankind; and each is known as 'a man for others.'"

The resolution was witnessed and signed by John L. Roesner, president, and Thomas W. Connor, secretary.

THE ARBITRATION OF EMINENT DOMAIN

By ROBERT COULSON
Executive Vice President
American Arbitration Association

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When a public utility or other agency with eminent domain power acquires a right of way over a piece of property, a dispute as to compensation is created. How much is to be paid to the owner of the land? This article describes an optional procedure for resolving that question, now available under the Eminent Domain Arbitration Rules of the American Arbitration Association.

First, of course, the right of way agent for the agency and the landowner should try to reach an amicable agreement as to compensation. Only when they are unable to agree, do they face a need for other options.

Let us suppose that in spite of their best efforts, they are unable to reach agreement on the economic issue. Do they now have the fight in the courts? For many parties the prospect of litigation is chilling. One expert, Oscar B. Latin, Director of Claims and Real Estate for the Toledo Edison Company, itemizes his own fears: "time delay, rising costs such as legal fees, court costs, high jury awards, limitation of the right of way document to only those rights presently needed, adverse public relations, stigmata of sometimes suing own customers, local prejudice and bias." He comes out strongly for a system of arbitration.

In fact, Latin's enthusiasm persuaded the American Arbitration Association to make special procedures available so that parties could agree to arbitrate right of way disputes. Although the procedures are similar to the well tested rules under which parties arbitrate thousands of cases each month before AAA tribunals, these are interesting differences reflecting the unique problems and issues that are involved in eminent domain cases.

For example, the submission form is somewhat different than is customary in other arbitration cases. It refers to Eminent Domain Arbitration Rules, which differ from the AAA's tribunal Commercial Rules. For example, Section 1 of these rules requires that the exact rights being taken be specified:

> Section 1. The Instrument. There shall be delivered to the AAA at the time of entering into the Submission to Arbitration a duly prepared, executed, witnessed and acknowledged instrument (hereinafter called "Instrument") from Owner to Agency which

fully and completely specifies the rights to be acquired by the Agency. Said Instrument is delivered by Owner to Agency for the purpose of placing same in escrow with AAA or with an escrow agent selected by AAA as hereinafter provided, to be delivered in accordance with the provisions hereof.

The number and identity of the arbitrators is also defined in more than usual detail:

Section 7. Number of Arbitrators. This controversy shall be submitted to three (3) arbitrators to be selected from the panels of arbitrators of the AAA. So far as practicable, one arbitrator shall be an Attorney at Law and one shall be a qualified appraiser of real estate. The area of expertise of the third arbitrator shall be in the discretion of AAA. The parties may, by written agreement attached hereto, agree that their controversy be determined by one arbitrator, who shall be either an attorney or an appraiser, to be appointed as specified herein.

As is customary under AAA procedures, the arbitrators are to be selected by the parties from lists of recommended and qualified persons who are screened to be sure that they do not have any financial or personal interest in the result of the arbitration. But under the Eminent Domain Rules, the arbitrators, in addition, cannot reside in the county where the land is located.

The Rules also give some guidance as to the exhibits that may be submitted to the arbitrators:

Section 9. Evidentiary Attachments to Arbitration Agreement. Either party may attach exhibits, which shall be denominated as "Agency" or "Owner" exhibits. Said exhibits shall be consecutively numbered for easy identification and reference. Such attachments may include:

- No more than two (2) Owner appraisal reports
- No more than two (2) Agency appraisal reports
- Photos, which shall be a fair representation of what they purport to depict; limit of five (5) photos to each party.

The Agency shall prepare and submit an engineering sketch or survey, indicating configuration and approximate dimension of Owner's lands, including buildings, trees and other material features, if any, and the approximate route and dimensions of the rights proposed to be impressed on the Owners' land by the Agency. The Agency shall also prepare an engineering sketch or survey showing configuration and relevant details and approximate dimensions of the facilities the Agency proposes to place under, over, or upon the Owner's land.

The hearings themselves are private, in that only those persons and their counsel who have a direct interest in the arbitration are entitled to attend.

As Latin says, "Many of us often wish to minimize the effect of publicity. In fact, we are often at pains to avoid a reputation for suing. The stigmata of often being in court is not to be envied. The privacy of arbitration may be effective in this concern. Certainly the parties are in a position to control the information on the vital question of "How

much was paid for what rights taken?"

In addition to the formal hearing, the arbitrators can make an inspection or investigation of the property, in company with both parties. At the arbitration hearing, customary evidenciary procedures will apply except that "Rules of law of the state where the land is located shall apply as to the measure of compensation and damages and elements thereof. Where there is no legislative or appellate court determination in said state of any relevant legal question, appellate court decisions from other jurisdictions, text books and encyclopedias shall be considered as persuasive on such questions."

Another provision expressly permits the arbitrators to disqualify themselves on the grounds that one of the parties has committed a material error which frustrates the panel's impartiality:

> Section 32. Misarbitration. If, in the sole judgment of the Arbitrator, any party to this agreement commits material error which frustrates the essential impartiality of the Arbitrator, a misarbitration shall be declared. Thereupon, the Arbitration panel appointed hereunder shall remove themselves, and a new panel of arbitrators shall be constituted as provided for in this agreement. All costs incurred in the misarbitration shall be assessed against the party committing such error; or may be apportioned as the Arbitrator may direct.
>
> The Arbitrator may, pending final determination of a new panel of arbitrators, enter such orders as he deems appropriate in the circumstances. These may include without limitation, in case of Owner's error, an immediate right of entry by Agency onto Owner's land for the purposes stated herein; or, in case of Agency error, a monetary penalty shall be paid to Owner not to exceed $300.

The award of the arbitrators shall be limited to the *range of the evidence*, and interest shall be computed at 6% per anuum, beginning thirty days from the date of the award or the date of Agency entry onto Owner's land, whichever date first occurs.

Since it is extremely important that the award take effect without further delay or litigation, the rules give detailed instructions as to enforcement:

> Section 40. Procedure Upon Notice of Award. Within seven (7) days after receipt of the award the Agency shall, unless it exercises the option to abandon the proceedings as hereinafter provided, deliver to the escrow agent holding the Instrument the amount of the award. Upon receipt of such amount the escrow agent shall record the instrument in the Recorder's office of the county where the real estate is located and then cause a title search to be made from the date of the evidence of title possessed by the Agency for Owner's property (which date shall be supplied to escrow agent by Agency) through the time of the recording of the Instrument Agency shall pay for the cost of such title search. Upon return from the recorder of the Instrument, same shall be delivered by the escrow in title and no liens filed against said property during said period,

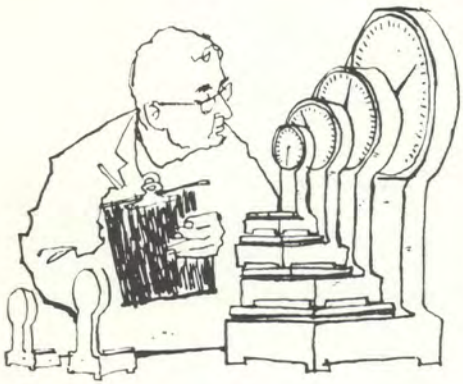
the escrow agent shall deliver the amount of the award to the Owner. Provided, that if the Agency fails to pay any of the costs due from the Agency incident to this arbitration when due, the AAA shall notify the escrow agent to withhold the recording of the Instrument until same are paid in full. If the Owner fails to pay any of the costs due from the Owner incident to the arbitration when due, the AAA shall notify escrow agent of the amounts due and the persons to whom payment should be made and the escrow agent shall disburse the funds received from the Agency, first to said persons designated by the AAA in the amounts designated, and the balance to the Owner. Agency shall be entitled to take possession of and exercise all of the right, title and interest granted by the Instrument upon payment of the amount of the award to escrow agent. In the event that there is any change of title or the filing of any lien or encumbrance during said period of said title examination, escrow agent shall not deliver such sum to Owner until the title change or lien has been removed. Owner agrees to so clear his title promptly. Taxes and assessments shall not be cause for delay in delivering said sum to Owner. Alternatively, the Agency upon receipt of the award, shall have the right and option to abandon the arbitration proceedings, provided notice of such abandonment is given to AAA and Owner within seven (7) days from such receipt, and possession of the lands of the Owner was not taken and the Agency agrees to pay all costs and expenses of the arbitration, including without limitation, reasonable attorney fees, witness fees, arbitrator fees and an amount not in excess of ten per cent (10%) of the amount the Owner would have been entitled to had the Agency not abandoned these proceedings. The Arbitrator shall be the sole judge of the reasonableness of payments under such paragraphs. Upon such abandonment of arbitration by the Agency, it shall be deprived for a period of two (2) years from date of award of the right to initiate judicial proceedings to acquire the right which were the subject matter of this arbitration on the Owner's land.

The cost of this procedure is enhanced somewhat by the fact that the arbitrators will be compensated at a rate not to exceed $150 per day within 75 miles of their residence, or $200 per day beyond. The administrative fees of the AAA are similar to those specified in the Commercial Arbitration Rules but are based on the amount of the award, rather than the amount in issue.

It is hoped that the Eminent Domain Arbitration Rules will afford prompt and economical arbitration of valuation issues. Where the sole issue to be determined is "how much" a particular parcel of land is worth, expert determination by an impartial panel mutually selected by the parties would seem to be an attractive alternative to litigation. For further information, attorneys and potential parties should contact a conveniently located regional office of the American Arbitration Association.

BRIEF HISTORY AND USE OF

THE ENGLISH AND METRIC SYSTEMS OF MEASUREMENT



Editor's note: With national conversion to a metric system of measurements a possibility for the future, Title News periodically reprints significant articles on this subject for the consideration of members of the land title industry. This article originally appeared in the Technical News Bulletin and is presented with the permission of the editors of that publication.

When the American Colonies separated from the mother country to assume among the nations of the earth a separate and individual station, they retained, among other things, the weights and measures that had been used when they were colonies, namely, the weights and measures of England. It is probable that these were at that time the most firmly established and widely used weights and measures in the world.

England a highly coherent nation, separated by sea from many of the turmoils of the European continent, had long before established standards for weights and measures that have remained essentially unchanged up to the present time. The

yard, established by Henry II, differs only by about 1 part in a thousand from the yard today. The pound of Queen Elizabeth I shows similar agreement with the present avoir-dupois pound.

No such uniformity of weights and measures existed on the European continent. Weights and measures differed not only from country to country, but even from town to town and from one trade to another. This lack of uniformity led the National Assembly of France on May 8, 1790, to enact a decree, sanctioned by Louis XVI, which called upon the French Assembly of Sciences in concert with the Royal Society of London to "deduce an invariable standard for all of the measures and all weights." Having already an adequate system of

The Nonmetric World . . .

The major countries [1] in the nonmetric world are few in number: the United States, Canada, Australia, and New Zealand; and this list is likely to become smaller in the future. Australia has recently completed a study which recommended conversion to the metric system, and it is likely that any such move would have a great deal of influence on New Zealand.

The United States is not letting these events pass unnoticed or without action. On August 9, 1968, the President signed into law a bill providing a three-year metric study. It authorizes the Secretary of Commerce to

> "conduct a program of investigation, research, and survey to determine the impact of increasing worldwide use of the metric system on the United States; to appraise the desirability and practicability of increasing the use of metric weights and measures in the United States; to study the feasibility of retaining and promoting by international use of dimensional and other engineering standards based on the customary measurement units of the United States; and to evaluate the costs and benefits of alternative courses of action which may be feasible for the United States."

The Secretary has assigned responsibility for the study to the National Bureau of Standards where a small group, headed by A. G. McNish, Assistant to the Director, has begun planning the study and conducting exploratory investigations. Because of limited funds, the metric study will continue in the planning and pilot phase for the time being.

The objectives during the planing phase are to identify major problems, specify tasks for studying problems, evaluate relative priorities,and experiment with methods of undertaking identified tasks. A full-scale study is being planned for fiscal years 1970 and 1971.

(From Technical News Bulletin)

[1] Other nonmetric countries include Sierra Leone, Rhodesia, Burma, British Honduras, Guyana, Liberia, Kenya, Uganda, South Arabia, and Malaysia.

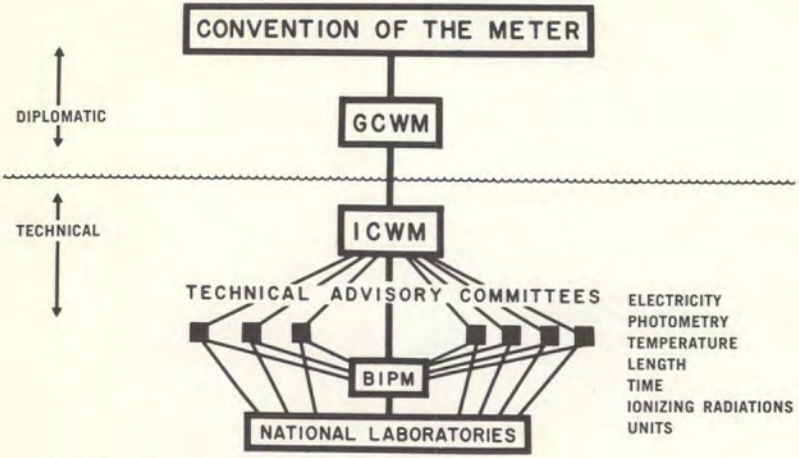
weights and measures, the English were not interested in the French undertaking, so the French proceeded with their endeavor alone. The result is what is known as the metric system.

The metric system was conceived as a measurement system to the base ten; that is, the units of the system, their multiples, and submultiples should be related to each other by simple factors of ten. This is a great convenience because it conforms to our common system for numerical notation, which is also a base ten system. Thus to convert between units, their multiples, and submultiples, it is not necessary to perform a difficult multiplication or division process, but simply to shift the decimal point. The system seems to have been first proposed by Gabriel Mouton, a vicar of Lyons, France, in the late 17th century. He proposed to define the unit of length for the system as a fraction of the length of a great circle of the earth. This idea found favor with the French philosophers at the time of the French Revolution, men who were generally opposed to any vestige of monarchical authority and preferred a standard based on a constant of nature.

The French Academy assigned the name metre (meter) from the Greek *metron*, a measure, to the unit of length which was supposed to be one ten millionth of the distance from the north pole to the equator, along the meridian running near Dunkirk, Paris, and Barcelona. An attempt was made to measure this meridian from northern France to southern France, from which the true distance from the pole to the equator could be calculated. The best techniques then available were used. Although the operations were carried out during a politically disturbed time, the results were in error only by about 2000 meters, a remarkable achievement in those days.

Meanwhile the National Assembly had preempted the geodetic survey, upon which the meter was to be based, and established a provisional meter. The unit of mass called the gram was decided on as the mass of one cubic centimeter of water at its temperature of maximum density. Since this was too small a quantity to be measured with the desired precision the determination was made on one cubic decimeter of water, but even at that the results were found to be in error by about 28 parts in a million. Thus, the meter that was established as the foundation of the system did not approximate the idealized definition on which it was based with the desired accuracy. Also the unit of mass differed from the idealized definition even as given in terms of the erroneously defined meter. So the new system was actually based on two metallic standards not differing greatly in nature from the yard of Henry II or the pound of Elizabeth I.

As a unit for fluid capacity, the founders selected the cubic decimeter and as a unit for land area



GCWM: GENERAL CONFERENCE OF WEIGHTS AND MEASURES
ICWM: INTERNATIONAL COMMITTEE OF WEIGHTS AND MEASURES
BIPM: INTERNATIONAL BUREAU OF WEIGHTS AND MEASURES

they selected the are, equal to a square ten meters on the side. In this manner, while decimal relationships were preserved between the units of length, fluid capacity, and area, the relationships were not kept to the simplest possible form. Although there was some discussion at the time of decimalizing the calendar and the time of day, the system did not include any unit for time.

The British system of weights and measures, and the metric system as well, had been developed primarily for use in trade and commerce rather than for purposes of science and engineering.

Because technological achievement depends to a considerable extent upon the ability to make physical measurements, the Americans and the British proceeded to adapt their system of measurements to the requirements of the new technology of the 19th century, despite the fact that the newly developed metric system seemed to have certain points of superiority. Both the United States and Great Britain soon had vast investments in highly industrialized society based on their own system.

The new metric system found much favor with scientists of the 19th century, partly because it was intended to be an international system of measurements, partly because the units of measurement were theoretically supposed to be

independently reproducible, and partly because of the simplicity of its decimal nature. These scientists proceeded to derive new units for the various physical quantities with which they had to deal, basing the new units on elementary laws of physics and relating them to the units of mass and length of the metric system. The system found increasing acceptance in various European countries which had been plagued by a plethora of unrelated units for different quantities.

Because of increasing technological development there was a need for international standardization and improvements in the accuracy of standards for units of length and mass. This led to an international meeting in France in 1872, attended by 26 countries including the United States. The meeting resulted in an international treaty, the Metric Convention which was signed by 17 countries, including the United States in 1875. This treaty set up well defined metric standards for length and mass, and established the International Bureau of Weights and Measures. Also established was the General Conference of Weights and Measures, which would meet every six years to consider any needed improvements in the standards and to serve as the authority governing the International Bureau. An International Committee of Weights and Measures was also set up to implement the recommendations of the General Conference and to direct the activities of the International Bureau; this Committee meets every two years.

Since its inception nearly 175 years ago, the number of countries using the metric system has been growing rapidly. The original metric system of course had imperfections; and it has since undergone many revisions, the more recent ones being accomplished through the General Conference of Weights and Measures. An extensive revision and simplification in 1960 by the then 40 members of the General Conference resulted in a modernized metric system—the International System of Units.

Dallas Title Gets Subsidiary

Effective March 1, 1969, the Home Title Company, Houston, which has been associated with Dallas Title Company for several years, became a subsidiary company of Dallas Title.

The name of the new operation became Dallas Title Company of Houston, and it will be under new management headed by M. G. Davis who was appointed vice president and general manager.

Names of the seven subsidiary companies located in Texas are being changed to reflect the name of the parent company.

ARIZONA PUBLIC RELATIONS PROGRAM SUCCESSFUL

Armando G. Felix, manager of the Nogales County branch office of Arizona Land Title and Trust Company, has found that an effective public relations program can be maintained in a small office—for the benefit of the company and the surrounding community as well.

Local, do-it-yourself public relations activity is a familiar endeavor in the Santa Cruz County office of Arizona Land Title and Trust Company, Nogales, Arizona.

Armando G. Felix, manager of the Nogales operation, passed this report along to *Title News:*

The Nogales office is staffed by three employees in a county with a population of approximately 12,000. Included in the office is a conference room that seats eight persons comfortably. The conference room often is used by the local Lions Club for board meetings, and generally is considered to be a public meeting place. ("It has never interfered with our work," Felix comments.)

Last year, two amateur artists were invited to display their paintings in separate one-man shows at the office. Each show was held on a Sunday afternoon and drew an attendance of about 150 persons. Results included publicity in two newspapers with statewide circulation. Cost for hosting was $20, excluding time, which was volunteered. Since the shows, a local bank has begun a similar activity and a local group has started work on an art center. A $20,000 tract of land has been donated for the art center, and an architect has been hired.

During a flood in Santa Cruz county, the Red Cross used a portion of the Arizona Land Title office as a base of operations.

After obtaining permission from customers, the Arizona Land Title Nogales staff develops articles for the local newspaper concerning particular real estate sales. It is not possible to mention the company's name, Felix says, but the publicity always reports that the land title is insured by a title insurance company.

Other public relations work is pursued by employees as opportunity and time permit. Exemplified at Nogales is this statement from the article, "Public Relations: A Local Asset," which appears in the February, 1969, issue of *Title News:*

"Above all, plan to work at promoting your company and your product—then do it."

Commonwealth, Provident Plan To Combine

Two Philadelphia institutions—Provident National Bank and Commonwealth Land Title Insurance Company—have announced plans to combine their ownership through the formation of a new holding company.

Under the proposal, the holding company would issue three shares of its common stock for each Provident share, which in effect would split Provident stock, 3 for 1.

The holding company also would issue one preferred holding company share for each Commonwealth share, which would be entitled to dividends at the rate of $1.80 per year and be convertible into one share of holding company common. The preferred stock would be callable at $40.

Provident currently is the largest Commonwealth stockholder, holding approximately 30 per cent of the company's shares.

William G. Foulke and James G. Schmidt, presidents of Provident and Commonwealth, respectively, said the proposal is subject to negotiation of formal agreements that must be approved and accepted by directors and stockholders of both companies. The proposal also requires approval by appropriate authorities and is conditioned upon a favorable tax ruling.

Provident listed assets of approximately $971,112,000 at the end of 1968. Commonwealth's assets stood at approximately $30,119,000 at the end of the same year. Net earnings of Provident for 1968 were $8,932,000, or $7.26 per share on 1,229,518 shares outstanding. Commonwealth reported net operating earnings of $1,655,000, or $1.98 per share on 827,073 shares, for the same period.

In Memoriam

GERALD W. CUNNINGHAM

Word has been received of the death of Gerald W. Cunningham, president of the Black Hawk County Abstract Company, Waterloo, Iowa. He was a long time member of ALTA and was very active in association affairs.

Mr. Cunningham had served as chairman of the Title Plants and Photography Committee and was a member of the Constitution and By-Laws Committee. He had contributed many notable articles for *Title News* on the subject of new plant equipment.

LAWYERS TITLE ADDS BRANCH

Lawyers Title Insurance Corporation, Richmond, Virginia, has purchased the Inland Abstract & Title Company of Tavares, Florida, and is operating it as a branch office. The company was previously a Lawyers Title agent.

Lawyers Title's Board of Directors has elected Chester L. Crum branch manager of the new operation, which is called the Inland Title Division of Lawyers Title Insurance Corporation.

ILLINOIS FIRM EXPANDS

Tohill & Gosnell, Inc., Lawrenceville, Illinois, has announced the purchase of the books and records of the Lawrence County Abstract Co., Inc. from Philip B. Benefiel. Mr. Benefiel had operated the business since 1951.

Tohill & Gosnell, Inc. was organized in 1942 and supplies abstracts and certificates of title in addition to being an issuing agent for the Chicago Title and Trust Company, Illinois.

FIRST AMERICAN EXPANDS

The first American Title Insurance Company, Santa Ana, California, has acquired a minority interest in Ticore, Inc. whose principal subsidiary, Title Insurance Company, is based in Portland. The announcement was made by D. P. Kennedy, president of First American. The Oregon company was established in 1937.

Mid-Winter Reception—?

Reception at the 1969 Mid-Winter Conference?—no, actually this was taken during the 1935 American Title Association Convention at the Wilson Plantation at Wilson, Arkansas. Watch for coverage of the 1969 Mid-Winter Conference in the May issue of Title News.

NAMES IN THE NEWS

LEAVITT

Dana G. Leavitt has been elected a vice president of the Transamerica Corporation. Mr. Leavitt is president and chief executive officer of Transamerican Title Insurance Company, a subsidiary of Transamerica Corporation. Mr. Leavitt has been president of the Oakland, California, based company since 1964.

* * *

The election of **Carl W. Thompson,** Scotch Plains, and **James Dantonio,** Belleville, as assistant secretaries of New Jersey Realty Title Insurance Company, Newark, has been announced. Mr. Thompson, who has been with the company since 1961, will continue to be located in the Newark headquarters. Mr. Dantonio will serve as assistant plant manager of the main title plant in the Newark headquarters. He has been associated with the company since 1948.

* * *

FLEET

Clifford B. Fleet has been elected secretary and treasurer of Lawyers Title Insurance Corporation. He succeeds **J. Bragg Lyne** who has retired after 44 years of service with Lawyers Title. Announcement of the election and retirement in the Company's Home Office in Richmond was made by George V. Scott, president. Mr. Fleet is also a Vice President of the company.

* * *

Land Title Insurance Company, Ontario, Oregon, has been appointed an agent to issue land title insurance policies for Pioneer National Title Insurance Company in Malheur County, Oregon.

Owners of Land Title Insurance Company are **Muriel M. Caldwell, W. B. Schlupe, and Ann Schlupe.**

* * *

McCLURE

The election of **Dale McClure** as a director of American-First Title & Trust Company, Oklahoma City, Oklahoma, has been announced. Mr. McClure is president of Southwest Property Management Corporation.

* * *

KENNEDY

HANSCHMIDT

Lawyers Title Insurance Company, Richmond, Virginia, has announced the election of **Paul J. Kennedy** as the Pontiac, Michigan branch manager and **William G. Hanschmidt** as the Denver, Colorado branch manager. Each man will have general supervision of Lawyers Title's operations in his newly appointed city.

* * *

Berks Title Insurance Company, Reading, Pennsylvania, has announced three promotions and the appointment of three new officers of the company. **Eugene R. Fosnocht** and **Morris E. Knouse** have been advanced to assistant vice presidents and title officers, and **Charles H. Roush, Jr.,** has been advanced to title officer. All three were formerly assistant title officers. Mr. Fosnocht has also been named assistant secretary while Mr. Knouse has been named assistant treasurer.

The three new officers include **Donald F. Kline, Amos D. Cross,** both assistant title officers, and **Thomas A. Testa,** auditor.

* * *

GARRITY

Gary L. Garrity, ALTA's Director of Public Relations, has been accredited by the Public Relations Society of America.

Accreditation is recognized as the highest professional status in the public relations field and is open only to men and women with a minimum of five years practice on the executive level. It is designed to raise the professional standards and improve the practice of public relations.

PART IV

REPORT OF THE ALTA JUDICIARY COMMITTEE

The members of the Judiciary Committee of the American Land Title Association have submitted over 300 cases to Chairman, John S. Osborn, Jr., Senior Vice President, General Counsel, and Title Officer, Louisville Title Insurance Company, for consideration in publishing the Annual Judiciary Committee Report. Chairman Osborn has chosen 126 cases which constitute a very lengthy report. Part IV concludes this report, sections of which also are published in earlier issues of Title News.

LIS PENDENS

Smith v. State of Texas, (Texas) 420 S. W. 2d 204 (1967)

Here the State brought suit to collect delinquent admissions taxes and foreclose its lien for same against the owner of the fee title of the real estate and the holder of a vendor's lien on the real estate although the taxes were incurred by a tenant holding under such owner. On the authority of State v. Rope, 419 S. W. 2d 890, it was held by the Court of Civil Appeals that the State's lien for admission taxes attached to the fee title as well as the interest of the tenant, and when filed and re-

corded in the county where the real estate is situated is prior and paramount lien superior to even a vendor's lien which is the highest form of private lien in this State, and this even though the vendor's lien was in existence at the time the State's lien for the admissions taxes was filed. The amendment to a statute requiring tax liens on real estate to be recorded in order to affect the interest of a mortgagee or purchaser, et al., was construed as being prospective and not applying to existing tax liens. (Application for writ of error granted)

The Texas Supreme Court in an opinion yet unpublished (but delivered July 24, 1968), apparently declared the admission tax would attach to the fee although the operator was only a tenant and further found that the requirement for recording the lien in order to give notice applied only to property of the taxpayer not used for amusement purposes. The property used for amusement purposes would be subject to the tax lien without any filing notice. This case apparently held the tax lien had priority over a pre-existing vendor's lien. (It is believed that a petition for rehearing is pending.)

TENANCY IN COMMON

Waldrop v. Bettis, 223 Ga. 715, 157 S. E. 2d 870 (1967)

In this case it was held that where property is owned by several parties as co-tenants, a quitclaim deed from an adverse claimant in favor of one of the co-tenants would inure to the benefit of all.

TITLE INSURANCE

Cambridge Acceptance Corporation v. American National Motor Inns, Inc., 96 N.J. Super., 183, 232 A. 2d 692 (1967)

In a very lengthy and involved case the Court held that an assignee which had acquired mortgage on realty knowing that mortgagor was not owner but was rather a motel building lessee with limited right under lease to subject property to mortgage to secure construction loan had interest inferior to that of owner and could not foreclose mortgage where none of funds advanced to lessee were used for construction purposes, even though the owner had subordinated the fee to the construction loan mortgage. The court further found that where no title policy had ever been issued and no premium paid, the title company was not liable, since the time limitation in the commitment had expired, and the premium was unpaid. The court said that a letter given by the title company expressing an opinion as to the validity of the subordination agreement was without consideration and therefore the title company could not be held liable for breach of contract or warranty.

American Legion Ed Brauner v. Southwest Title and Insurance Company, 207 So. 2d 393, (La.) (1968)

Where title insurer was not precluded from taking affirmative action to remove encumbrance upon insured title, independently of action taken by other parties in interest, failure of title insurer to take such affirmative action to clear title was arbitrary and capricious and insured would be entitled to recover from insurer statutory penalty of 12% plus a rea-

sonable attorney's fee. Although the encumbrance was removed in this action, the court found that it was not removed within a "reasonable time" as provided in the title policy, and that the title company could have taken further action.

San Jacinto Title Guaranty Co. v. Lemmon, 417 S. W. 2d 429 (Tex. 1967)

Title Insurance Underwriter failed to place as an exception in its policy an easement shown on the recorded subdivision plat. Reference was made to the plat in general terms in the property description of the policy, for "all pertinent purposes," but no specific exception was placed in Schedule B of the policy as to such easement. Held Underwriter was liable. Case points up urgent necessity to state specifically the exceptions in policy, and that Underwriter cannot rely on vague or general references to serve as exceptions.

The court also held that the measure of damages was the cost of removal of the easement, up to the face amount of policy.

Prudential Federal Savings & Loan Association v. St. Paul Insurance Companies, 20 Utah 2d 95, 433 P. 2d 602 (1967)

Rowley was a loan officer for Prudential. Rowley personally sold Parker some real estate encumbered by a loan to First Federal. Parker applied to Prudential for a loan and Security Title issued a preliminary report to Prudential showing the outstanding mortgage to First Federal. As Loan Officer of Prudential, Rowley closed his own sale and did not pay off the mortgage to First Federal. Security Title issued a mortgagee policy to Prudential without taking exception to outstanding mortgage to First Federal, apparently believing Rowley had paid it off. Thereafter Prudential discovered Rowley had embezzled sizable sums over past years and discovered that he had not paid off his mortgage to First Federal. Prudential made claim against First American, the underwriter for Security Title. St. Paul had issued blanket fidelity bond on Prudential's employees, including Rowley. First American contended that St. Paul was responsible for loss.

Held: Since the St. Paul policy contained provisions limiting its liability any excess over other valid or collectible insurance, it must respond only if the specific insurance fails to satisfy the loss. Here First American is liable on the title policy, since it insured that the mortgagee had a first lien and the mortgagee does not. The lower court holding was reversed and the case remanded.

E. A. Robey and Co. v. City Title Ins. Co., 68 Cal. Rptr. 38 (1968)

Title Insurance Policy excepted

> "Right of the public and others to use the southerly 342 feet as a beach and athletic field."

Held: Where the southerly 342 feet had been dedicated to the public as a beach and athletic field, fee title passes to the public. The title policy only excepted rights in the nature of an easement, and there is nothing in the language used in the policy to indicate that City intended to give no coverage on the 342 feet in question. Therefore City is liable to the insured.

Jeter v. Title Insurance Company of Minnesota, 424 S. W. 2d 329 (Mo. 1968)

Vendor who purchased title policy from title insurance company for vendee and who signed various documents in conjunction therewith without knowledge that one of the documents was an agreement to indemnify company from loss and expenses sustained in conjunction with defending title was not liable for suit costs incurred by insurer which charged extra ($250) fee for title policy. In this case there was a dispute over whether or not vendor knew he signed an indemnity agreement to the title insurance company. Vendor contended and the court found that he believed the extra $250 fee charged by title company was for the extra risk involved and that vendor was entitled to be relieved from liability under the indemnity agreement he signed.

This case illustrates the care needed in handling unusual transactions and the expertise needed in order to draft indemnity agreements.

Cole v. Home Title Guaranty Co., 285 N. Y. Supp. 2d 914 (1967)

Assessments which did not become liens until after issuance of title policies were not within coverage provision of policy reading:

> ". . . any statutory lien for labor or material furnished prior to the date hereof which has not gained or which may hereafter gain priority over the interest insured hereby . . ."

The court also said that "any other determination would be inconsistent with the concept of assessments as distinguished from mechanics liens and would impose a risk which the title company, absent specific coverage to that effect, did not assume."

UNITED STATES

United States v. Montgomery, 268 F. Supp. 787 (Kansas 1967)

Action by the United States to foreclose mortgage held by the Small Business Administration.

Held: That mortgagors were not entitled to state statutory period of redemption because federal law applies. They were entitled to an equitable period of time in which to redeem and would be allowed 60 days from date of sale to redeem.

United States of America, Plaintiff, v. Forest Glen Senior Residence, 278 Fed. Supp. 343 (Oregon, 1967)

Defendant, an Oregon corporation, constructed a large apartment facility, the construction funds being the proceeds of a mortgage executed by defendant to State Finance Company, the mortgage being insured by F. H. A. pursuant to Title II, Section 213, of the National Housing Act. On default the mortgage was assigned to the Federal Housing Commissioner, who began foreclosure action. Although the Oregon statute provides for a right of redemption from mortgage foreclosure sales, the plaintiff moved for a decree which would bar the mortgagor from any right of redemption.

Held: Federal, not state, law controls cases involving the foreclosure of mortgages issued pursuant to the National Housing Act. Since there is no federal statute which would permit redemption following the fore-

closure sale, plaintiff is entitled to a decree barring defendants from any rights of redemption after sale of property by the Marshal. In the interest of uniformity, it is necessary that a federal rule be adopted barring redemption, and neither prior custom providing for redemption nor Oregon law should be adopted.

United States v. Mosolowitz, 269 F. Supp. 12 (Conn. 1967)

This was an action to enforce a federal tax lien and to subject property belonging to taxpayer to such lien pursuant to federal tax lien enforcement statute. The court held that residential real estate jointly owned and occupied by taxpayer husband and his non-taxpayer wife under a survivorship deed could be sold in satisfaction of a federal tax lien upon property of taxpayer husband. This authorized a sale of all the property with a division of the proceeds between the wife and the United States.

Lewis v. General Services Administration of the United States, 377 F. 2d 499 (Cal. 1967)

Plaintiff, an Indian, sought to restrain the G.S.A. from selling land previously acquired by the United States through condemnation for military purposes, and later declared surplus. The plaintiff sought to obtain an Indian Allotment therein.

Held: Such land is not in the public domain and is not subject to the general land laws, such as mining, homestead, grazing, and Indian Allotments.

Lytle v. Federal Housing Administration, 280 F. Supp. 668 (Fla. 1968)

On April 18, 1966, plaintiff purchased a home from F. H. A. The sales contract stated that the seller would pay any discounts necessary for the purchaser to obtain F. H. A. or V. A. financing. The contract also provided that the decision of the seller as to the prevailing charge should be final and the purchaser agreed to be bound by that provision. Within the area of the southern district of Florida, the prevailing discount rate was 6½ per cent to 7 per cent. FHA arrived at a discount rate of 4½ per cent which was presumed to be the average for the entire country. The buyer sued FHA to recover the difference between the local and national discount rates.

Decision: The Federal Court granted summary judgment in favor of FHA on the ground that the purchaser had agreed that the seller should determine the amount of the discount rate by contract. The local situation played no part in the decision.

USURY

American Acceptance Corporation v. Schoenthaler, 391 Fed. 2d 64 (Fla. 1968)

The defendants made a contract with the Maxwell Company to purchase furniture at a cash price of $180,000.00 or a time price of $238,-

484.14, and at the same time borrowed an additional $170,000.00 on a note calling for simple interest at 10 per cent. As additional collateral security a stranger deposited $100,000.00 in cash as an indemnity with American Acceptance Corporation and a motel chain gave a further indemnity inn writing of an additional $150,000.00. The furniture obligation and the $170,000.00 note were made payable in one lump sum to be first credited to the interest due on the $170,000.00 note, the balance to be credited to the $238.484,14 until it was retired and then the $170,000.00 note would receive principal credits. These obligations were secured by a second mortgage, behind $1,350,000.00 first held by a union pension fund. The first was foreclosed, and American Acceptance as assignee of the Maxwell Company commenced this action to recover on the notes. The Schoenthalers interposed the defense of usury, stating that the sale of the furniture and the $170,000.00 note were in fact one transaction. Florida law acknowledges that the difference between a cash price and a time price does not constitute usury.

The Fifth Circuit Court of Appeals affirmed a judgment of the District Court which held in effect that the court could probe the substance of a transaction to determine if it was a loan rather than a sale. In addition, the court found that the $100,000.00 cash deposit meant that the loan was funded only for $250,000.00 rather than $350,000.00 as called for by the notes. The court concluded the interest to be in excess of 25 per cent and voided the debt under the Florida Statute.

Modern Pioneers Insurance Company v. Nandin, 437 P. 2d 658 (Arizona 1968)

Transaction wherein lender extended loan to borrowers at eight per cent maximum allowable interest rate, and wherein borrowers' broker (50% of whose stock was unbeknown to borrowers, owned by lender) also collected eight per cent "brokerage fee," was usurious.

Sapphire Homes, Inc., et al. v. Gilbert, 426 S.W. 2d 278 (Texas 1968)

The court held that where Dallas bank lent $120,000 at 5½ per cent per annum to Texas corporation, which had never actually had any capital, primarily on strength of written guarantee of partners in lumber company and where, when simultaneously Texas corporation lent same amount at same rate to borrower, the loan was guaranteed by Florida corporation in which partners owned all stock but which had debts in excess of its assets, the $20,000 which the borrower was required to pay to Florida corporation was properly classified as interest in determining whether loan was usurious. The court allowed piercing of the corporate veil.

The court also stated in the opinion:

> "Lenders often require borrowers to pay expenses incurred by the lenders in connection with loans, such as title policy premiums, recording fees, costs of supplemental abstracts and attorney's fees. When such expenses are actually incurred and they are paid in good faith to those furnishing the services, and no part of the payment is received by the lender, they are not properly classified as interest in determining whether the loan is usurious."

Chesapeake Homes Inc. v. McGrath, 249 Md. 480, 240 Atl. 2d 245 (1968)

Purchaser of house and lot in subdivision was an attorney at law. The house was model home for subdivision and settlement was consummated and the deed did not contain metes and bounds description but referred to lot and block number on recorded subdivision plat.

Although at the time of negotiations the lot was only partially sodded, the seller's representative assured the buyer that the lot extended beyond sodded portion to a line of utility poles. After settlement seller actually sodded the lot back to pole line. No survey was made. Plat on wall in the office of seller showed correct lines of lot but, although seen by purchaser, was disregarded as salesman advised it was small and confusing. Purchaser discovered error in lot size when seller began construction of another house on disputed area.

Court held that purchaser as a practicing attorney should be held to the exercise of a greater degree of diligence than that demanded of the ordinary layman in a real estate transaction. However, in the instant case, the sales manager of the subdivision certainly would be in as good a position as the purchaser, if not better, to have actual knowledge of the location of boundary lines and markers.

> "Where the boundaries of land are unmarked and vendor undertakes to point out the boundaries to purchaser, he is under an obligation to point them out correctly; and the purchaser has a right to rely upon such a representation **without being required to make an examination of the land records or to employ a surveyor to make a plat of the land and he can hold the vendor liable for any fradulent misrepresentation."**

Court ordered rescission of contract, deed, return of all consideration paid, and release of purchaser's deed of trust and note.

Engel v. Tinker National Bank, 269 F. Supp. 199 (N.Y. 1967)

The court held that the interest of purchasers in realty occupied by them pursuant to unrecorded conditional sales contract was not subject to government's subsequent judgment against vendor although purchasers had made payments to vendor and vendor's assignee after filing of government's tax lien and docketing of judgment where government had failed to take affirmative action to enforce its rights against such payments while they were being made.

Even without recording, the rights of a contract vendee are superior to all except bona fide purchasers for value under New York law.

Price v. Watts, 223 Ga. 805, 158 S.E. 2d 406 (1967)

The court held that a lender taking a mortgage who had notice that the borrower had not completed payment of the purchase price for the property was put on inquiry as to the possible existence of a mortgage or other lien and was therefore charged with notice of an unrecorded security instrument held by the former owner of the property.

Masterson v. Sine, 65 Cal. Rptr. 545, 436 P. 2d 561 (1968)

In a majority opinion the California Supreme Court, after first declaring that extrinsic evidence was admissible to interpret what was meant by

the "same consideration as being paid heretofore" and by "depreciation value of any improvements," held that parol evidence was admissible to establish that the option was personal to the grantors and not assignable, with the result that it did not pass to the trustee in bankruptcy.

Handy v. Gordon, 55 Cal Rptr. 769, 422 P. 2d 329 (1967)

Subordination clause in agreement for sale of real property (approximately 320 acres) specified that the construction and financing loans should be in the maximum amounts of $10,000.00 and $52,000.00 per lot, maximum interest rates of 7% and 6.6%, and mature in not more than 6 and 35 years respectively. The contract did not specify the number of lots into which the land was to be divided.

Held: Where the contract leaves the vendor with nothing but the vendee's good faith and business judgment to insure that the vendee will receive anything for conveying the property, the contract is not "just and reasonable" and under California law will not be specifically enforced.

In the instant case the court noted the failure to specify the number of lots and observed that if divided into one acre lots the subordinating construction and financing loans could total $3,200,000.00 and $16,640,000.00. If ¼ acre lots, the loans could total $12,800,000.00 and $66,560,000.00.

Target Stores, Inc. v. Twin Plaza Co., (Minn.) 153 N.W. 2d 832 (1967)

Held: Unrecorded prior agreements between vendor and retailers giving retailers right to lease certain buildings which vendor had proposed to construct as part of a shopping center complex did not create an adverse interest in the realty where plans for shopping center did not materialize and buildings to be occupied were never constructed, and agreements made no reference to an interest in land being passed and it was clear that retailers were not interested in occupying bare land, and hence purchaser was not entitled to rescission on the ground that the failure of vendor to disclose the agreements constituted fraud.

Bandy v. Myers, 227 N.E. 2d 183 (Ind. 1967)

Myers gave Bandy an option to purchase real estate. The option was not recorded. Before the exercise of the option, Myers negotiated with Layton for the purchase of a part of the real estate covered by the option. A deed was not to be delivered until a proper legal description could be obtained based upon a survey. In the meantime, however, Layton paid the purchase price in full, put a well down on the real estate, had a foundation prepared for a house, and moved a house onto the foundation. At that time, Layton had never heard of Bandy, knew nothing of the option and did not have notice of any facts which would put an ordinarily prudent person on inquiry. Bandy, then noticing Layton's claim of interest in the real estate, exercised the option and also advised Layton of Bandy's rights in the real estate. Thereafter, Myers deeded to Layton that portion which he had negotiated to sell to Layton. Bandy brought suit for specific performance. Held: Disallowed. Bandy had no right to the real estate involved in the Layton sale despite the fact that Layton had notice of the existence of the option at the time he received the deed. Bandy did not attempt to take title on that part of the real estate which Myers was able to convey and to com-

pel Myers to perform to the extent of her ability either with or without abatement from the purchase price to compensate for the deficiency in land caused by the conveyance to Layton.

WATER AND WATER COURSES

Pierce Family Inc. v. Magness Construction Company, 235 Atl. 2d 268 (Del. 1967)

Held that the upper land owner cannot compel lower landowner to provide drainage facilities to carry off the amount of water increased artificially above natural drainage level. Lower landowner may not artificially obstruct natural flow of water onto his land so as to cause water to back up and flood land of upper landowner. Upper landowner may not artificially increase flow of water onto lower lands above its natural volume. Where, in the course of filling lower land and erecting apartment buildings thereon, streams through which waters from upland had naturally drained into creek were blocked, owners of upland could compel owners of lower land to make provision for drainage sufficient to take care of natural flow of water but could not compel installation of system sufficient to pass off greater volume of water which certain forms of land development might cast upon low land.

O'Neill v. State Highway Department, 50 N.J. 307, 235 A. 2d 1 (1967)

Purchaser from record upland owner brought action to compel State Highway Department to condemn "marshlands" used for highway purposes and against title insurance company under its title policy which had declined to defend against State's assertion of ownership on tidelands theory. Held: Doctrine of sovereign immunity does not prescribe a suit by a private claimant to settle title to real property. The state owns only the lands that are flowed by the tide up to mean high water line. Meadowlands which are only periodically covered by water are therefore not tidelands and not owned by the State. The court found that the burden should be upon the party who challenges the existing scene, whether the alterations were due to the State or to private activity, to satisfy the trier of the facts that the tideland status of the property was changed by such artificial measures. The judgment of the lower court was reversed and the matters remanded for a new trial. The controversy between plaintiff and the title company will await a decision on the tidelands issue.

WILLS

Rucker v. Harris, 91 Ill. App. 2d 208, 234 N.E. 2d 392 (1968)

It was held here that where joint will of husband and wife was found to constitute a contract for devolution of all their property, real and personal, to daughters of husband, wife had only life interest in property formerly held in joint tenancy and could convey no greater interest.

Harrison v. Shipper, 419 S.W. 2d 557 (Ky. 1967)

This was a suit seeking construction of a will. The testator died in 1881

leaving her property in trust for her two daughters, with remainder at the death of each to their descendants. If the daughters died without issue the remainder was to go to testator's husband, and if he predeceased the daughters, it was to go to testator's "heirs."

The husband predeceased the daughters and they both died without issue, the last one in 1964.

The appellants, who are the descendants of the husband and his second wife, contend that the heirs of the testator are those who stood in that relation as of the date of her death, 1881.

The appellees, who are the descendants of the brothers and sisters of the testator, contend that the heirs should be determined as of the date of the death of the last living daughter, 1964.

Held: The court concluded that in the circumstances of this case the testatrix intended her estate to pass to her brothers and sisters and their descendants. It ruled that the rule of construction that at estator's heirs are to be determined as of the date of the testator's death will not be invoked when the intent of the testator would be frustrated.

In Re Estate of Stolte, 226 N.E. 2d 615 (Ill, 1967)

Petition for probate and letters testamentary were filed by testator's nephew and named executor, and testator's widow filed objections to the probate. The Circuit Court admitted certain instruments to probate as the last will and codicil of testator and issued letters testamentary thereon. Upon widow's appeal, the Supreme Court held that the amendment of the Probate Act to read "No will or any part thereof shall be revoked by any change in the circumstances, condition or marital status of the testator" could not revive will which had been revoked under prior law by marriage of testator subsequent to execution of his will.

Matthews v. Loftin, 224 Ga. 98, 160 S.E. 2d 399 (1968)

The court dealt with the familiar subject of street-number descriptions. A will devised "the house and land at 70 Clark Street, Newnan, Georgia," and the question was whether this also included adjoining vacant land and how much land was included. The court determined how much land was included by a reading of other passages of the will and by outside evidence. The will had given other property in the same block to other parties by street numbers, but had used the phrase "house and lot" instead of "house and land," and unless additional land were included, there would have been an intestacy. On this basis the court decided that all the remaining land went with the house except that specifically devised to others.

Freedman v. Scheer, 223 Ga. 705, 157 S.E. 2d 875 (1967)

A will gave the entire estate consisting mainly of Georgia realty to the State of Israel. The Supreme Court held that the will was valid as to personal property, but that a testator has no authority to devise real property located in this State to a foreign country. However, the court did permit the administrator c. t. a. to sell the real estate and turn over the proceeds to the State of Israel.

Allen v. Bolton, 416 S.W. 2d 906 (Tex. 1967)

Here the court holds that even though a will be admitted to probate and the time for appeal from the order has expired, a will bearing a later date

may be probated as a muniment of title more than ten years later. This is a suit by a devisee under a will first probated against devisee under the later will to remove cloud. The court says that since no bona fide purchasers under the first will are involved, the title vested under the second will.

In Re Hamilton's Estate, 73 Wn. Dec. (2d) 869, 441 P. 2d 768 (Wash., 1968)

The making of a one dollar bequest to "my stepdaughter," with no indication that the testator contemplated adopting such person, did not constitute naming this person as a child within the meaning of the pretermitted heir statute; hence, where this stepchild became a child through adoption some four years later, the reference to her in the will as a stepdaughter was insufficient to avoid her being a pretermitted heir.

Will of Wehr, 36 Wis. 2d 154, 152 N.W. 2d 868 (1967)

Under a will creating a trust of the residue of an estate designating certain brothers and sisters as life income beneficiaries and directing division of the remainder (upon the death of the last survivor) into two shares, one of which was to be distributed to testator's aunt "if she be then living; and if she be dead, then, in equal shares, to her then surviving descendants" upon death of the last life income beneficiary, where neither the aunt nor any of her lineal descendants survived the last life income beneficiary, a nephew of the aunt could not claim entitlement to such share in the remainder, for he was not a surviving descendant.

ZONING

Gibbons & Reed Company v. North Salt Lake City, 19 Utah 2d 329, 431 P. 2d 559

Land owners who had used their property for sand and gravel excavation prior to passage of zoning ordinance prescribing such excavation brought action seeking prohibition against enforcement of ordinance.

Held: After taking into consideration the existing use of the property, the availability of the natural resource, and the severe loss to both the fee owners and the public as compared to the relatively small inconvenience to owners in the neighborhood, it was held that a zoning ordinance which required discontinuance forthwith of nonconforming use existing when ordinance was adopted was deprivation of property without due process of law unless use is a public nuisance.

Village of Wind Point v. Halverson, 38 Wis. 2d 1 (1968)

In an action by a village to enjoin property owners from proceeding with the construction of a swimming pool building in violation of a setback restriction in an ordinance, the owners could not successfully urge estoppel in defense on the ground that they had received a village building permit authorizing the construction of the improvement, for a municipality cannot be estopped by errors of its officials, however sincere, particularly where, as here, the permit was secured with full knowledge on the part of the owners that the improvement violated the restrictions.

Saunders County v. Moore, 155 N.W. 2d 317 (Neb. 1967)

A vested interest in non-conforming use under zoning regulations is a property right and any statute or law purporting to take away that right is invalid.

MEETING TIMETABLE

1969

April 3-4-5, 1969
Arkansas Land Title Association
Coachman's Inn
Little Rock, Arkansas

April 17-18-19, 1969
Oklahoma Land Title Association
Oklahoma City, Oklahoma

April 24-25-26, 1969
Texas Land Title Association
Texas Hotel
Fort Worth, Texas

May 4-5-6, 1969
Iowa Land Title Association
Holiday Inn
Sioux City, Iowa

May 8-9-10, 1969
Utah Land Title Association
Park City, Utah

May 8-9-10-11, 1969
Washington Land Title Association
Tyee Motor Hotel
Olympia, Washington

May 9-10, 1969
Tennessee Land Title Association
Downtown Holiday Inn
Chattanooga, Tennessee

May 21-22-23, 1969
California Land Title Association
Fairmont Hotel
San Francisco, California

May 22-23-24, 1969
New Mexico Land Title Association
White Winrock Motor Hotel
Albuquerque, New Mexico

May 25-26-27, 1969
Pennsylvania Land Title Association
Shawnee on Delaware, Pennsylvania

June 11-12-13, 1969
Illinois Land Title Association
Drake Hotel, Chicago

June 12-13-14, 1969
Colorado Land Title Association
Steamboat Springs, Colorado

June 18-19-20-21, 1969
Oregon Land Title Association
Gearhart Motor Inn
Gearhart, Oregon

June 25-26-27-28, 1969
Michigan Land Title Association
Hidden Valley
Gaylord, Michigan

June 26-27-28-29, 1969
Idaho Land Title Association
The North Shore Motor Hotel
Coeur d'Alene, Idaho

June 27-28, 1969
South Dakota Land Title Association
Holiday Inn
Aberdeen, South Dakota

June 30-July 1, 1969
New Jersey Land Title
Insurance Association
Seaview Country Club, Absecon

July 13-14-15-16, 1969
New York State Land Title Association
Whiteface Inn
Lake Placid, New York

August 14-15-16, 1969
Montana Land Title Association
YoGo Inn
Lewistown, Montana

August 21-22-23, 1969
Minnesota Land Title Association
Edgewater Motel
Duluth, Minnesota

August 22-23-24, 1969
Ohio Title Association
Atwood Lodge
Dellroy, Ohio

September 4-5-6-7, 1969
Missouri Land Title Association
Plaza Inn, Kansas City, Missouri

September 11-12-13, 1969
North Dakota Land Title Association
Plainsman Hotel
Williston, North Dakota

September 12-13, 1969
Kansas Land Title Association
Lasson Motor Hotel
Wichita, Kansas

September 12-13, 1969
Nevada Land Title Association
Las Vegas, Nevada

September 28-29-30, October 1, 1969
ANNUAL CONVENTION
American Land Title Association
Chalfonte-Haddon Hall Hotel
Atlantic City, New Jersey

October 9-10-11, 1969
Nebraska Title Association
Lincoln, Nebraska

October 16-17, 1969
Dixie Land Title Association
Calloway Gardens
Pine Mountain, Georgia

October 26-27-28, 1969
Indiana Land Title Association
Stouffer's Inn
Indianapolis, Indiana

October 30, November 1, 1969
Florida Land Title Association
Causeway Inn Resort
Tampa, Florida

October 30, November 1, 1969
Wisconsin Land Title Association
Holiday Inn
Eau Claire, Wisconsin

December 3, 1969
Louisiana Land Title Association
Royal Orleans Hotel
New Orleans, Louisiana

1970

April 1-2-3, 1970
MID-WINTER CONFERENCE
American Land Title Association
The Roosevelt Hotel
New Orleans, Louisiana

October 4-5-6-7, 1970
ANNUAL CONVENTION
American Land Title Association
Waldorf-Astoria Hotel
New York, New York

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