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NO lawyer likes to "turn down" a title as unmerchantable. Occasionally a disappointed owner and would-be seller or a real estate broker may feel that a lawyer takes a fiendish glee in rejecting a title as unmerchantable, but this feeling is entirely unwarranted.

The title to real estate, which a lawyer is called upon to examine and pass upon, is the title that is shown by written instruments of record. Necessarily, therefore, the examination of and passing on the title is a technical matter of examining these papers which have been filed of record and determining whether they show a title that appears good or whether there are defects in the title so shown.

The attorney making the examination does so on behalf of a client who desires to purchase the property or to make a loan. If he passes the title as good, his labors after completing the examination are comparatively simple, consisting of writing a brief opinion stating the title is good, subject of course to such encumbrances, restrictions, tax liens, etc., as may exist, preparing the necessary papers and closing up the deal, and in such case his client is relieved and satisfied, the owner of the property is likewise and everyone is happy. But, if the lawyer turns down the title as unmerchantable, his troubles have just commenced; he must write an opinion setting forth the facts concerning the defect and the reasons why same renders the title unmerchantable and then he must explain the matter to his client and tell him why it is that he is compelled to reject the title and then follows a session with the owner, going into again with him the matter, and possibly a similar one with the real estate agent, and then usually comes arguing out the matter with some other lawyer who has previously passed the title, all of which involves a large amount of time and discussion and conditions which can not be considered enjoyable to the attorney, with no additional compensation to him for the same.

But a lawyer of course can not pass the title because rejecting it would impose upon him additional time, work and unpleasantness. If he finds in the title a defect which under the law or under the recognized practice would render

the title unmerchantable, he must reject it; if he does not do so, he is not true to his client and he subjects himself to the danger of having his client come back to him in the future because of such title being rejected by an attorney examining for a prospective purchaser or lender.

There are of course various kinds and degrees of defects in titles. It requires an expert knowledge and a nice sense of discrimination to distinguish between defects which may be considered as immaterial and of no consequence, on the one hand, and defects which are substantial, on the other hand. And a defect which is purely a technical one and which does not mean that the purported owner of same does not as a matter of fact own the property nevertheless may render the title unmerchantable on the face of the records.

The foregoing are platitudes but they are merely an introduction to statements as to the reasons which have prompted the passage of the various statutes which, especially during the last seventeen years, have from time to time been passed by the Colorado Legislature to remedy various defects in record titles and to make titles to real estate more merchantable. From time to time during such period groups of lawyers, a substantial portion of whose practice consists of examination of titles, have conferred together, discussed curative statutes which might be passed, agreed upon their phraseology and assisted in having them put through the Legislature. They did this in the interests of the public and, in a sense, against their own selfish interests in that the passage of a number of these statutes has meant that lawyers would not be employed to bring suits to quiet title which they would have been employed to bring had the statutes not been passed.

In selecting defects to be remedied by curative statutes and in preparing the statutes there was required a fine sense of balance between matters, on the one hand, which involved actual substantive rights of which the owners thereof might be deprived by the legislation, and, on the other hand, purely technical matters which involved no substantive rights of which the owners would be deprived by the legislation. It is one thing to prepare hastily a statute to remedy a certain kind of defect in the title, but it is another thing altogether to guard against actual interests or property rights being cut out thereby. Therefore the number of defects in titles which

can be eliminated by legislation without unjustly cutting out actual property rights is not unlimited.

The legislation which was thus conceived by lawyers or groups of lawyers to remedy technical defects in titles in this manner falls into two classes: one class consists of those statutes which make certain things appearing of record *prima facie* evidence of certain matters; and the other class consists of those statutes which impose periods of limitation upon the assertion of rights and claims. It is believed that statutes falling within either of these two classes are valid and constitutional. Patton on Titles 224-233.

It is not the assumption of the writer in preparing this article that the lawyers do not know of these curative statutes and that they do not follow them. On the contrary, the writer knows that the attorneys who examine titles are familiar with them and follow them. The purpose of this article is to collect in one place in an alphabetical arrangement these various curative statutes which have from time to time over a long period been passed and which appear in the statutes in various places, in order to provide a source of ready reference to which the lawyer can turn to find quickly the statute he desires, together with an explanation as to the purpose for which each was passed.

Abstracts. By 1927 Sess. L. 600 Sec. 34, C.S.A. Chap. 40, Sec. 140, it is provided that an abstract of title certified by any reputable Colorado abstracter or abstract company incorporated under the laws of Colorado may be used to establish *prima facie* evidence that the chain of title is as shown by the abstract except as to any of the instruments of conveyance or record thereof or certified copy thereof which may be offered in evidence and that the Court may take judicial notice of the repute of the abstracter and that the absence of tax sale certificates from such abstract for any period of time covered by the abstract shall be *prima facie* evidence of the payment of taxes during such period by the party relying upon any chain of title shown by such abstract. In Hockmuth vs. Norton, 90 Colo. 453 it was held that under this section the abstract of title, when admitted in evidence without limitation, is "*prima facie* evidence that the chain of title is as shown thereby." The purpose of this section was to do away with the previously required laborious task of proving in an action

the title of a litigant by introducing in evidence, one by one, the recorded copies of each and every instrument making up the chain of title of such litigant from the very beginning of such chain, necessitating the carrying from the office of the Recorder to the court room a large number of heavy books and the identification thereof and testimony with regard thereto of the Recorder or his Deputy and also to make simple the proving *prima facie* of the payment of taxes for a period of seven years so as to bring the case within the provisions of C.S.A. Chap 40, Secs. 143 and 144.

Acknowledgments. Prior to 1927 the form of acknowledgment set out in the Colorado statute (1921 Comp. Laws Sec. 4899) was one quite different from the form used in most of the other states of the Union, particularly in that the Colorado form contained the words "to be his act and deed for the uses specified therein." Repeatedly, examining attorneys would find in the title acknowledgments which omitted either the phrase "to be his act and deed" or the phrase "for the uses specified therein" without the substitution of any equivalent words and it was felt generally by examining attorneys that each of these two separate phrases was a substantial portion of the statutory form, so that, if either of them was omitted without substitution of equivalent words, the acknowledgment was a nullity. The omission of one or the other of these phrases very often occurred because a deed was prepared, executed and acknowledged in another state upon a form printed for use in that state and containing not the Colorado form of acknowledgment but the form of acknowledgment in use in that state. To remedy this situation there were prepared and adopted in 1927 several sections. One of these (1927 Sess. L. 585 Sec. 1; Original 1935 C.S.A. Chap. 40, Sec. 107; now amended by 1937 Sess. L. 477, Sec. 1; 1938 Supp. C.S.A. Chap. 40, Sec. 107) provided a very short and simple form of acknowledgment which, as to an individual, merely reads: "The foregoing instrument was acknowledged before me this_____day of_____19_____, by_____", thereby omitting the troublesome words "to be his act and deed for the uses specified therein". Another section (1927 Sess. L. 587, Sec. 2; C.S.A. Chap. 40, Sec. 108) provided that, in addition to the officers then empowered to take acknowledgments within or without the

United States, instruments may be acknowledged before any Notary Public having a notarial seal. This was to cover the condition created by the previous statute (1921 C. L. Sec. 4891 sub. Third) not having permitted an acknowledgment to be made before a notary public outside of the United States or its possessions. Another section (1927 Sess. L. 588, Sec. 4; C.S.A. Chap. 40 Sec. 110) provided that all instruments affecting title to real property in this state which shall have been theretofore executed or should be thereafter executed purporting to have been acknowledged or proved out of this state before a notary public or other officer empowered by the laws of this state to take acknowledgments, if the form of acknowledgment be in substantial compliance with the laws of the state or territory where taken or in substantial compliance with the requirements of the present statutes of Colorado, shall be deemed *prima facie* to have been properly acknowledged or proved before proper officers. This section made good any acknowledgment previously made in a form used in the state where it was made but not in accordance with the previously prescribed Colorado form and also any acknowledgment which had been previously made if it was substantially in the form prescribed by the present statutes and was taken by an official authorized by the present statutes to take acknowledgments.

Acknowledgments of Instruments Remaining of Record More than Twenty Years. A large number of defects in titles arise through defects in the acknowledgments to instruments in the chain of title. In order to correct these defects arising from defective acknowledgments or total lack of acknowledgments, where the instruments in question have been of record for a long time, there was passed in 1913 (1913 Sess. L. 319; 1921 Comp. Laws, Sec. 4906) a statute which, as amended in 1927, appears as 1935 C.S.A. Chap. 40, Sec. 111 and as amended in 1937 appears as 1937 Sess. L. 481, 1938 Supp. C.S.A. Chap. 40, Sec. 111. This statutes provided that instruments affecting title to real property which have remained or shall have remained of record in the office of the Recorder of the county where the real property affected is situate for a period of twenty years, although unacknowledged or not acknowledged according to law, shall be received and may be read in evidence and the same or the record thereof

or a certified copy of the record thereof shall be received and may be read in evidence without additional proof of the execution thereof in the same manner and with the same force and effect as if they had been properly acknowledged and proved according to law. The 1937 amendment, for the same reasons as are mentioned herein under the heading "Recording a Long Time After Execution of Instrument", inserted in the statute the words "irrespective of the length of time that may have elapsed between the date of any such instrument and the date when same was so recorded". Because of this statute it is unnecessary and useless for an examining attorney to devote any time to checking the sufficiency in form of an acknowledgment to an instrument if the instrument shall have been of record for twenty years or more because, even if he finds the acknowledgment defective, such defect is of no consquence in view of the language of the statute.

Building and Use Restrictions. Considerable trouble has been encountered by examining attorneys through there appearing in the chain of title (usually in a deed of conveyance) provisions which not only impose building restrictions but provide for the forfeiture of the title in the event that such building restrictions are violated. An attorney will naturally hesitate about passing the title for the making of a loan by a client if his client's lien can be cut out through the title of the owner being forfeited because of the owner violating the restrictions. Because of this there was passed 1927 Sess. L. 606, Secs. 46 and 47, C.S.A. Chap. 40, Secs. 153 and 154, which provide that building restrictions and all restrictions as to the use or occupancy of real property shall be strictly construed and that restrictions which provide for the forfeiture of title to or an interest in real property because of the violation of the restrictions on other real property (the parcels of real property being owned by different persons) shall be construed as applying only to the property embraced in the restriction and owned by the party on whose property the violation of the restriction occurred and that no action shall be commenced or maintained to recover possession of real property or to enforce the terms of any restriction concerning real property or to compel the removal of any building or improvement because of the violation of any of the terms of any restriction unless said action is commenced within

one year from the date of the violation for which the action is sought to be brought or maintained.

Construction of Curative Statutes. As is seen from a glance through this article, a large number of the curative statutes mentioned herein were adopted in 1927 and were in Chapter 150 of the Session Laws of that year. Section 44 on page 605 thereof, being C.S.A. Chap. 40, Sec. 151, states that it is the purpose and intention of the 1927 Act to render titles to real property and every interest therein more secure and marketable and that it is declared to be the policy in this state that said act and all other acts and laws concerning or affecting title to real property and every interest therein and all recorded instruments, decrees and orders of court of record, including proceedings in the suits wherein such orders or decrees may have been entered shall be liberally construed and with the end in view of rendering such titles absolute and free from technical defects and so that subsequent purchasers and encumbrancees may rely on the record title and so that the record title of the party in possession shall be sustained and not be defeated by technical or strict construction.

Contracts of Sale. See Options to Purchase.

Corporations. In 1927 there were passed two sections relating respectively to execution in the name of a corporation of a deed before the filing of its incorporation papers and the execution in the name of a corporation of a deed after expiration of its existence where there was an attempted renewal or extension of its existence. Such sections are 1927 Sess. L. 607, Secs. 49 and 50, C.S.A. Chap. 40, Secs. 156 and 157. The first of these sections provides that, if at the time of the delivery of a deed describing the grantee as a corporation, no incorporation papers have been filed and if thereafter proper incorporation papers shall be filed, the title to the property shall vest in the grantee as soon as the grantee is incorporated and no other instrument of conveyance shall be required. The second section provides that where the corporate existence of any corporation shall expire and there shall be an attempted renewal or extension of its corporate existence, either within the time provided for by law or thereafter, a conveyance thereafter by such purported corporation shall vest in the grantee the interest of the former corporation. As to cases where the deeds had been executed before the time when these sections

went into effect, it is provided in the first of such sections that it shall be conclusively presumed that the title vested in the incorporators in trust for the grantee and that said incorporators properly conveyed the real property to the grantee when the grantee was incorporated unless within one year from the time the section went into effect there shall be filed in the office of the proper Recorder a written explanation or statement of the transaction signed and acknowledged by the proper parties and it is provided in the second of said sections that the title or interest so conveyed shall be presumed to have been properly passed to the grantee unless an action be brought within one year from the time the section became effective to establish a different result.

Death, Certificates of. It very often is necessary in order to have a merchantable title that the death of a person be *prima facie* shown on the records. This arises most frequently in cases where a life estate is devised or conveyed. By C.S.A. Chap. 78, Sec. 128, a certified copy of the record of the death of one dying in Colorado made and kept in accordance with sections 104 to 114 of said chapter is made *prima facie* evidence of the facts therein stated. This, however, left the question of whether, if the death occurred outside of Colorado, a certified copy of the Certificate of Death issued by the official of the foreign state would be admissible in evidence in a Colorado court and certainly, if it was recorded in the office of the Recorder, the copy thereof in the records of the Recorder would not be admissible in evidence. Therefore in 1927 there was passed a statute (1927 Sess. L. 591, Sec. 11; C.S.A Chap. 40, Sec. 117) providing that a certificate of death issued by a public official (whose apparent official duties include the keeping of records of death) of any state, territory, county, parish, district, city, town, village, province, nation or other governmental agency or subdivision thereof or a copy of any such certificate of death certified by such public official or by the county clerk and recorder of any county in the State of Colorado in whose office the same or a certified copy thereof shall have been recorded shall, insofar as the death may affect any interest in real property, be *prima facie* evidence of the death so certified and of the time and place of such death and shall be admissible in evidence in any court in Colorado, and that such method of proving death shall not be exclusive.

Decrees, Judgments and Official Deeds. 1927 Sess. L. 603-604, Secs. 39 and 40, C.S.A. Chap 40, Secs. 146 and 147 contain provisions which are probably the most helpful statutory provisions that have ever been passed in Colorado in the removal of defects in titles which otherwise would require the titles to be rejected as unmerchantable. Said Sec. 146 provides that no action shall be commenced or maintained against a person in possession of real property to question or to attack the validity of or to set aside upon any ground or for any reason whatsoever any final decree or final order of any court of record of this state or any instrument of conveyance, deed, certificate of sale or release executed by any private trustee, successor in trust, Public Trustee, sheriff, marshal, public officer or officers or appointee of a court when such document shall be the source of or in aid of or in explanation of the title or chain of title or right of the party in possession or any of his predecessors or grantors, insofar as the same may affect the title or explain any matter connected with the title in reference to said real property, if such document shall have been recorded and have remained of record in the office of the Recorder where said real property is situated for a period of seven years. Said section further provides that any and all defects, irregularities, want of service, defective service, lack of jurisdiction or other grounds of invalidity, nullity or causes or reasons whereby or wherefore any such document might be set aside or rendered inoperative must be raised in a suit commenced within said seven-year period and not thereafter. Said section 147 provides that persons under legal disability at the time the right of action first accrued and who at the time of the expiration of the limitation applicable are still under such disability shall have two years from the expiration of a limitation to commence action and no action shall be maintained by such persons thereafter. Said Section 146 provides that its provisions shall not apply to any of the following cases: forged documents; during the pendency of an action commenced prior to the expiration of said seven-year period to set aside, modify or annul or otherwise affect such document if notice of such action has been filed as provided by law; when such document has been by proper order or decree of competent court avoided, annulled or rendered inoperative; and where the party who brings the action to

question, attack or set aside the validity of such document or his predecessor shall have been deprived of possession within two years of the commencement of the action. The result of these two sections is that where a certified copy of a decree entered in a suit affecting the title to real estate, whether it be a foreclosure action or a suit to quiet title or an action for declaratory judgment or any other character of action affecting the title to real estate, shall have been of record in the office of the Recorder of the county wherein the real estate in question is situated for the period of nine years (the seven years provided by section 146 plus the two years provided by section 147) prior to the time of the examination of the title and the person in whose favor such decree was entered or his successors in interest shall be in possession of the property at the time of the examination and for the period of two years immediately prior thereto and no notice of pendency of an action to attack or set aside such decree is shown by the records and no order or decree affecting or setting aside such decree is shown in the files of the suit or by the records in the Recorder's office, then the decree as entered by the court and the certified copy thereof as set out in the records of the Recorder can be accepted by the examining attorney as being valid and binding according to the terms and provisions on their face as against those named therein as defendants and those who have acquired interests from them subsequent to the filing of the lis pendens or the certified copy of the decree, irrespective of any defects and irregularities there may be in the securing of service of summons in such action or in any other proceedings in such action prior to the entry of the decree. And the same result follows as to releases of deeds of trust by Public Trustees and by private trustees and also as to Public Trustees' Deeds, Sheriffs' Deeds, Special Master's Deeds, Executors' and Administrators' Deeds and other conveyances, certificates of sale and releases executed by officials included in the language of the section. A concrete illustration of the effect of these sections can be cited in the case of Public Trustee's Deeds. In the article prepared by the writer and published in the November, 1936, issue of DICTA entitled "Foreclosure by Sale by Public Trustee of Deeds of Trust in Colorado", which article was prepared with the idea of furnishing a guide to an attorney in carrying through fore-

closure proceedings by sale by the Public Trustee, there were set out the various steps and proceedings that should be taken in the foreclosure and the manner in which they should be taken to comply with the statutes and the law; and in such article particular attention was given to the matter of the notice of the sale that was to be given and with respect to such notice it was stated that the publication of the notice of sale and the mailing of such notice are the very heart of the foreclosure proceeding and that the publication and mailing of the notice of sale in strict compliance with the provisions of the statute are necessary to confer power on the Public Trustee to sell the property. However, under said sections 146 and 147, it is immaterial whether notice of the sale was given in conformity with the provisions of the statute or not and whether other proceedings were properly taken in the foreclosure if the Public Trustee's Deed shall have been on record for more than nine years and no notice of pendency of action to set same aside is shown in the records of the Recorder and no decree setting it aside is shown in the records of the Recorder and the grantee in such Public Trustee's Deed or his successor in interest shall be in possession of the property at the time of the examination and shall have been in such possession for two years immediately prior thereto. It must be borne in mind, however, that, if the decree, the release, the certificate of purchase or the deed is defective on its face, then said sections 146 and 147 can not cure the defects which are shown on the face of the instrument, since these sections operate only to prevent the setting aside of such instruments after the same shall have remained of record for the specified period and to make them good according to their terms. Therefore particular attention must still be given to whether the decree, deed or other instrument correctly states the names of all the necessary parties and the description of the property and all other matters which should be stated in such instrument in order for it to be valid and fully effective on its face.

Deeds. See also: Acknowledgments; Corporations; Decrees, Judgments and Official Deeds; Descriptions—Numbers and Letters in; Executors and Administrators—Conveyances by; Official Sales; Recitals *prima facie* Evidence; Recording a Long Time after Execution of Instrument; Seals; Signature of those Acting in Representative Capacity; Trustees; Unre-

corded Instruments—Against Whom Invalid; and *Wills—Powers of Sale Under.*

Descriptions—Numbers and Letters in. There is authority for the holding that the words "Lots numbered 1 to 10", without the addition of the word "inclusive", convey only the lots to but not including 10 and therefore such a description conveys only lots numbered 1 to 9, inclusive, and does not convey lot numbered 10. Many titles are rejected because of the omission of the word "inclusive". Feeling that when a grantor executes a deed conveying "lots numbered 1 to 10" he intends to convey all ten lots, irrespective of what the technical interpretation given to same might be, there was passed in 1927 a section (1927 Sess. L. 593, Sec. 15; C.S.A. Chap. 40, Sec. 121) providing that all instruments wherein the parcels of property affected are not separately enumerated or listed, but are described as being from one numbered, lettered or designated parcel to another, shall be construed as including the first and last designated parcels, and also the intervening parcels, unless a contrary intention be expressly and clearly set forth in the instrument.

Estates—Foreclosure of Deeds of Trust Against. The statute passed in 1905 (1905 Sess. L. 290) as amended by 1917 Sess. L. 391, C.S.A. Chap. 176, Sec. 208, provided that no mortgage, deed of trust or other security constituting a lien or encumbrance on any property owned by any person at the date of his death or on the date of adjudication of mental incompetency or which secures an indebtedness constituting a claim against the estate of any decedent or mental incompetent shall be foreclosed except in accordance with and under the conditions prescribed by such statute. One of such conditions was that such a deed of trust could not be foreclosed by sale by the Public Trustee during the period of one year after the death or adjudication unless the claim shall have been first proven and allowed or (if the amount secured be not a claim against the estate) until the validity of the encumbrance and the amount secured thereby shall have been first duly proved in the estate proceedings and permission given by the County Court for such foreclosure by sale. Under this provision, even though the proceedings for the foreclosure by sale by the Public Trustee of a deed of trust appeared entirely valid and regular upon the face of the rec-

ords in the office of the Recorder and in the office of the Public Trustee, nevertheless the sale might have been in violation of the provisions of such statute because of the person owning the property having died or been declared incompetent or the person primarily liable on the indebtedness secured thereby having died or been adjudged incompetent and the foreclosure sale having been made less than a year after such death or adjudication of incompetency and no permission to foreclose by sale having been secured from the County Court. To be assured that something like this might not have happened which would impair the validity of the foreclosure it would be necessary for the examining attorney to ascertain whether the owner or any person primarily liable on the indebtedness had died or been adjudged incompetent within a year prior to the foreclosure sale and, if so, whether permission to foreclose by sale had been given by the County Court. Therefore there were passed in 1931 four sections (1931 Sess. L. 793-794, Secs. 1-4; C.S.A. Chap. 40, Secs. 65-68) providing: that all deeds of trust theretofore or thereafter executed to a Public Trustee may be foreclosed by such Public Trustee in the usual manner without regard to the fact that the indebtedness secured may constitute a claim against the estate of a deceased person and notwithstanding the death of one or more of the owners of the real estate covered by it; that such foreclosure should be good against the heirs at law, legatees, devisees and creditors of any decedent and all persons claiming by, through or under such decedent; that notice of the foreclosure proceedings should be given in the usual manner to the grantor in the deed of trust at the address stated therein as though living and to all persons having record interests; that no notice of the foreclosure proceedings need be given to any heir at law, legatee, devisee, creditor or any person claiming by, through or under the decedent unless the claim or interest of such person appears of record; that no deficiency claim shall be made or allowed against any estate where foreclosure is had under the provisions of said four sections; that the interest and claim of all persons in and to the real estate claiming by, through or under any decedent, including minors and mental incompetents, shall be terminated and concluded by such foreclosure unless they shall redeem within the time prescribed by law;

and that at the expiration of one year after said four sections became effective all trustees' deeds theretofore issued by any Public Trustee shall be considered valid and conclusive notwithstanding the fact that no court order permitting foreclosure had been obtained from the estate of a deceased debtor or from the estate of a deceased owner. It is to be noted that these four sections relate only to estates of decedents and that they leave the 1917 Act still in effect as to the foreclosure of encumbrances against property owned by one who has been adjudged a mental incompetent or securing indebtedness constituting a claim against a mental incompetent. A bill has been introduced in the present session of the Legislature to amend said Sections 65 to 68 and also the 1917 Act to make the situation the same with respect to mental incompetents as it now is under Sections 65 to 68 as to decedents and, by amending said Sec. 208 of Chap. 176, to make the filing of a claim in the estate of a decedent or mental incompetent, before the foreclosure sale is held, a prerequisite to the allowance of a claim for any deficiency against the estate.

Executors and Administrators—Conveyances by. Under the provisions of original 1935 C.S.A. Chap. 176, Sec. 95, it was required that where an executor or administrator is authorized by the will to sell real estate he must, before making the sale, secure from the Court an order authorizing the sale and give a bond in an amount at least equal to and not more than double the appraised value of the real estate ordered to be sold and it was provided by said section that no such sale shall be valid unless such bond shall be first given and approved by the Court. In 1937 such section was amended by 1937 Sess. L. 1365-1366, Sec. 1, 1938 C.S.A. Supp., Chap. 176, Sec. 95, so as to provide, in the place of the provisions above mentioned regarding securing an order authorizing the sale and the furnishing of bond, that, if a sale of real estate is made by an executor or by an administrator with the will annexed pursuant to a power of sale contained in a will, he shall forthwith make written report to the Court of the fact of such sale and shall include in such report a description of the property and the consideration received therefor and it shall then be discretionary with the Court whether to require the personal representative to execute and file a bond, with the provision, however, that the

failure to make such report of sale or furnish bond shall not invalidate any such sale. In order to cure defects in titles arising from deeds having previously been executed by the executor or the administrator under a power of sale without the required bond having been given, Secs. 2 and 3 on pages 1366-1367, 1937 Sess. L. provide that all sales of real estate theretofore made pursuant to power of sale contained in a will and which would have been valid and effective to convey title except for the fact that such sale was not made pursuant to the terms of Sec. 95, Chap. 176, Original 1935 C.S.A. were confirmed and declared to be valid and effective for all purposes and that no action shall be commenced or maintained to question or set aside any sale of real estate theretofore made pursuant to a power of sale contained in a will upon the ground that such sale was not made in compliance with the terms of said Sec. 95 unless such action be commenced within six months from the time that said 1937 sections became effective. See also *Wills—Powers of Sale under.*

Homesteads. Previous to 1927 the statutes relating to the encumbering or conveying of property, upon the margin of the record title to which an entry of homestead had been made, (1921 Comp. Laws, Secs. 5924-5931) required a rather complicated procedure including the husband and wife joining in the execution of the same instrument and the wife voluntarily, separate and apart from her husband, signing and acknowledging it and the officer taking the acknowledgment fully apprising her of her rights and the effect of signing the instrument and the acknowledgment to such instrument expressly stating compliance with the foregoing. Occasionally it was found that such a conveyance was signed by only one of the spouses and afterwards a conveyance was signed by the other and more frequently it was found that there was some technical insufficiency or omission in the certificate of acknowledgment so that such certificate of acknowledgment did not show an exact compliance with the terms of the statute. Feeling that too much red tape and technicality in the present day and age should not be thrown around the conveyance or encumbrance of homesteaded property and that all that should be required for such conveyance or encumbrance should be such signatures and acknowledgments as would be required if the two spouses owned the property as

tenants in common, there was passed in 1927 a statute (1927 Sess. L. 592, Sec. 12; C.S.A. Chap. 40, Sec. 119) which provided that to convey or encumber a homestead both husband and wife must execute a conveyance or encumbrance of their respective interests therein and that the same may be one instrument signed by both of them or by their separate instruments and that no special form of acknowledgment other than the form provided to be used in other conveyances shall be necessary. Also previous to the passage of this Act difficulty was sometimes encountered in one or the other of the following circumstances: a person who, though unmarried, was nevertheless the head of a family and entitled to a homestead, owned the property and entered it as a homestead, in which case, when a conveyance or encumbrance of the property was to be made, there was no spouse to join in the execution of the instrument and there was no way except by suit in which it could be established of record, even *prima facie*, that the owner of the property was unmarried and that therefore it was not necessary that his or her spouse also execute the instrument; and one of two spouses owned the property and either of the spouses entered it as a homestead and the spouse who was not the record owner died or was divorced, in which case it was either impossible or exceedingly difficult to obtain the signature of the former spouse who was not the record owner and, although under the law, because of the death or divorce, the signature of such spouse was not necessary to the validity of the conveyance or encumbrance, nevertheless it was difficult to show of record the death or divorce. To cover these situations the said section in the 1927 law provided that, if the homestead be claimed by a person who at the time of the conveyance or encumbrance thereof be not married, a statement to that effect in such instrument shall be *prima facie* evidence of such fact.

Judgments. See Decrees, Judgments and Official Deeds.

Lien Notes. During recent years there has arisen a practice on the part of certain firms and companies of having the property owner sign a short instrument constituting in effect both a promissory note and a mortgage upon property. In most cases these instruments were executed to roofing companies and in them the property owner agreed to pay the roofing company a certain amount in certain installments for

a new roof or for roofing repairs and gave to the roofing company a lien upon the property for the payment of same. These instruments were acknowledged in the same manner as other instruments affecting ttile to real estate and were then recorded. Usually before these instruments were recorded they were discounted by the roofing company to a finance company and in such cases the recorded copy of the lien note showed an endorsement on the back of the instrument from the roofing company to the finance company. These endorsements were never acknowledged. Later, upon payment of the indebtedness, the finance company would execute and acknowledge a quit claim deed purporting to operate as a release of the lien note. However, since the lien note was, in law and in fact, a mortgage upon real estate, an endorsement or assignment thereof was in effect an assignment of a mortgage on real estate and such assignment could not be accepted as showing of record the assignment of the mortgage unless it was acknowledged. So that, since the assignment was only by endorsement and was not acknowledged, the endorsement was not *prima facie* evidence of the assignment and so the later quit claim by the endorsee could not be accepted as releasing the lien note. And very often, when attempts were made to locate the roofing company in order to secure a release from it, it was found that it had folded up and the officers or partners thereof could not be found. In order to remedy this condition a statute was passed in 1937 (1937 Sess. L. 479-480, Sec. 2; 1938 Supp. to C.S.A. Chap. 40, Sec. 107 (1)) which provided where an instrument which by its terms constitutes a promise or obligation for the payment of money and also by its terms creates a lien on real estate as security for the payment thereof shall at the time it shall have been recorded (whether such recording be the original recording or a recording subsequent to the original one) have borne upon its face or upon its back an assignment, transfer or endorsement thereof, such instrument and such assignment, transfer or endorsement or the recorded copy thereof or a certified copy of the recorded copy thereof shall be admissible in evidence as and constitute *prima facie* evidence of such transfer, assignment or endorsement of such instrument from the person whose purported signature is affixed thereto to the person named therein, irrespective of whether such assignment, transfer or endorse-

ment shall have been acknowledged in the manner provided by law for the acknowledgment of instruments relating to or affecting title to real property or acknowledged at all. Such section further provided it should be applicable to all of such instruments which shall have been executed prior to the time when such section took effect, as well as to all such instruments which are executed after the time when the section takes effect. (Concluded in March Issue)

ANNUAL BANQUET

The following committee has been appointed to arrange the 1939 annual banquet. The banquet has never been held at any stated time, and the desire this year is to fix the date to suit the convenience of some nationally known speaker to be secured who will stimulate the greatest interest. The task is made difficult by our distance from the great centers of population and the fact that most figures of national prominence would be kept from other engagements for several days by a trip to Denver. Suggestions as to speakers will be welcomed by the committee.

MYLES P. TALLMADGE, *Chairman*

John P. Akolt	S. Arthur Henry
L. Ward Bannister	Erskine R. Myer
Clarence A. Bailey	Gustave J. Ornauer
Irving Hale, Jr.	Albert L. Vogl
Horace N. Hawkins, Jr.	Floyd F. Walpole

LAWYER-MUSICIANS

All member of the bar association who have had musical training and experience, either vocal or instrumental, please communicate with the Editor, KE. 7771.

DUES

The Secretary's office desires to remind all members that dues are now due and past-due; that it takes the filthy lucre to keep the Association going, and even DICTA is obliged to look to some extent to association dues in order to be maintained. So send in your check now.