Modern Business

A SERIES OF EIGHTEEN TEXTS, ESPECIALLY PREPARED FOR THE ALEXANDER HAMILTON INSTITUTE COURSE IN ACCOUNTS, FINANCE AND MANAGEMENT

EDITED BY

JOSEPH FRENCH JOHNSON

DEAN, NEW YORK UNIVERSITY SCHOOL OF COMMERCE, ACCOUNTS AND FINANCE

Titles	*Authors*
ECONOMICS OF BUSINESS	Edward Sherwood Meade
ORGANIZATION AND MANAGEMENT	Lee Galloway
MARKETING METHODS	R. S. Butler
SALESMANSHIP	Herbert F. DeBower John G. Jones
ADVERTISING	Harry Tipper George B. Hotchkiss
CORRESPONDENCE	George B. Hotchkiss
CREDITS	Peter P. Wahlstad
TRAFFIC	Philip B. Kennedy
ACCOUNTING PRACTICE	Leo Greendlinger J. William Schulze
AUDITING	Seymour Walton
COST FINDING	Dexter S. Kimball
CORPORATION FINANCE	William H. Lough
BANKING	Joseph French Johnson Howard M. Jefferson
FOREIGN EXCHANGE	Franklin Escher
INVESTMENT AND SPECULATION	Thomas Conway Albert W. Atwood
INSURANCE	Edward R. Hardy
REAL ESTATE	Walter Lindner
COMMERCIAL LAW	Charles W. Gerstenberg Thomas W. Hughes

ALEXANDER HAMILTON INSTITUTE
NEW YORK

Insurance and Real Estate

PART I: INSURANCE

BY

EDWARD R. HARDY

STAFF LECTURER ON FIRE INSURANCE AND INSURANCE LAW IN NEW YORK UNIVERSITY SCHOOL OF COMMERCE, ACCOUNTS AND FINANCE; ASSISTANT MANAGER OF THE NEW YORK FIRE INSURANCE EXCHANGE: SECRETARY, INSURANCE SOCIETY OF NEW YORK

PART II: REAL ESTATE

BY

WALTER LINDNER

GENERAL SOLICITOR OF THE TITLE GUARANTEE AND TRUST COMPANY OF NEW YORK CITY

Modern Business
Volume XI

ALEXANDER HAMILTON INSTITUTE
NEW YORK

TABLE OF CONTENTS

PART I: INSURANCE.

CHAPTER I.

HISTORICAL SKETCH OF INSURANCE.

CHAPTER II.

MARINE INSURANCE.

CHAPTER III.

FIRE INSURANCE.

CHAPTER IV.

THE ORGANIZATION OF FIRE INSURANCE COMPANIES.

CHAPTER V.

OFFER, ACCEPTANCE AND INSPECTION OF RISKS.

CHAPTER VI.

FIRE PROTECTION.

CHAPTER VII.

FINANCIAL ASPECT OF FIRE INSURANCE PROTECTION.

CHAPTER VIII.

RATING.

CHAPTER IX.

MINIMUM AND SPECIFIC RATES.

CHAPTER X.

UNIVERSAL MERCANTILE SCHEDULE.

CHAPTER XI.

ANALYTIC SCHEDULE.

CHAPTER XII.

INSURANCE CONTRACT.

CHAPTER XIII.

NEW YORK STANDARD POLICY.

CHAPTER XIV.

CLAUSES AND WARRANTIES.

CHAPTER XV.

FORMS AND POLICY WRITING.

CHAPTER XVI.

LOSS SETTLEMENTS.

CHAPTER XVII.

BROKERS, BROKERAGE, MORAL HAZARD AND UNDERWRITING.

CHAPTER XVIII.

ORGANIZATION OF LIFE INSURANCE COMPANIES.

CHAPTER XIX.

MORTALITY TABLES.

CHAPTER XX.

POLICIES AND PREMIUM RATES.

CHAPTER XXI.

INDUSTRIAL AND ASSESSMENT INSURANCE.

CHAPTER XXII.

CASUALTY INSURANCE.

CHAPTER XXIII.

WORKMEN'S COMPENSATION.

CHAPTER XXIV.

OTHER BRANCHES OF CASUALTY INSURANCE.

PART II: REAL ESTATE.

CHAPTER I.

INTRODUCTORY.

CHAPTER II.

INTERESTS IN LAND.

CHAPTER III.

BROKERAGE.

CHAPTER IV.

CONTRACTS.

CHAPTER V.

CONTRACTS. (*Continued*)

CHAPTER VI.

AUCTION SALES.

CHAPTER VII.

LIENS.

CHAPTER VIII.

TAXES AND ASSESSMENTS.

CHAPTER IX.

THE TRANSFER OF TITLE AND TITLE INSURANCE.

CHAPTER X.

DEEDS.

CHAPTER XI.

BOND AND MORTGAGE.

CHAPTER XII.

LEASES.

CHAPTER XIII.

ADJUSTMENTS AT CLOSING.

CHAPTER XIV.

METHODS EMPLOYED IN ARRIVING AT VALUATION OF REAL ESTATE.

CHAPTER XV.

THE SURVEYOR'S RELATION TO REAL ESTATE.

CHAPTER XVI.

WORK OF THE ARCHITECT.

CHAPTER XVII.

PROBLEMS OF MANAGEMENT.

CHAPTER XVIII.

UNSETTLED PROBLEMS.

PART I: INSURANCE

CHAPTER I

HISTORICAL SKETCH OF INSURANCE

1. *Insurance defined.*—Insurance is a provision for the distribution of risks; that is to say, it is a financial provision against loss from unavoidable disasters. The protection which it affords takes the form of a guaranty to indemnify the insured if certain specified losses occur. The principle of insurance, so far as the undertaking of the obligation is concerned, is that for the payment of a certain sum the guaranty will be given to reimburse the insured. The insurer, in accepting risks, so distributes them that the sum total of all the amounts paid for this insurance protection will be sufficient to meet the losses that occur.

Insurance, then, indicates divided responsibility. This principle is introduced in most stores where a division is made between the sales clerk and the cashier's department, the arrangement dividing the risk of loss. The insurance principle is similarly applied in many other cases of divided responsibility. As a business, however, insurance is usually recognized as some form of securing a promise of indemnity by the payment of a premium and the fulfillment of certain other stipulations.

2. *Early instances of insurance.*—Forms of insurance were known to the Romans and to some extent were practiced among the *Collegia.* In certain respects these bodies resembled our benefit societies. For example,

they provided for burial and also made some form of provision for promotion among the soldiers in their organizations. In reality, then, they were based on the insurance principle since they accepted from their members a certain stipulated sum and in return agreed to perform certain services. Demosthenes describes marine loans made to the ancient Greeks; we also have record that insurance existed among the Chinese 2500 years ago. In none of these early instances, however, did insurance reach anything like large proportions. In fact, so far as we know, it entirely disappeared, many centuries passing before there was a revival. It is true that certain laws among the Romans governing annuities necessitated a mortality table, but it was, however, for this sole purpose and apparently not in any sense an insurance matter.

3. *Present forms of insurance.*—The business of insurance is divided into four main branches: marine insurance, fire insurance, life insurance and casualty insurance. The first three state the form of disaster against which insurance is provided. The fourth—originally accident insurance—includes all forms not embraced in the other three. An idea of the variety of events against which insurance is offered may be had from the following list:

1. Fire (including Rent)
2. Consequential Loss
3. Foreign (Home)
4. Abstainers' Section
5. Children's Deferred and Endowment
6. Convertible Term
7. Discontinued or Deferred Bonus
8. Double Endowment
9. Foreign Residence
10. Guaranteed Bonus
11. Monthly Premiums
12. Without Examination
13. Immediate
14. Immediate (with return)
15. Deferred Annuities
16. Marine

17. Engines, Boilers and Electric Plant
18. Personal Accident
19. Sickness and Accident
20. Sickness with Life Assurance
21. Coupon
22. Cycles
23. Hailstorm
24. Lifts and Cranes
25. Live Stock
26. Motor Cars
27. Plate Glass
28. Third Party and Driving
29. Transit
30. Workmen's Compensation
31. Accountant's Indemnity
32. Bad Debt and Credit
33. Burglary
34. Burglary (All Risks)
35. Contract Guaranty
36. Dentist's Indemnity
37. Druggist's Indemnity
38. Fidelity Guaranty
39. Forged Transfers
40. Insanity
41. Keys
42. Leasehold Redemption
43. Licenses
44. Mortgage
45. Patents (Infringement)
46. Property Owner's Indemnity
47. Railroad, Wagon Indemnity
48. Registered Post
49. Solvency Guaranty
50. Sprinkler Leakage
51. Trusteeships

These fall under the following divisions:

Nos. 1, 2 and 3, Fire.

Nos. 4 to 15, inclusive, Life and Annuity, with a sub-heading under Nos. 13, 14 and 15 of Annuity only.

No. 16, Marine.

No. 17 is not listed under any special branch.

Nos. 18, 19 and 20 under Personal Accident.

Nos. 21 to 30, inclusive, under Casualty.

Nos. 31 to 51, inclusive, under various forms of insurance which do not lend themselves to any general classification.

Marine insurance antedates every other form, its history dating back over seven centuries. It appears to have been practiced in the Mediterranean, and at least one old policy has come down from the thirteenth cen-

tury, proving that marine insurance was an established practice among the commercial countries of that time. A broad gap exists between that period and the continuous history running back now some four hundred years, but since that time insurance has been an established business among those engaged in maritime adventures.

Fire insurance, the second oldest form to become permanently established, dates from the great London fire of 1666.

Life insurance followed a little later, although not until 1760 was a company founded on a modern basis.

Casualty insurance owes its origin to the application of steam to railway travel; its more common name of accident insurance was due to the fact that the first events to be insured against were those of accidents to the person on a railway journey. It originated in England in the first half of the nineteenth century.

4. *The theory of probabilities.*—All forms of insurance have a fundamental basis in the theory of probabilities. This theory deals with those events which seemingly do not lend themselves to a fixed law but which in reality occur with such approximate regularity that a definite law may be deduced from a sufficient number of these uncertain events, the law being that these events will occur with sufficient regularity over a period of time so that conclusions may safely be drawn from them.

The possibilities contained in the theory of probabilities were first brought to light by the famous solution of a gaming problem. Two noblemen, engaged in a game of cards called the Game of Points, were obliged to cease play before the game could be finished. Being unwilling to separate with each retaining his own stakes, they asked Pascal, the eminent Frenchman, to suggest

how the stakes should be divided. The stakes amounted to $64, each having contributed $32, and it was necessary for one of the players to make three points before he would be entitled to the stakes. At the time they appealed to Pascal, one player had two points to his credit and the other player had one. Pascal submitted the following solution: "Suppose," he said, "that you had played another hand. One of two things would necessarily happen: either the player who has two points would gain one, and, having three points to his credit, would claim the stakes; or the player with one point to his credit would win another so that he would have two points to his credit, the same as his opponent. If this latter should happen, each would have retained his individual stake. The chances of winning I consider equal, and as it is evident that the player with two points cannot, if he plays another hand, lose his original stake of $32, the other $32 should be divided into two parts and the player who has one point to his credit retain $16 and the player with two points receive $16, or the whole stake be divided into proportions of 48 and 16.

Pascal submitted two other suggestive solutions to clinch his theory, but they need not be discussed here. Gambling at that time was prevalent in the courts, and nothing pleased the gamblers more than to be shown ways whereby their games could be decided although not played to a conclusion. Great intellectual interest was aroused in the theory of probabilities, and out of this condition the business of insurance in its modern aspect originated. At this point it should be said that insurance, although often compared with gambling—possibly because of these early associations—is entirely different from it in principle. Gambling is an attempt

to increase one's means by a venture not based on any known factors; that is, it is purely and simply a chance. Insurance, on the other hand, takes into consideration all the factors that enter into the problem and that may affect the hazard insured against, or the factors that may, if guarded against, prevent the contingency from happening.

CHAPTER II

MARINE INSURANCE

5. *Marine insurance based on indemnity.*—Marine insurance is, as has already been said, the oldest form which passed into a distinct commercial business. Like fire insurance, it is based on indemnity, the purpose being to make whole a loss which has occurred, but not in any sense to do more than that. Marine insurance was undoubtedly practiced in the Mediterranean. Indeed, in its basic form, so far as adventures at sea were concerned, the principle of insurance was recognized in remote times. Among the Rhodians there were undoubtedly forms of indemnity much like our modern form of insurance. The Hanseatic League also provided for meeting the contingencies of maritime enterprises.

6. *Lloyds of London.*—Marine insurance among English speaking peoples had its origin in the famous coffee-house kept by Edward Lloyd in London. Lloyd took such an active and successful interest in marine insurance that his name has become identified with the most important marine insurance association in the world. Lloyds of London is known the world over, primarily for marine insurance and secondarily for other forms of insurance. It was the custom among the merchants who met at Lloyds to assume for each other a portion of the risk of a voyage. Thus, a merchant sending a ship with cargo to the West Indies for purposes of trade and having at stake some 10,000 pounds in the whole adventure, would get his fellow merchants, for a

premium, to assume a portion of the risk in the event of the vessel being lost. For a time these amounts assumed were small—possibly 100 pounds, seldom more—and each insurer wrote his name at the bottom of the policy. From the position of the name on the policy arose the term "underwriter," which designates the one who assumes or underwrites part of an insurance risk. As wealth increased, men who had no interest in maritime enterprises beyond that of insurers were induced to insure marine adventures. In other words, a distinct body of insurers arose, and, for the payment of a premium, the merchant was relieved of that part of the burden of his maritime enterprises.

7. *Underwriting.*—In the earlier forms of insurance offices a number of persons associated themselves and each person was obliged to sign the policy before it was binding on the offices. Later there arose the practice of empowering the keeper of the office, together with two or three other members of the group, to sign or "underwrite" all policies. Signed in this way the policies became binding on the whole group, but only to the extent of their individual assumption of liability. Later came the modern practice of having the single agent or attorney sign for the office. Then followed the corporation to undertake the business.

8. *The policy.*—The history of marine insurance has been fraught with the romance which naturally pertains to all customs of the sea. Modern inventions and appliances have reduced the dangers of the ocean, although occasional disasters remind us that the ocean's power has not yet been curbed and that there is as much need as ever—probably more need than ever—for insurance against "maritime perils." A unique feature of marine insurance is that the form of the policy has been estab-

lished practically since 1770, when it was standardized by Lloyds. In the following ancient language it states the things which are insured against:

Touching the adventures and perils which the said **Atlantic Mutual Insurance Company** is contented to bear, and takes upon itself in this voyage, they are of the *seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints and detainments of all kings, princes or people of what nation, condition or quality soever, barratry of the master and mariners,* and all other perils, losses and misfortunes, that have or shall come to the hurt, detriment or damage of the said vessel, or any part thereof. AND in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, factors, servants and assigns, to sue, labor and travel for, in and about the defence, safeguard and recovery of the said vessel, or any part thereof, without prejudice to this insurance, to the charges whereof, the said Insurance Company will contribute according to the rate and quantity of the sum herein insured, nor shall the acts of the insured or insurers, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; having been paid the consideration for this insurance, by the assured or assigns, at and after the rate of

Within recent years the question of putting the policy into modern language has been under serious consideration. It is felt, however, that so much commercial practice is based on court decisions of the policy that to overturn this great bulk of law would be to the disadvantage of maritime enterprises. Indeed, it is said that every word in the policy has been construed by the courts, and although its construction frequently differs from that which the policy seems to set forth, nevertheless, as all

parties to the agreement understand the meaning which the courts have attached to the clauses, it is accepted by all parties and but little trouble results.

9. *Warranties.*—Marine insurance always contains certain conditions precedent to the liability of the underwriter and incumbent upon the insured. These conditions are known as *warranties* which, although not expressed, are of binding force. These are, that the vessel is seaworthy; that the voyage will be made without deviation; that the voyage or business of the ship is legal, and that she has the necessary legal papers. The violation of any of these warranties would be sufficient to void the policy.

In marine insurance the terms "general average" and "particular average" occur frequently. The word "average" means "damage," its meaning being taken directly from the French word *avarie* meaning "damage to ship or cargo," and not from the word "average" as we commonly use it.

10. *General average.*—General average embraces all losses which arise when there has been a sacrifice made for the purpose of the safety of the ship or of the cargo. It is a most ancient principle of maritime transactions and in the form of full insurance is brought over into marine insurance. Previous to the invention of insurance it was the established practice that whenever on a voyage it was necessary to make a sacrifice of a portion of the cargo of the ship in order to complete the voyage in safety, the loss should be divided among all interested in the voyage. The interests usually fell into three groups: (1) the owner of the vessel, (2) the charter party (the one who might have hired the vessel for the voyage and who was interested in the freight to be earned), and (3) those who owned

the cargo. These three interests, commonly known as the vessel, the freight and the shipper of the goods, shared in proportion to their respective interests any loss, such as that of an anchor, a mast or sails or any sacrifice of cargo for the safety of the voyage. A simple illustration will present it more clearly than any other method. It can be well imagined that a group of Romans—say ten—may have been journeying across the Mediterranean taking some kind of a cargo to Rome for sale. This may have been sheep, and each may have owned ten head. A storm arising, it becomes evident to all that if any are to be saved some part of the cargo must be sacrificed. Naturally no one of the ten desires to throw his sheep overboard, but the suggestion is made that if one will throw his sheep overboard the others will share the loss with him; hence ten of the sheep are thrown over, and on arriving at Rome each man has for sale nine sheep, one sheep having been the contribution of each to the loss which was voluntarily accepted that they and as much of their cargo as possible might be saved.

Summing up, then, the principle of general average is this: Each one interested, and according to his interest, must share the loss made for the benefit of all. The owner of the vessel would have to contribute as well as the shippers.

11. *Particular average.*—Particular average means an individual loss. It applies only to the person interested and does not represent a sacrifice, as in the case of general average. To refer again to the illustration just used, if the sheep were not voluntarily thrown overboard, but one of the shippers had been unfortunate enough to have all his sheep fall overboard, he alone would have had to stand the loss. The loss is not for the benefit of

anybody. It is his misfortune, and is known as particular average.

Average existed, as it has been noted, centuries before insurance was invented. Sometime, somehow and somewhere there was a person bright enough to conceive the idea of having each person who was interested in a voyage contribute a small sum to cover any loss which might arise from general or particular average. When that was done, marine insurance was born. If, however, marine insurance should be blotted out to-morrow, the loss of particular and general average would at once come into play, and every person interested in a voyage would be his own insurer to the extent of his interest in the voyage as represented by the value of his goods compared with the value of all.

12. *Dangers insured against.*—The dangers insured against have been grouped into four classes:

1. Those of the sea.

2. Those concerning the conduct of persons in charge of the vessel.

3. Those arising from the outside; such as pirates.

4. All other perils, is the somewhat broad language which apparently lets nothing happen to the vessel, cargo, or freight that is not covered by the marine policy.

We must not infer from the last of these groups that everything, as a matter of fact, is covered by the marine policy. The so-called ordinary wear and tear which happens to all things is not covered by the policy. That a vessel may need repainting, the paint having worn away with time, is not such a loss as is covered by the policy. Perhaps the proper interpretation of this last group of causes would be the uncontrolled disasters which may happen to the ship.

13. *Losses.*—The losses in marine insurance are divided into four classes:

(a) Total loss.
(b) General average.
(c) Particular average.
(d) Salvage.

Total loss might seem to be capable of a very simple definition. A moment's thought will show us that many cases must arise where, while apparently a vessel is lost, no absolute information exists concerning the fact. The most complete case, of course, would be where a vessel was sunk, or destroyed by fire, and due evidence of that fact was available. It became necessary, however, in marine insurance to establish a certain time when, if a vessel was not heard from, she was considered a total loss. At Lloyd's this is a period of seven years. When this time has elapsed, from a special part of the room a bell is tolled and the announcement made that such and such a ship is a total loss. The insurance is then payable, and even if, as it has happened in one or two cases, the vessel may afterwards return, she is legally lost so far as the insurance transaction is concerned. A vessel may be captured by an enemy in a time of war and, although in existence, may be a total loss to the owner.

A total loss may be constructive or actual. A vessel, for instance, may run ashore, and the cost of getting her off the rocks and repairing her may be more than her value. That is a constructive total loss. While the vessel is in existence in a sense, she is not in existence from an insurance viewpoint. The rule in such cases is, if the cost of saving the vessel, added to the cost of repairs, is greater than the value of the vessel, the loss is total. The same rule is applied in regard to the

cargo when the cost of saving and forwarding it to its destination would be greater than its value.

14 *Salvage.*—Salvage in marine insurance means the reward permitted by law for services in saving life and property at sea. It is required that the service must have been of substantial assistance and have been rendered by non-interested parties. Salvage is divided among the various interests precisely as a loss would be apportioned under general average. Thus in these modern days of course the insurer would have to step forward and pay the final amount.

CHAPTER III

FIRE INSURANCE

15. *Fire insurance defined.*—Fire insurance is a provision made by the insured for reimbursement in the event of a loss occurring by fire. On the part of the insurer it is a promise to reimburse the insured for the loss that may occur. In making this promise, the insurer will take into consideration everything that may possibly increase the chance of a fire and everything that may decrease the chance of a fire, and, basing his calculation on these two sets of factors, will undertake the contract of indemnity and determine his charges and the form of contract.

16. *Origin.*—The beginnings of fire insurance are lost in antiquity. It is not known who was the first to promise reimbursement for a loss; that is, to do this in a way that corresponds with our modern contract of insurance. There was in the early ages doubtless something approaching modern insurance, but it was not until 1667 that the business of fire insurance in its modern commercial aspect was founded. In the preceding year had occurred the Great Fire of London, the greatest in history with the possible exception of that at San Francisco in 1906. Considering the difference in money values of the two periods the damage at London probably was equal to that at San Francisco.

17. *Barbon and Povey.*—Nicholas Barbon was the first to open an insurance office in London (after the Great Fire), and to him credit should be given for plac-

ing fire insurance on a modern commercial basis. Another name should be linked with that of Barbon—Richard Povey; for, while Barbon led the way in the insurance of buildings, Povey about 1706 introduced the insurance of goods. These two names should be linked together in any consideration of the origin of fire insurance.

18. *An experimental science.*—Although two centuries have fixed the principles of fire insurance from a practical standpoint, the science of fire insurance may still be regarded as largely experimental. Special conditions existing in every particular case must determine whether property is insurable and what rates of premium should be charged. The conditions met by one generation of underwriters are not likely to be exactly duplicated in a succeeding age. The invention and installation of fire-detecting and fire-extinguishing apparatus necessitate constant changes in premium rates. Other conditions, too, may tend to increase or decrease the fire hazard. This means that fire underwriters must keep well abreast of the times.

As in the case of any science, the past of fire insurance must be studied if the present principles and practices are to be correctly understood. In this connection it should be remembered that the principles of fire insurance can more readily be grasped when compared or contrasted with those of marine insurance. Both forms are based on the same principle of indemnity for material loss. It is interesting to note that neither form differs essentially from those of a century and a half ago.

19. *Early practices.*—Fire insurance at first largely drew its practices from marine insurance which was at that time quite well established, its forms, laws, and

customs being well crystallized. The development of the business in Great Britain was along normal commercial lines. At first it was conducted by individuals, later by a group forming an office, and finally by a corporation. The first corporations to be duly organized were the London Assurance, and the Royal Exchange Assurance, both being granted charters in 1720. The Sun Insurance Office was the outgrowth of that founded by Povey in 1706 and is the oldest organization engaged in fire insurance.

20. *United States.*—In the United States, prior to 1735, the business probably was conducted in a small way by individuals, but in that year at Charleston, S. C., a mutual company was organized that apparently had a prosperous existence for some years. This first company is not well known and only recently has come into the light. The Philadelphia Contributionship, founded at Philadelphia in 1752, of which Benjamin Franklin was a director, is the best known of the early organizations. Indeed, the latter company, which was a mutual, was for a long time supposed to be the first company organized in the United States. After the Philadelphia organization other companies in the next fifty years were organized at various points, such as Richmond, Va., Charleston, S. C., Boston, Mass., Norwich, Conn., New York City, etc.

In New York City no company appears to have been organized until 1787, although the business was fairly well established in other parts of the country long before that time. From 1800 the growth of the insurance business was very rapid, and generally sufficient to meet the needs of the commercial interests of the country. The only portion of the world, in fact, where insurance capital may still be lacking is in the

so-called congested portions of the larger cities where the danger of a sweeping loss is such as to make capital extremely careful. Probably not until our cities are rebuilt with better safeguards will there be sufficient fire insurance capital employed to meet the needs of such congested localities.

21. *Statistics.*—Before considering the forms of organization and the details of fire insurance, it is better to glance at the general statistics of the business, in order to realize the amounts of the different items. All statistics quoted are based on the reports of the Insurance Department of the State of New York. There are some companies in the United States that do not report to the New York Insurance Department. These companies, however, are very small in comparison with the volume of business written, probably 95 per cent of the entire business done in this country being reported to the Insurance Department of the State of New York. The statistics of this department, being the most complete, are commonly used as a basis for comparison the world over.

22. *Number of companies.*—The number of stock companies in the United States reached a high point between 1871 and 1880, when 162 were engaged in the business. The record for the twelve years ending 1913 was as follows:

Year	Number of Companies
1902	145
1903	147
1904	144
1905	158
1906	156
1907	169
1908	162
1909	163
1910	175
1911	180
1912	183
1913	185

The number of companies that have engaged in and retired from business since 1860 is 1,000, representing a capital of $150,000,000. As the capital now invested is about one-half this sum, it will be seen that twice as much capital has retired from the business as has continued.

23. *Capital.*—The capital invested in this business has not varied a great deal, possibly not so much as might be expected, throughout the last fifty years, during which time the business has been fairly well established on this continent.

From 1860 to 1870 the United States companies had an average capital investment of $45,000,000; 1871 to 1880, $51,000,000; 1881 to 1890, $57,000,000; and from 1891 to 1895, $51,000,000. The following is the record for the twelve years ending 1913:

Year	Capital
1901	$54,000,000
1902	54,000,000
1903	56,000,000
1904	56,000,000
1905	59,000,000
1906	65,000,000
1907	68,000,000
1908	68,000,000
1909	68,000,000
1910	75,000,000
1911	77,000,000
1912	81,000,000
1913	87,000,000

24. *Investment of foreign companies.*—The capital investment of foreign companies cannot be considered except as special deposits may be required. It must be remembered that a foreign company doing business in the United States considers such business merely as one of agency in the same manner that a company in Massachusetts might consider the business done in Albany as the business of the Albany agency. Hence, the funds

which the foreign companies may have on deposit with the Insurance Departments or in the form of assets in their United States office do not represent the entire assets of the company, since the United States branch may call on the home office if necessary and likewise be called upon by the home office.

25. *Volume of business.*—In 1908 the risks written amounted to $30,232,055,437. Some conception of the growth of the business may be gained from the statement that between 1860 and 1870 the business done reached $36,000,000,000, hardly more for those ten years than that done in the single year of 1908; 1871 to 1880 the business written was $62,000,000,000; 1881 to 1890, $100,000,000,000; 1891 to 1895, $70,000,000,000; and from 1902 to 1913, as follows:

Year	Volume of business
1902	$21,000,000,000
1903	22,000,000,000
1904	24,000,000,000
1905	25,000,000,000
1906	28,000,000,000
1907	30,000,000,000
1908	30,000,000,000
1909	33,000,000,000
1910	36,000,000,000
1911	39,000,000,000
1912	41,000,000,000
1913	45,000,000,000

26. *Premiums.*—A conception of the growth in the business may again be obtained by comparing the receipts for the single year of 1913 with $291,000,000, the receipts for the decade following 1860.

Year	Premiums received
1903	$190,000,000
1904	206,000,000
1905	216,000,000
1906	238,000,000
1907	252,000,000
1908	247,000,000
1909	262,000,000

Year	Premiums received
1910	$273,000,000
1911	280,000,000
1912	308,000,000
1913	324,000,000

It may be added that in the period of ten years from 1899 to 1908 inclusive the business practically doubled.

27. *Losses paid.*—This is the one item in the business of fire insurance that shows the greatest variation. Losses from 1860 to 1913 are as follows:

Year	Losses
1860–1870	$169,000,000
1871–1880	315,000,000
1881–1890	488,000,000
1891–1895	366,000,000
1896	64,000,000
1897	60,000,000
1898	71,000,000
1899	85,000,000
1900	88,000,000
1901	93,000,000
1902	94,000,000
1903	92,000,000
1904	127,000,000
1905	103,000,000
1906	230,000,000
1907	117,000,000
1908	135,000,000
1909	126,000,000
1910	136,000,000
1911	151,000,000
1912	161,000,000
1913	172,000,000

The sum paid out including the San Francisco losses of 1906 amounted to $230,000,000, a sum greater by one-third than the entire loss from 1860 to 1870 and an amount more than twice as large as that of 1905. It is well to study these figures and carefully to bear in mind that the companies may at any moment be called upon to pay losses similar to those of 1906.

The increase in 1904 (more than that of any other single year since 1896) was due to the conflagration at Baltimore, which entailed a net loss of about $39,000,000.

28. *Rate of premium.*—The rate of premium is the amount charged for each $100 of indemnity; and so far as each risk is concerned, there are the widest differences. A large fireproof office building may be written as low as five cents per year for each $100, and there are buildings (for instance sweat shops) which command a rate of four dollars for each $100 per year. Between these extremes nearly every rate is possible, although the average rate is not subject to very large variation.

In the ten years from 1871 to 1880 inclusive, the average rate was 94 cents; 1880 to 1890, 98 cents; 1891 to 1895, $1.06, and from 1902 to 1913, as follows:

Year	Rate of premium
1902	$1.15
1903	1.18
1904	1.16
1905	1.16
1906	1.14
1907	1.16
1908	1.14
1909	1.12
1910	1.08
1911	1.05
1912	1.05
1913	1.04

It will be seen that since 1903 there has been a slight tendency downward in the rate of insurance, probably contrary to the general idea concerning this matter. The importance, however, of an increase or decrease of one cent in the average rate of insurance throughout the country can be appreciated when it is stated that on insurance of $1,000,000,000, one cent amounts to $100,000 of premium, and on $30,000,000,000 an increase or decrease of one cent in the average rate means the increase or decrease of more than $3,000,000 in the premium receipts.

It may be surprising to know that the rate of to-day is much less than that of 1904, the year of the Baltimore fire, when it was 2 cents less than in the year preceding. When San Francisco was destroyed the rate was lower than it had been since 1902, the increase after that date being very slight (a little over 2 cents). The rate is now still lower than in 1906.

29. *Dividends.*—Only the data of the United States companies are available in describing dividends. Furthermore, foreign dividends are affected both by business done in this country and by what is done in all countries. For fifty years fire insurance dividends have averaged about 11¼ per cent on the capital invested. From 1860 to 1870 it was 10 per cent; 1871 to 1880, 11 per cent; 1881 to 1890, 10 per cent; 1891 to 1895, 10 per cent. Since 1896 the rates have been:

Year	Percentage
1896	11.24
1897	11.33
1898	11.64
1899	11.65
1900	11.18
1901	11.63
1902	11.96
1903	12.69
1904	13.37
1905	13.01
1906	10.97
1907	11.07
1908	11.98
1909	12.00
1910	16.00
1911	15.00
1912	16.03
1913	19.83

The greatest variation in regard to dividends exists among the individual companies, a meager 4 per cent in some cases, rising to ten times that amount in others. The decided gain in 1910 and 1911 represents final recovery from the Baltimore and San Francisco losses.

For the risk entailed, that is, the possibility of failure at almost any moment owing to a sweeping conflagration, the dividends have been on the average rather moderate, especially when it is borne in mind that the dividends were declared on the capital and that the capital at the present time is about one-seventh of the total assets of the companies.

30. *Expenses.*—When the expenses in fire insurance are spoken of, neither amounts paid for losses nor for dividends are meant, but only the sums of money the company is called upon to pay in addition to those items. The expenses, therefore, include commissions paid to the agent, salaries, printing, assessments for inspection and rating organizations, and every other item incidental to commercial business. This expense is properly divisible into two parts: commissions, and all others.

Practically all agents work on a commission basis, a few being employed on other conditions. The commission is the one item of expense showing a steady increase, as noted below:

Year	Commission Percentage
1860–1870	11.32
1871–1880	14.89
1881–1890	17.95
1891–1895	18.77
1896–1900	19.64
1901	20.76
1902	20.28
1903	21.31
1904	21.22
1905	21.45
1906	21.45
1907	21.22
1908	21.89
1909	21.50
1910	21.61
1911	21.82
1912	21.90
1913	22.32

This table shows that the commission has practically doubled since 1860 to 1870, running nearly 22 per cent at the present time as against 11 per cent for that decade. It has not fallen below 21 per cent since 1903.

Other expenses have not increased, but on the contrary have decreased. The expenses and commissions combined from 1860 to 1870 were 31 per cent; 1871 to 1880, 33 per cent; 1881 to 1890, 35 per cent; 1891 to 1895, 35 per cent; and from 1896, as follows:

Year	Expense Percentage
1896	36.14
1897	37.19
1898	39.35
1899	39.31
1900	38.42
1901	37.45
1902	35.73
1903	36.89
1904	36.93
1905	36.92
1906	38.85
1907	38.16
1908	39.24
1909	38.50
1910	39.16
1911	39.75
1912	39.14
1913	39.66

Deducting the commission from 1860 to 1870, which was 11 per cent, we find the expenses were 20 per cent. Deducting the commission from the commission and expenses combined, the expenses for 1903, 1904, and 1905, were 15 per cent, and for 1906, 1907, and 1908, 17 per cent. The expenses other than commissions have shown a decrease with the increase in business, the true economic result to be expected.

CHAPTER IV.

THE ORGANIZATION OF FIRE INSURANCE COMPANIES

31. *Methods of organization.*—There are four methods of organization for insuring property from loss by fire. An individual may undertake the risk; it may be undertaken by a group of individuals, commonly called Lloyds; it may be undertaken by a mutual company; or it may be undertaken by a stock company. It is very seldom in the United States to-day that any individual assumes the responsibility alone. There are, perhaps, individuals who are members of Lloyds that undertake such risks, but these are exceptional cases. Individual underwriting has practically passed away.

32. *Lloyds.*—The general name "Lloyds" is applied to a London organization that originated in the seventeenth century at the Coffee-House kept by Lloyd. This particular coffee-house was an attraction for men principally interested in shipping and foreign trade. The insuring of one another's property became as much a part of their business as their individual dealings in merchandise. Naturally when a group of individuals arose to undertake the specific business of insuring property they would resort to the place where customers were to be found. This place was Lloyds' Coffee-House. The coffee-house has long since passed away, but the name Lloyds has become a part of the common language of insurance, and out of it has grown the famous organization known as Lloyds of London.

This organization does not insure property itself any

more than the Stock Exchange, as an exchange, buys or sells stocks. To become a member requires certain qualifications; such as a deposit of a certain sum of money. As the number of members has now become quite large a set of rules has grown up for their guidance almost as minute as the regulations of any business exchange.

Lloyds of London does no insurance business, but it furnishes a room for meetings or a general place of business where the members may conduct their affairs. In addition to the headquarters, it has the most complete system in existence for the survey of vessels, with agents in every port to flash the news of their arrival and departure.

Out of hundreds of members some underwrite as individuals, others as groups, and still others form a distinct group with one acting as attorney or agent having the power to sign for all.

It is possible at Lloyds to insure almost anything, though marine business is dealt in to a larger extent than any other form of insurance. There are, however, certain groups which continuously underwrite risks against fire in the United States and other parts of the world. They may underwrite surplus business which cannot be taken care of through regular channels, and they are at times active competitors with the regular companies in the different countries.

In the United States the tendency is to regulate such methods of underwriting, but even when regulated the underwriting is more or less by an individual, or group of individuals. Each individual assumes a certain part of the liability, but in the United States individual signatures are not taken, the group acting through an attorney.

33. *Mutuals.*—The mutual form of organization is an agreement on the part of certain individuals, whether few or many, to reimburse any member of the group in case of loss by fire, it being understood that the sum to make up this loss is to be figured on a pro rata basis, each individual bearing the part he expects to receive. The mutual form of insurance is naturally the oldest form, since at first insurance was a part of the merchant's business and he assumed a portion of the risk of his fellow merchants and they assumed a portion of his whenever he sent a vessel to sea. The mutual form of insurance still exists and in two fields is quite successful. First, local mutual companies; and second, the so-called New England mutuals, which deal principally with large factories.

34. *Stock companies.*—Approximately 95 per cent of fire insurance is done by stock companies. As each country and state has its own laws for corporations, it would be almost impossible to give the law for all of them; but the requirements of New York, which has the largest number of corporations, may be cited as typical. These may be briefly stated as follows: Thirteen or more persons may become a corporation for the purpose of insuring dwelling-houses, stores, and all other kinds of buildings, household furniture and other property against loss or damage by fire, lightning, wind storms, and tornadoes. They may be incorporated for the purpose of insurance or re-insurance. To do this they must file in the office of the Superintendent of Insurance a declaration of their intention to form a corporation for the purpose of transacting such business, which declaration shall comprise a copy of the charter setting forth the name of the corporation, the place of location of its office, the manner in

which the corporate powers are to be exercised, and its directors elected. A majority of the directors must be resident citizens of the state. In the case of a stock corporation the director must be the holder in his own right of at least $500 worth of the stock of the corporation at its par value. The method of filling a vacancy in the office of director must be set forth, the beginning and end of the company's financial year, and the amount of capital to be employed in its business. This declaration must not be filed until it has been published at least two weeks in a public newspaper in the county where the office is to be located.

The business of such corporation is strictly limited to fire insurance, and it is to be known as a fire insurance corporation. It may not deal in trade, or in the buying and selling of goods, except such as it may assume in the settlement of losses.

Upon filing the notice as previously set forth the subscription books may be opened and the same kept open until the full amount specified in the charter is subscribed.

The surplus from which dividends may be declared is that portion of the assets over and above the capital stock and the unearned premium and all other manner of indebtedness which the corporation may owe.

The directors, until the required amount of capital has been entirely subscribed, are responsible for the funds of the corporation.

Such in brief are the main steps to be taken in the formation of a fire insurance corporation.

35. *Deposit requirement.*—All states and a great many foreign countries require a deposit before permitting an insurance corporation to issue policies. In the State of New York there must be deposited with

the Superintendent of Insurance the sum of $200,000, or stocks, bonds, or acceptable securities representing that amount, before insurance business can be transacted by a corporation chartered by the state.

It does not follow that each state requires a deposit. The fact that the deposit has been made in one state is frequently accepted by other states as equal to a deposit in their own state. It is, in fact, an exception for a state to require from an outside corporation a specific amount if the state in which that corporation is chartered requires a deposit. Nearly all states require at the present time a minimum deposit of $200,000.

36. *How stock is usually sold.*—Inasmuch as $200,000 is usually required as a deposit, and of course as only the income thereof is available to the company, it can readily be seen that a company could hardly start in business with the minimum capital only. It is customary to place the stock of the corporation at a premium, possibly at $125 for each par value of $100, the $25 above par furnishing the working capital to pay the expenses of the corporation and the means of beginning business. Of course, if the company's original capital is larger than $200,000 this may not be necessary. At the same time, as losses may occur very early and the company may permit its capital to be impaired to a slight extent only, these few losses may serve to ruin it and to cause it to cease writing insurance until the impairment is made up.

The general opinion now is that a company to be successful should, when organized, have its stock sold at a premium, this premium to furnish the working funds.

37. *Organization.*—The organization of a stock fire

insurance company is similar to that of any large corporate body. The chief officer is the president, though the representative chief officer of the foreign companies in this country is usually termed a manager. In addition to the president there are vice-presidents, of which there may be more than one, depending upon the amount of business done. Next comes the secretary. In many cases one officer is sufficient to discharge the duties of this office, but there may be one or more assistant secretaries. If an insurance company confines all its business to a single locality it would have no necessity for other offices than its head office, but the fundamental principle on which an insurance company is founded, namely, that its liabilities must be widely spread, leads to securing business from as wide an area as possible. This makes what might seem an unsettled business a settled business, since disasters are not likely to occur in more than one place within a series of years.

In the branching out of the business the company may undertake the entire management from the home office or may divide the country into districts, with a responsible head in charge of each district. Both methods have their advocates. The majority of companies follow the district method, having what are termed departments. Chicago, for instance, is the center for the Western department; San Francisco for the Pacific; Atlanta for the Southern; and New York for the Eastern. Hartford, a very strong insurance center, is the home office for several American companies and the head office of some foreign companies. The term "general agency" is usually applied to this division or department.

Owing to its nature the insurance business must keep

as close a touch as possible not only with the insured but with its representative. With a general agent near the local agent a greater degree of confidence will be inspired in the local agent, since he feels that the difficult problems will be better understood by a general agent located near him than by one located at the home office in some distant state.

38. *Special agent.*—The special agent in the list of officers comes next to the executive officers of an insurance company. He is the connecting link between the head office and the local agent, or between the general agent and the local agent. He is the commercial drummer, so to speak, of the business. He supervises the local agencies, settles the losses—at least all important ones—is in touch with the general underwriting conditions in his territory, and is more or less familiar with the risks involved. Formerly he did a good deal of the rating, if not individually at least as member of a committee of other special agents; but as rating has now become practically a branch of the business by itself, the special agent is relieved from that duty. In regard to loss settlements also, owing to the formation of general adjustment bureaus, the special agent has been partly relieved of that work, though not as much as in the case of rate-making. He still retains the vital connection between the company and the local agent within his territory; is best informed as to the business being done; the share his company is getting and the class of risk to be written; and is thoroughly familiar with the local conditions in any village, town, or city in his jurisdiction.

39. *Adjuster.*—After the executive officers the adjuster holds probably the most important position connected with an insurance company. Fifty per cent or

more of the company's income is paid out in the form of losses, so it can readily be seen that an inefficient director of the loss department would cause a drain upon the resources sufficient to make a difference between the profit and no profit, if not to bankrupt the corporation.

40. *Inspectors.*—Not ranking as high as the special agent is the inspector. Owing to the growth of manufacturing industries and the necessity for accurate information about the various manufacturing risks, general inspectors are required. It must be understood that notwithstanding the information the company may obtain through inspection bureaus, etc., there is still the necessity of an inspection by a company employee, if not in all at least in doubtful cases, concerning the risk.

41. *Other employés.*—The other employés of an insurance company are such as may be found in any other corporation. In the large city department there is a local secretary in charge of the business for that city. Under him are the countermen, who meet the people desiring insurance, and who probably take care of a great majority of the cases, the more difficult ones going to higher officials. Then come the clerks necessary in any organization to perform clerical duties.

42. *Work of local agent.*—The local agent is an appointee of the company having the privilege of writing risks for the company within a certain territory, hence the name "local," but usually with a restriction as to the kind of business to be written. A company seldom gives to a local agent (unless he is a person of some years' experience and one of sound judgment) the privilege of writing all kinds of business without consulting the company. The local agent is generally paid by commission; hence it is to his interest to secure as

much business as possible, since his remuneration depends upon his exertions.

It is very rare that the local agent is the agent for a single company; he may represent many others. As representative of an insurance company a large responsibility rests upon him, not only to see that his company gets its proper share of the business but that the business secured is desirable and profitable to the company.

Volumes have been written concerning the local agent and more will probably be written. He is held by some to be the most important employee of an insurance company. It is sufficient, however, to say that as the greatest part of the business comes through the local agent his importance should not be underrated.

The exact number of local agents in the United States is not known, but there are single companies having eight thousand or more. It can thus be seen that while there may be several companies represented by these eight thousand agents, their number throughout the States is very large.

In the larger centers the local agent is not usually engaged in any other business but devotes his time to the insurance agency. Outside the large cities his insurance business is usually united with real estate, law, etc. The large number of different companies' agents in a small community results in the business being divided; it is therefore generally profitable only as a side issue.

43. *Responsibilities of local agent.*—The responsibilities of the local agent can be readily understood when it is understood that the state courts have generally interpreted the knowledge of the agent as being the

knowledge of the company, although certain limitations are placed by the company on the agent's authority.

The United States courts have not placed an interpretation so broad upon the agent's powers. The agent should bear in mind that whatever he does will generally be interpreted as though the company did it, hence the necessity for care in the discharge of his duties.

The local agent in his field may well consider himself an underwriter having complete jurisdiction. It is quite possible that he does consider himself in this light, and to such view is due some of his errors. It may seem reasonable that he should have unlimited sway within his own territory, but it should be remembered that no man, or firm, pays for his or its own insurance in the sense that he or it contributes a sum of money sufficient to pay that insurance in event of loss: each risk merely contributes a certain proportionate sum with hundreds of others and these various contributions, being brought together into the treasury of the company, serve as a fund to reimburse the few individuals who may meet with a loss. It is well to remember that the average rate of insurance is about $1, or 1 per cent on the property insured. Taking 40 per cent of this for expenses (which is about the average at the present time) 60 per cent is left to pay losses and maintain reserves. It is evident that before any single risk could pay in a sufficient amount to be reimbursed in event of a large loss this amount must be paid in through a long series of years. There are some cases, probably, such as firms in business for a long time, where the premiums paid equal the return in event of fire. These cases are extremely rare and are counterbalanced by the fact that

from the minute that a firm takes out and until it discontinues carrying insurance, it has a claim, when a fire occurs, upon this general fund for reimbursement.

To the local agent a rate may seem all right, or a form appear correct, on a certain plant or risk, but he must remember that the plant or risk is only one of many contributing to pay the losses and that an undue advantage to one is an injustice to all. If this is borne in mind, it will suffice to make the local agent understand why a risk that he has written is not accepted by the company, or a form that he has passed comes back for correction.

44. *Underwriting.*—In many features and in a large portion of its work the fire insurance company does not differ from any other corporation. It is engaged in a distinctive work; that of furnishing indemnity against fire. It issues its policies, which provide that if the party holding such policy suffers from a loss by fire he will be indemnified up to a sum not exceeding that stated in the policy, the amount of the policy being the limit of the indemnity obtainable from the company. It will readily be seen that in the general work of the corporation its detailed clerical work is perhaps not much more difficult than that of any other corporation; neither is the management of its finances more difficult than that of the finances of another corporation. Every moneyed corporation must of necessity have more or less of its income in a transitory state, either uncollected from the debtors or in the hands of agents or in process of transmission. The character of these financial matters, and also the safeguarding of the funds, do not call for higher ability than that required for similar service by any other corporation. Because of this fact it frequently follows that the underwriter of the com-

pany may not be the chief executive, or rather may not be the one in charge of the financial matters. The underwriter may be the secretary or the vice-president; in most cases he is the president. Whatever his office, there is always some one official in charge of this branch of the business who is held responsible for the acceptance or rejection of risks.

The underwriter does not see the papers in every case. As a matter of fact, he sees them in few instances; but he does, however, determine the class of risk to be accepted, the amounts to be accepted thereon, the amounts to be accepted in different sections of a city or state and similar important matters. It should be remembered by the student that underwriting is what the company is engaged in. Whatever else it does is incidental. It hopes to make a profit by furnishing indemnity, and to furnish indemnity certain risks must be assumed. Without the assumption of these risks there would be no income and there would be no profit. Because it is his function to assume those risks which will be profitable and reject others, the managing underwriter is the most important member of the company.

CHAPTER V.

OFFER, ACCEPTANCE, AND INSPECTION OF RISKS

45. *Offer and acceptance of risk.*—In the beginning of fire insurance it was the practice to have all applications submitted in writing over the signature of the person desiring insurance. How complete a statement concerning the property to be insured was required in the early days we do not know, but the practice soon developed of requiring on any business property a somewhat complete statement or survey, as it was called, of the proposed risk. Naturally the more hazardous the risk the more complete the statement required. A building in which a person lived, or which was occupied merely for dwelling purposes, would have fewer points to be considered than a factory devoted to manufacturing, or a store or warehouse used for buying or selling goods.

In all cases the location of the property and its area would be required, with a description more or less complete of the kind of building—that is, whether wood, brick or stone. Careful inquiries were made about the stove and the stove pipes, and the method of lighting the premises. In the case of a manufacturing plant a minute description of the business was also required, including the number of hands employed, and the extent to which the work was carried on, since some factories might only do a portion of the work of making woolen cloth while others might carry through all the processes from raw material to finished cloth. There

would also be a report on any special apparatus for fire-extinguishing purposes, the amount of insurance desired, and the number of machines on the property. These surveys, if approved by the company, were filed with the other papers pertaining to the risk.

This method of application has practically passed away. It is very doubtful whether in the United States it is now used to any great extent. This is due to the fact that the companies have developed inspection or survey bureaus to cover the entire country. If the bureau should not have an inspection covering a special risk the company may send its own inspector. In fact, a person at present seeking insurance simply makes a direct request, and unless asked would not be required to fill any special form, the company making its own inspection and investigation.

As already stated, formerly the application had to be in writing. This is not necessary now, most of the business being done on verbal application and acceptance. The method of written application was necessary in the early days as the companies were not so well supplied with knowledge of the properties offered for insurance, and with maps, surveys, etc., concerning every important risk in the country. Thus if a person some years ago wrote from a distant point for insurance, and the company possessed no knowledge of the property, it would hesitate to accept insurance thereon without first having made an inspection to be sure the risk was desirable. It is sufficient to state that the acceptance need not be in writing.

46. *Importance of inspections.*—An accepted principle of the commercial world is expressed by the Latin phrase *"Caveat emptor"*—Let the buyer beware. The insurance company stands in the position of a buyer.

Whenever it is offered a certain risk it buys the opportunity of insuring that risk, receiving a certain sum of money. It is something which men do not buy unless needed; hence the company being the buyer must have the opportunity of inspection before purchasing. And it does make a minute inspection of the property, not from the owners' point of view but from its own. A retail dry-goods store for the purposes of business may have an admirable location in town or city, but for the purposes of insurance it may be in the poorest. Its advantages in the first instance may be disadvantages in the second. The exact condition of the property is necessary to a just estimate of the undertaking; therefore the inspection. The inspector is probably as old as the fire insurance business. Two hundred years ago the Sun Insurance Office appointed a carpenter and a mason to inspect properties.

The inspections were more or less simple affairs in those early days as compared with those of the present time, the development of inspection arising in the last fifty years, or since the Civil War. It was the result of the expansion of business following the war and the tendency to increase the size of properties. At that time the average business building was about 100 by 25 feet and four or five stories high. Few merchants wanted more than $50,000 of insurance, while $100,000 was a large amount. At the present day single properties carry millions, there being one block carrying six millions in New York City. It can thus be seen that the problems to be solved to-day are wholly different from those of fifty years ago.

The New England mutual companies were probably the first to require detailed information regarding pro-

posed risks on which to base their writings. In time the system spread to stock companies.

47. *Methods of inspection.*—To attain success in inspecting a man must be of alert perception and have accurate judgment. Tact he must possess or acquire. He must note all that increases the possibility of fires starting, entering, or spreading on the premises, and all that tends to prevent such starting, entering, or spreading. Before visiting the premises he should gather information about its occupancy and the manufacturing carried on, and then inform himself as to whether the materials and processes of manufacture involve any special hazard of fire. A map of the building would greatly simplify his task. In default of the owner's map he should make one himself. This is the first step in inspection. To do this, he will need a two-foot rule, a tape measure or scale rule, and a supply of co-ordinate paper, unless he uses the scale rule, with which plain paper is preferable. First, he should determine upon the longest, simplest line of the building or group of buildings as a base line from which to make all subsequent calculations. It is then plotted on co-ordinate paper by allowing each section to represent a certain number of feet, or with a scale rule on plain paper by allowing each sub-division of the inch on the scale rule to represent a definite distance. Then the angle made by the walls at each end of it are to be plotted. In most cases this is a right angle, but to be certain the inspector should take two points; the first one four feet from the corner in one wall and the second three feet from the corner in the other. If the line connecting these points is five feet long the inclosed angle is a right angle. Acute or obtuse angles, how-

ever, should be determined by triangulation. If the wall to be drawn goes off at an obtuse angle from the wall he has already drawn, he should make or drive a stake at some point on this second wall. This point may be call A. He should then return to the corner and walk out from the building in a straight continuation line from the wall he has plotted. He should continue pacing until he is abreast of the point A. By measuring the distance he has walked he can plot this second point B. If at B he makes an accurate right-angled turn toward the building and continues he will come directly to the point A. By measuring this last distance he can locate the point A on his map. A line drawn from the end of the wall already plotted, passing through A, will be the desired line representing the second wall. An acute angle can be ascertained by taking a point at a convenient distance from the corner on the wall already drawn, starting at right angles to this wall toward the wall to be drawn. Consider the point at which this wall is reached as P. By measuring and plotting the line walked the point P of the second wall can be determined, and a line from this corner through this point P will represent the direction of the wall desired. The diameter of circular tanks, chimneys, etc. can be obtained by measuring the base circumference and dividing by 3.1416. If the inspector carefully determines one line or angle at a time he will have no difficulty. Doors, windows, chimneys, etc. he can represent by arbitrary symbols. Having completed his map he checks off the information he gathers during his inspection.

48. *General information about risk.*—Starting with outside details he should first examine surrounding buildings and industries to determine the risk from exposure.

Next come the features of the building itself; whether of frame, mill, brick, or fireproof construction. Does it communicate with adjacent buildings, and are there proper doors and cut-offs to protect these communications? Is the roof protected by proper parapet and covered with fireproof materials? Have skylights, windows and doors, the proper screens and shutters to hinder the breaking and letting in of flying embers in case of near-by fires? Satisfactory information having been gained on these points the inspector should then examine the inside and make note of (1) materials of walls, floors, ceilings, supports, etc.; (2) all unprotected metal or light masonery which would warp or fall in case of fire and pull down other parts; (3) all stair, elevator or dumbwaiter shafts, belting, chutes or any other floor or partition opening which would act as a flue in case of fire, noting the provision for cutting off such openings; (4) all concealed or inaccessible places; (5) condition of building, whether walls or ceilings are cracked, allowing fire to enter. These in general are the points to be investigated, although any building may present special features.

49. *Occupancy.*—Then comes the occupancy of the building, and here the inspector needs to go carefully and not to be too credulous. He must not rely upon the information furnished by proprietor or tenant who wishes to present as safe a risk as possible, but must investigate for himself. He should first find the names of the tenants and what part of the building each occupies and for what purpose. If manufacturing is carried on, the number of employees at dull and at prosperous seasons, and the number of these engaged in hazardous processes must be ascertained. If parts of the building contain stock he must find out whether

it is in storage or for wholesale or retail trade, also how this stock is arranged, whether on open counters, shelves, tables, hooks, or skids six inches from the floor, or packed in closed boxes or fireproof vaults.

50. *Protection of machinery.*—Where manufacturing is done it is necessary to know how many machines are used and whether they are operated by mechanical or manual power. It is important to report whether drip pans are used under these machines and whether the floor needs a metal covering to protect from oil soaking; whether or not woodwork and dust machines have blowers, and whether individual motors are used for power. The inspector must ascertain whether any heat, flame or fire other than for power is used for manufacturing purposes, and the number and purpose of these appliances, what fuel they use, how they are set and how the surrounding woodwork is protected. In case of enclosures for baking, drying or steaming—such as caul-boxes, drying-rooms or japanning ovens—the inspector must find their number, size, material, and construction; particularly smoke pipes, ventilators, and steam pipes, noticing if they are safely arranged or if heated pipes come in contact with wood or other light inflammable materials.

51. *Dangerous substances.*—Raw stock and materials used in the process of manufacturing are exceeding liable to include highly volatile and explosive liquids and substances. Here especially the inspector must be sure to cover all the ground and to see all that is going on in spite of the assurances of the tenant that all is safe and needs no investigation. A list of the dangerous substances most often found is of great value. Chief among these are: Benzine, gasoline, naphtha, collodion, rubber cement, paints, oils, varnishes, alcohol,

lacquers, thinners, and celluloids. All loose packing materials, such as excelsior, hay, straw, and cut paper, are a source of danger. Spontaneous combustion often occurs from bituminous coal and where wet lime comes into contact with wood. When any one of these dangerous substances is found, especial care should be taken to report accurately the supply and how kept and if in safety cans or bins. These receptacles should be examined for defects; nearby gas jets or flames should also be noted.

52. *Heating, lighting, and power.*—Is the building heated by steam, furnace, or stove? If by steam the inspector should describe the size in H. P., the construction and location of the boiler, and test the whole system for unsafe features, such as heated pipes coming into contact with unprotected inflammable materials, etc. If a furnace is used he should describe its location, size, and any dangerous features. Where stoves of any kind are used the inspector must report whether the surrounding woodwork, especially the floors, is properly protected, and what the stovepipe enters, whether wood, glass, or lath and plaster partition. If gas is used it is important to know how it is supplied, whether through rubber tubes or not, and how the tube is attached and protected.

Next the lighting is examined. If protected gas jets are less than eighteen inches, or unprotected ones less than thirty-six inches, beneath unprotected woodwork or lath and plaster they should be considered unsafe. Bracketed lamps and gas jets must not swing against unprotected, combustible walls. The lights in the windows should be protected by globes. Stables need safety lanterns, and lights for work tables should be enclosed in cages of suitable construction. If electricity is used the

method of installation should be reported and the system examined for defects that may cause short circuiting and fire.

Now the inspector comes to the power. If it is manual, pedal or animal, it is necessary simply to state it in his report. If it is mechanical it must be more minutely described. Its construction, location, size by H. P., setting, whether it is open, enclosed or cut off are all important details. In addition, if gas or electricity is used, the materials of their surroundings with their protection must also be described.

53. *Facilities for extinguishing fire.*—After the inspector has carefully examined for defects and unsafe features of the power plant he should observe the means provided to check a probable fire in its outbreak, and the available aid for fighting it. There is given in Chapter VI a list of the fire checking and fighting apparatus in common use, and also the standard requirements. These requirements furnish a guide for this part of the inspection, and any deviation or defect or mismanagement which might render any apparatus unfit for instant use should be reported for correction. The water supply must be ascertained in detail. If it comes from the city main the available pressure must be determined; if from a private supply the pump and tank capacity must be disclosed as well as the pumps' supply. Should it come from a creek the inspector must learn the depth of the water in the dry season; whether the suction is in a crib sunk in the bed of the creek; what arrangements are made to prevent sand and gravel filling the crib and how often it is cleaned out. Besides these facts he must not neglect to find out the distance to the nearest fire engine house and alarm box, and whether the service is volunteer or paid and what equipment it has.

54. *Possible sources of fire.*—Throughout his inspection the inspector should be alert to notice any faults of management or defects in buildings, machinery or apparatus which would increase the probability of fire. This contingency largely results from carelessness and untidiness; such as broken plaster and windows, holes in floors, walls, or ceilings, uncovered stove holes, oil sprinkling of floors, sawdust in cuspidors, ashes in wooden boxes or barrels, gatherings of rubbish or waste, whether inside on floor or in wooden boxes or barrels or outside in yard, cellar, alley, vaults, or under sidewalk gratings; any floor opening or closet used for storage of old clothes, oil-soaked rags, oil lamps, or any other dangerous articles; all cotton waste and material used for wiping and polishing which result in absorption of hazardous chemicals if not kept in self-closing waste cans; crowded stock that leave aisles less than three feet wide and not leading to windows; piling stock to ceiling and obstructing windows, thus preventing entrance of firemen.

This enumeration of the causes of fire could be continued indefinitely and yet not cover all points of danger of this class. The inspector's ability is shown not only by accuracy in obtaining information upon definite points but by readiness in discovering the individual or unusual point of danger. To indicate how widely these causes of fire may differ the following are given: Friction from a chafing belt, or from a shaft not running true, may strike fire to the oil in the bearing, which would spread to the nearby woodwork; an open fuse may be too near combustible material; a rubber tube on a gas heater may break; small scraps of oilcloth, harmless when scattered over the floor, become dangerous when collected in quantities; small heaps of iron scraps or

shavings, more or less oily, on the floor of a machine shop are likely to generate heat when they become rusty.

55. *Qualifications of inspector.*—As indicated by the foregoing an inspector's work requires that he be informed on a great variety of subjects. Some knowledge of draughting, mechanics, electricity, and chemistry is indispensable. To obtain all the information necessary a tactful treatment of the tenant or proprietor may be required. Minute questionings naturally arouse the suspicions of a manufacturer who has secret processes in his works. Only tactful questionings supplemented by keen observation should be depended upon to determine the moral hazard. If a plant is extending its operations and increasing the number of its employees the chances of its being burned for its insurance are at a minimum. If, however, poor transportation facilities make raw stock more expensive there than to a more fortunately situated competitor or if building or machinery shows evidences of neglect the inference is that the plant is unprofitable to its owners. From such observations, together with information gained from the answers to seemingly casual questioning, such as "Business good?" the inspector should draw his conclusions regarding the moral hazard.

From the observations made the inspector is often asked to recommend improvements for a risk. A point to be observed in making recommendations is that the additional protection afforded by carrying out his suggestions should be sufficient compensation for the expense.

Though fire insurance engineering is a comparatively new line of work an inspector should never forget its importance. Every point of danger he can discover and have remedied may mean a serious fire averted;

any point overlooked or neglected may cause, beside the loss of thousands of dollars to his employers, the more serious loss of life, property, and employment. His work well done is of value not alone to the insurance companies and the assured but to the whole community; it has been called "active philanthropy on a business basis."

56. *Classes of buildings.*—From the foregoing general considerations of the inspector's duties it is well to consider the subject in detail. Buildings may be divided into four classes:

1. Frame building.
2. Building of ordinary construction.
3. Slow burning, or building of mill construction.
4. Building of fireproof construction.

57. *Frame building.*—There are two distinct methods of framing a building. The type in general use in the larger part of this country a generation ago is known as the braced construction and is a more expensive and difficult style than the balloon construction which has gained in popularity, the latter having proved itself well adapted to withstand wind pressure and tornadoes, as well as being a simpler and quicker method of framing.

In braced construction the beams are fitted together with mortises and tenons and held by wooden pins, while all angles are braced by cross pieces framed in by mortises and tenons. In building a house the sills are first laid on the foundation walls, then the corner posts, which are to extend to the plate, are placed firmly in their mortises and securely spiked. They are held rigid by braces fitted into the mortises cut in both sills and corner posts. Next the horizontal timbers or girts which tie the frame and support the floors are framed into the

corner posts. The two of these, running parallel to the floor beams, are on a level with them, the other two, running at right angles to these first girts, are dropped a little to support the ends of the floor beams notched down to them. The four angles made at each corner by the corner posts and girts are strengthened by braces. After the floor supports are put in the plate is added, the angles of which are halved together and mortised entirely through in order to fit over the long tenons left at the tops of the posts; the angles between the posts and plate are left braced. The frame is now ready to receive the studs, which are mortised into sills and girts so that each floor has a separate set.

When balloon construction is used in framing, the sills are put in place on the foundation, and then the studs of the outside walls as well as the corner posts, all of which are to extend the entire length from the sills to the plate, are erected and securely nailed. These are now temporarily braced by stay lathes—pieces of wood nailed diagonally across the studding. All these uprights are next measured and cut off at the proper height to receive the plate, which is made of two thicknesses of 2″ x 4″ or 2″ x 6″ timber, the first laid directly on top of the studs and nailed to each one, and the second timber nailed to the first, but breaking joints with it and overlapping at the corners. The studs are now marked with two lines four inches apart at the proper height for placing the ledger-board which supports the beams of the floors above the first. The studs are next notched between these lines, and a board an inch thick and four inches wide is fitted into the notches and finally nailed in place. This ledger-board, though sufficiently strong as a support, is quickly burned off in case of fire, allowing the floors to fall. To prevent the

building from springing under wind pressure long pieces of board are applied diagonally over the studs notched to hold them.

The form of construction most frequently found varies in different parts of the country. Often features of one type are combined with those of the other according to locality or use of the building.

The following is a description of a standard frame building from the "Universal Schedule":

A standard frame building may be described as one not exceeding two stories in height, with a ground floor area not exceeding 1,000 square feet, say 20×50. The building itself and all chimneys should rest on substantial foundations of brick or stone laid below the frost line. The sidewalls should be of clapboard finish on substantial hardwood studdings, either filled in with brick between studs ("brick-nogged") or instead with back-plastering on inside of outside sheathing between studs. (These two forms of finish are usually employed as non-conductors of heat and as a protection against the weather, but they are also admirable provisions for preventing the rapid spread of fire, particularly in connection with certain fire stops that cut off drafts from floor to floor.) If the building is veneered with brick, or sheathed with metal, tin, or corrugated iron, deductions are made in rate. Wooden side walls and roof should be painted with good fire resisting paint. Roof should be of metal or tile, or shingles laid in mortar."

58. *Ordinary building.*—The majority of this class of buildings inspected for fire insurance have brick walls, though the number of concrete buildings is rapidly increasing, while a few are found with an outside of stone. A cast iron post is often used on such buildings if they are built or remodeled for store purposes. Except in the material of these walls these three classes do not differ from the frame building, i. e., the beams,

floors, etc. are of wood and the finish of wood, lath, and plaster.

Even when erected under the restriction of excellent building laws a building seldom if ever conforms to the following description of a standard building as is given in the "Universal Schedule":

The standard building has walls of brick or stone (brick preferred) not less than twelve inches thick at top story (sixteen inches if stone), extending through and twenty-four inches above roof in parapet and coped and increasing four inches in thickness for each story below to the ground, the increased thickness of each story to be utilized for beam ledges. Ground floor area not over 2,500 square feet; height not over four stories, or fifty feet; floors of two-inch plank covered by seven-eighths or one-inch flooring, crossing diagonally with waterproof paper or approved fire-resisting material between; wooden beams, girders, and wooden story posts or pillars, twelve inches thick, or protected iron columns; elevators, stairways, etc., cut off by brick walls or plaster on metal studs and lathing; communications at each floor protected with approved tin-covered doors and fireproof sills; windows and doors in exposed sides protected by approved tin-covered doors and shutters; walls of flues not less than eight inches in thickness, to be lined with fire brick, well burned clay or cast iron, with throat capacity of not less than ninety-six square inches if steam boilers are used; all floor timbers to be trimmed at least four inches from outside of flue; heated by steam; lighted by gas; cornices of incombustible material; roof of metal or tile; if partitions are hollow or walls are floored off there should be fire stops at each floor.

59. *Mill construction.*—A mill constructed building, or building of slow-burning construction, is one having brick walls and with all woodwork in the form of heavy planks and timbers laid in compact thick masses, with the least number of ignitable angles or projections. If the materials used are of sufficient size and

are properly put together a building of this type may have excellent fire-resisting ability. To obtain this condition the lumber used should be not less than eight inches in either cross dimension. Over the floor and roof beams there should be a covering of spliced or tongued and grooved planks at least three inches thick, while tongued and grooved boards an inch or more in thickness should be laid diagonally and properly nailed on top of the floor planking. Between these boards and the floor planks two thicknesses of waterproof material should be laid and flashed at least three inches around all wells and posts or columns and openings with moldings or base.

The cross sectional area of all wood supports for floors and roofs except in top story should be at least one hundred square inches, while each dimension should be at least ten inches for the supports on the top story. A cross sectional area of sixty-four square inches is sufficient provided that neither dimension is less than eight inches. These wooden posts should have caps or boxes of cast iron which may serve as bases for the posts above. The ends of the girders should be fastened to the caps or boxes in such a manner as to be self-releasing. There should be no openings through the floors, all stairways, elevators, etc., being cut off in brick towers. A building of this type does not readily ignite, though even in case it should catch fire it is likely to burn so slowly that the fire could be put out without serious difficulty, as all parts are easily accessible to a stream of water.

60. *Fireproof construction.*—The chief point of difference between the ordinary building and the building of fireproof construction is that in the latter the frame work is usually of metal and the floors of fireproof

material, an especial advantage as they separate the various stories from one another.

Fireproof buildings should have walls of brick, stone, Portland cement, or concrete, with floors and roofs of wrought iron, or steel floor beams, which in stores and warehouses and factory buildings should be placed not more than five feet apart on centers but which on other buildings may be eight feet apart on centers. Suitable tie rods should tie the beams together at short intervals. Incombustible flooring should be put between the beams in both floors and roof. There may be used for this purpose any fireproof material approved by the insurance companies, such as brick arches, hollow tile arches of hard burned clay, or porous terra cotta, or arches of Portland cement, concrete, plain or reinforced with metal. Stairs and landings should be built of brick, stone, Portland cement, concrete, iron or steel, or a combination of these, and, like all elevators and dumbwaiters, should be enclosed in a non-combustible shaft. No kind of inflammable material should be used in partitions, flooring or ceilings and the frames and sashes of windows should be of metal both inside and outside.

Four inches of hard burned brick, terra cotta, concrete or any other approved fireproof material should be entirely fitted over all cast iron, wrought iron, or rolled steel columns, including the lugs or brackets in such a manner as to be without air space next to the metal. All pipes, wires, or conduits of any kind should run outside of and not be enclosed in fireproofing surrounding columns, girders, or beams of steel or iron. The exposed side of steel or iron beams should be covered with at least four inches of fireproofing material, and two inches of such material is required to pro-

tect properly the exposed flanges of these girders or beams.

The following is the standard fireproof building according to the "Universal Schedule":

Walls not less than sixteen inches for the upper twenty-five feet portion, thence increasing four inches for each twenty-five feet to the bottom; not exceeding five thousand square feet of ground floor area; height not over eight stories; floor beams and girders to be supported by masonry. (If skeleton construction floors carried entirely by iron frame work, there is a charge.) Not to be occupied above seventh floor for storage of merchandise or other combustible material where burning would injure the ironwork. All iron beams, girders, and pillars, or story posts to be protected by approved fire resisting material, except in office and hotel buildings, in which there is a half charge for absence of covering. If wrought iron or steel is used in construction that portion of the masonry in contact with the metal should be free from cement or plaster of Paris, lime mortar only being used. At least all stairways to be fireproof with metal treads, stone treads, whether marble or slate, being dangerous.

CHAPTER VI

FIRE PROTECTION

61. *Fire losses.*—The annual loss from fire in the United States amounts to nearly $3 per capita, and shows but little diminution in the past fifty years. The losses since 1878 are as follows:

Years	Aggregate Property Loss
1878	64,315,900
1879	77,703,700
1880	74,643,400
1881	81,280,900
1882	84,505,024
1883	100,149,228
1884	110,008,611
1885	102,818,796
1886	104,924,750
1887	120,283,055
1888	110,885,665
1889	123,046,833
1890	108,993,792
1891	143,764,967
1892	151,516,098
1893	167,544,370
1894	140,006,484
1895	142,110,233
1896	118,737,420
1897	116,354,575
1898	130,593,905
1899	153,597,830
1900	160,929,805
1901	165,817,810
1902	161,078,040
1903	145,302,155
1904	229,198,050
1905	165,221,650
1906	518,611,800
1907	215,084,709
1908	217,885,850
1909	188,705,150
1910	214,003,300
1911	217,004,575

These figures demonstrate the necessity for fire protection. The United States presents a fire-protection problem unequaled in history. It may be safely estimated that one-half of the fire losses in the whole world occur in the United States, and it is probably equally true that one-half of the amount paid in the world for fire insurance is paid in the United States. On the continent of Europe and in England the losses by fire do not amount to more than a tenth of those in the United States. This is due principally to improved building construction, to better enforcement of fire laws, and, apparently, to greater respect for law in general.

62. *Prevention of fires.*—The foregoing facts among others led to a study of the causes of fires, and then to a study of the means of prevention. It is said that 90 per cent of the fires in a cotton mill start in the picker-room. The fact that statistics enable us to locate 90 per cent of such fires enables us to determine where prevention should first be applied. The work of the fire-protection or "insurance" engineer deals with this problem of fire-protection worked out through appliances for preventing or extinguishing fires. The field of his labor is shown in the following incomplete list:

a. Fire doors and shutters.
b. Wired glass.
c. Waterworks.
d. Fire departments, public and private.
e. Standpipe systems.
f. Perforated pipes.
g. Automatic sprinklers.
h. Chemical fire extinguishers.
i. Fire pails and buckets.
j. Signalling systems.

k. Watchmen and watch-clock systems.

l. Safety receptacles.

m. Heat, light, and power.

n. Hydrants and hose-houses.

63. *Fire-doors.*—The necessity of confining the area subject to a fire to small units is understood. There is a difference of opinion as to how large that area should be. In some cases 1,000 square feet constitute the unit, charges being made for additional area; in others 2,500 square feet, while in a fireproof building 5,000 feet. The conception of a business in a building 25x100, with an area of 2,500, grown to such extent as to necessitate the use of the building adjoining, will make clear the origin of the fire-door. A merchant taking the second building may have an opening on each floor cut into the adjoining building. Thus instead of 2,500 square feet subject to fire on each floor there are, by open communication with the adjoining building, twice that area. In the very beginning of this practice it was recognized to be dangerous and means were sought whereby these openings might be sufficiently protected to prevent fire passing from one building to another. Iron doors were the first protection adopted after the wooden door was found to be of little use.

64. *Features of door-openings.*—(1) Openings in the wall should not exceed eighty square feet and should be as few as possible.

(2) There should be one door on each side of the wall, preferably both sliding, though one may be swinging.

(3) The size and shape of the door and the sills and lintels are covered by the specifications.

(4) The wood in the door, or the core, should be of

well-seasoned white pine or of a similar non-resisting wood. There should be three thicknesses of board, the outer layers being vertical and the inner horizontal. They are securely fastened together with wrought-iron clinch-nails, leaving the surface smooth.

(5) The fire-resisting value of the tin-covered wooden door depends upon preventing access of oxygen to the wood. To obtain this result the covering must be applied so that the joints between the tin remain intact, provision being made for the escape of the gas from the wood core.

Although the foregoing covers the more important features of the standard door, the hardware, the hanging, etc., should also be carefully noted.

The standard doors which operate automatically are held open by a "fusible link." This link, melting under the action of heat at about 160 degrees, releases the door, which closes and covers the opening in the wall.

65. *Standard fire shutters.*—The standard fire shutter on the outside of the building protects property from exposure and is similar in form to the standard fire-door. The objection to shutters is that when they are closed at night the interior of the building cannot be seen.

66. *Wired glass.*—This kind of glass apparently was first used in England at an election. It was desirable to look into the ballot boxes while the votes were being cast, at the same time having the boxes closed. A wire mesh was placed between two panes of glass, thus furnishing an opportunity to see within the box but keeping the ballots safe. An accident disclosed that wired glass was a fire retardent. Ordinary glass melts at from 800 to 1,000 degrees Fahrenheit, but by embedding a wire mesh into it the melting point is raised to from 1,800 to 2,200 degrees.

There is slight advantage in wired glass if a wooden frame is used for the sash. Metal-covered wooden sashes came into use, and later a hollow metal frame was adopted. The window is occasionally double glazed; that is, has two panes of wired glass with an air space between them. The general opinion is that within thirty feet the double wired glass in metal frame is as good as the standard shutter, while beyond thirty feet a single pane of wired glass in metal frame is as good as the standard shutter. These are general working rules, however, and are not to be implicitly relied upon in every instance.

67. *Waterworks.*—The pressure for distributing water through a system of pipes may be obtained in the following ways: by gravity only; or by first pumping the water to an elevated reservoir, whence it flows into the pipe system by gravity; or by pumping the water to an elevated tank or standpipe; or from pumps that force the water directly into the distributing pipes. The pipe system everywhere is practically the same. For fire extinguishing purposes the gravity system, especially if it receives and distributes in duplicate conduit, is the best and the most reliable. It has less apparatus to get out of order than the other systems.

68. *Use of hydrants.*—When the pressure in the mains is sufficient, fire streams may be taken directly from the hydrants. If the pressure is low, however, steam fire engines are necessary. High pressure is of great value, especially in small cities and towns, as it eliminates the necessity of fire engines, though a few of these should be kept in reserve for emergencies.

To be available for hydrant fire pressure the pressure in the mains should produce at hydrants, when properly spaced, a 240 or 250-gallon capacity in business districts

and a 175 to 200-gallon capacity in the residential localities. With high pressure, hydrants do not need to be as closely set together as with low. With close hydrant spacing a sixty-pound pressure for the residence district and a seventy-pound pressure for the business district are not uncommon, though for effective streams an 80-pound and a 100-pound pressure are desirable. In small towns supplied by the gravity system the sixty to seventy-pound pressure may suffice, as a higher pressure would not be sufficient compensation for the expense of producing it.

69. *Arrangement of pipes.*—The best arrangement of pipes for distributing water is one in which the mains run at right angles to one another and connect at every street intersection. By this "gridiron system" the mains are fed at both ends. The amount of water needed in any locality regulates the size of the mains and cross pipes. Small cities and outlying districts of large ones require six-inch cross mains with eight, ten or twelve-inch pipes at intervals of from four to six blocks. Larger places or compactly built districts require eight-inch cross mains with an occasional twelve to sixteen-inch main, or six-inch pipes running lengthwise and eight-inch pipes crosswise. Unusually large areas may require larger feeders, such as twenty-four, thirty-six or even forty-eight-inch pipes. As the safety and comfort of a city depends upon its water supply, the efficiency of the pumping station should be assured. It should be of fireproof construction and removed from such hazards as factories, electric light stations, etc.

70. *Fire boats.*—Fire boats are of valuable aid in cities located near bodies of water. These boats are generally used for fighting fires along the rivers, although they may supply water to special pipe lines running

from the water front to other parts of the city. These boats usually have very powerful pumps, equal in efficiency to from ten to thirty-five or more fire engines.

71. *Public fire department.*—With the public fire department the fire-protection engineer has little to do. The department grew out of the volunteer system, continued in force in the United States until the early sixties, but now since the introduction of the steam engine rapidly declining. It is only recently that the necessity has arisen for a fire-protection engineer to take charge of the public fire department, but several now specialize in that branch.

72. *Private fire department.*—The necessity for a private fire department is based on the fact that when a fire starts there should be a trained organization always ready to act, not waiting until a fire occurs and then depending upon chance or the inspiration of the moment.

The following is a descriptive outline of a private fire department, taken from the standard rules:

PRIVATE FIRE DEPARTMENT.

ORGANIZATION.

Chief. Assistant Chief. Battalion Chief.

HOSE COMPANIES.

Captain. Hydrant men (2).
Pipe men (3) for each hydrant outlet.
Extra hose men (3).

LADDER COMPANIES.

Captain. Six ladder men.

SALVAGE CORPS.

Number of men to be determined by size of property.

PUMP MEN.	STEAM PUMP.	ROTARY PUMP.
Engineer in charge.		Engineer in charge.
Extra men to fire boilers.		Extra men to assist.

73. *Standpipe equipments.*—In general all city or mill buildings over three stories high and all open or inclosed structures that cover large areas irrespective of their height, require a standpipe equipment for their proper protection against fire. If the buildings are so near one another that the use of hose from the roofs may be advantageous, the standpipes may be extended to supply roof hydrants. The special function of the standpipe is to carry water for hose streams to upper floors, thus eliminating the difficult handling of hose and ladders that causes so much delay. Minor details must be determined by the local fire department and the local insurance authorities with reference to each particular building and the water supply available.

74. *Automatic sprinklers.*—It is an adage among insurance workers that any fire could readily be put out *if* at the time of its origin someone were there to throw a cup of water upon it. This adage emphasizes the time element. Efficient fire protection depends upon being ready to stop the small fires before they become powerful and destructive. Of the many means to effect this immediate extinction the automatic sprinkler is perhaps the most successful. It has been described by an authority as follows:

The sprinkler head itself consists of a casting with a one-half inch orifice, designed to screw into the pipe fitting, the orifice being closed by a cap held in place by a strut or levers composed of pieces of metal held together with fusible solder. There is also a deflector or splash plate against which the water impinges, and each sprinkler is designed to protect the floor area of from 80 to 100 square feet. The piping is attached generally to the ceiling, the sprinklers being spaced eight to ten feet apart. It is evident that for the sprinkler to be effective there must be a water supply of sufficient pressure and volume, while for a standard equipment two water supplies are required.

75. *History of automatic sprinklers.*—The earliest reference to any device considered as coming under the automatic sprinkler class was in a patent granted in 1723 for a fire-extinguishing apparatus consisting of a cask filled with a fire-extinguishing liquid to be released and set into action by means of a small can of gunpowder connected to a system of fuses. There is a record in 1727 of a fire extinguished by this device.

In 1806 John Carey invented an apparatus for automatically extinguishing fires, making use of perforated sprinklers connected with piping. In 1809 Sir William Congreve secured a patent covering an automatic fire-extinguishing system. It appears to have been similar to Carey's, but in 1812 he took out a second patent in which a fusible substance instead of a cotton cord was to be used for releasing the water. This appears to be the earliest reference to the use of a solid substance melting at low temperature and setting the sprinklers in operation. Nothing practical came of these early attempts. In 1864 Major A. Stewart Harrison, who was connected with the first London Engineer Volunteers, invented what seems to have been the first automatic sprinkler constructed on modern lines, yet it is now conceded that the first commercially successful sprinkler was invented by Henry S. Parmelee, of New Haven, the patent thereof being dated August 11, 1874. In 1875, 2,500 of these sprinkler heads were installed in the mills at Fall River. The Parmelee sprinkler used a fusible solder that melted at 160 degrees. For ten years, however, after the Parmelee sprinkler was invented, but little progress had been made in introducing the device. In 1881 Frederick Grinnell, of Providence, invented the sprinkler that still bears his name. To Grinnell more than any one else is due the commercial

extension of automatic sprinkler protection. Subsequently other persons invented and placed on the market successful sprinkler heads. To-day there are several on the approved list.

While to Grinnell much credit is due for the improvement in sprinkler protection, yet equal praise is due for its advocacy and adoption to the mutual fire insurance companies of New England. They were the first companies to test the system and to instal it in the most hazardous portion of the properties they insured, later extending it to all. In due time the stock companies discovered that they were losing business to the mutuals, and they, too, adopted the sprinkler device.

76. *Value of sprinkler protection.*—The results of sprinkler protection are well stated in a letter written by President R. W. Toppin, of the Arkwright Mutual Insurance Company of Boston, to the Automatic Sprinkler bulletin. The letter states briefly and concisely the loss from fire before and after the introduction of the sprinkler:

The first automatic sprinklers put into mills insured by this company were installed about 1875. During the fifteen years of the business of this company prior to 1875, in round figures, the

Insurance written aggregated	$118,300,000.00
Losses	284,500.00
Average yearly loss per $100	.24

During the first years of automatic sprinkler protection the progress of installation was somewhat slow, though it continued steadily. In the second fifteen-year period, from 1875 to 1890, the

Insurance written aggregated	$509,000,000.00
The losses were	948,500.00
Average yearly loss per $100.....	.186

or, in other words,

Insurance written increased 33.8%
The loss ratio reduced 22.5%

As the value of automatic sprinklers for the extinguishing of fires became more and more evident by their remarkable success in reducing fire loss the Mutual Companies began to require their installation throughout all parts of manufacturing plants where formerly they were required only in rooms where the more hazardous processes were carried on or which contained large values, until to-day practically every part of our manufacturing risks is protected by automatic sprinklers, and they have been extended to nearly all storage buildings insured by us. The result of this has been a remarkably low loss ratio, viz.:

During the ten years ending Dec. 31, 1907, the
Insurance written aggregated $1,552,000,000.00
The losses were 774,500.00
Average yearly loss per $100 .... .05

Compared with the first fifteen years of our business with no automatic sprinklers the

Insurance written increased over 1200%
The loss ratio reduced 79%

Taking all the business of the Mutual Companies represented in the Senior Conference during the year 1907 the

Insurance aggregated $1,816,000,000.00
The losses were 1,420,000.00
Average loss per $100 written .... .078

It should be remembered that these results were obtained upon manufacturing risks, the hazards of which are generally considered more than the average.

The figures presented speak forcefully for the value of fire protection, of which automatic sprinklers form a very considerable part.

Additional testimony is furnished by reports of the National Fire Protection Association, which has kept a close record of sprinkler fires during the thirteen years of its existence. Its records show 8,942 fires in sprinklered risks where the sprinklers operated. The operation of the sprinklers was unsatisfactory in only 843 cases, or 5 per cent. The causes of failure were generally due to closed gate valves, defective equipment, defective water supply, exposure or conflagration fires, faulty building construction, and serious obstructions to the distribution of water. The records also show that in 30 per cent of the fires only one sprinkler opened, thus showing that the cup of water does a large part of the work. In 55 per cent of fires three or less than three sprinklers opened, and twenty-five or less in 90 per cent. It is a rule that where more than twenty-five sprinklers open, it is due to some condition not found in the ordinary risk.

77. *Spread of sprinkler protection.*—The spread of sprinkler protection is shown by the fact that one-third of the property insured against fire in New England comes under this system, while in New York City more than $300,000,000 worth is thus protected. The total amount throughout the United States is not now available in figures, but it is believed that within ten years there will not be a single manufacturing or mercantile risk of much value unprotected by automatic sprinklers. The reduction in the rate of insurance will be enough to warrant this, while the inability to obtain insurance without such protection will hasten it.

The fusible metal or solder used in sprinklers is adjusted to different temperatures according to the character of occupancy of the building to .be protected. The ordinary sprinkler head has a melting point of

about 160° Fahrenheit, but heads melting at as high as 212° to 400° Fahrenheit are used in dry rooms, boiler rooms, and other places of high temperature.

78. *Requisites of sprinkler protection.*—The requisites for obtaining the best automatic sprinkler protection are:

The building should be open in construction, the sprinklers being so located that distribution may cover all points on the premises. This means that sprinklers should be installed in basements and lofts, under stairs, inside elevator wells, in belt, cable, pipe, gear and pulley boxes, inside small inclosures, such as drying and heating boxes, tenter and dry-room inclosures, chutes, conveyor trunks, cupboards, and in chests unless they have tops entirely open and so located that sprinklers can properly spray therein. Sprinklers should not be omitted in any room merely because it is damp, wet, or of fireproof construction. Special instructions should be obtained as to placing sprinklers inside show windows, boxed machines, metal air ducts, ventilators, concealed spaces, under large shelves, benches, tables, overhead storage racks, over dynamos and switchboards, platforms and similar water-sheds.

The piping should be of sufficient capacity, as a system is of little value unless the riser pipe and distributing mains are of sufficient size to supply the sprinkler heads.

Steam, rotary and electric fire pumps should be installed in accordance with the rules of the National Board of Fire Underwriters. It is required that with five pounds pressure maintained at the sprinklers each head shall discharge approximately twelve gallons per minute. The sprinklers should, therefore, be made with an unobstructed outlet of sufficient size and suitable

form to accomplish this result. Siamese sidewalk connections should be provided for the use of the fire department for direct attachment of fire engines to risers.

The circulation of water in sprinkler pipes is objectionable owing to increased corrosion and deposit of sediment. For this reason the pipes of a sprinkler system should not be used for domestic or other than fire service. Hand hose for fire purpose only may be attached to sprinkler pipes within a room under the following restrictions: Pipe nipple and hose valve are to be one inch; hose to be one and one-fourth inches; nozzle to be not longer than one-half inch. Hose is not to be connected to sprinkler pipe smaller than two and one-half inches and not to be attached to a day pipe system.

79. *Automatic alarm.*—In order to detect the presence of fire or of a leak in a sprinkler system every equipment should have an automatic alarm device or possess a watchman service. Sprinkler heads have been known to open and permit water to flow from Saturday night to Monday morning, there having been no alarm device to indicate the flow.

80. *Dry pipe.*—A dry pipe system should be used only where a wet pipe system is impracticable; as, in buildings or portions of buildings having no heating facilities. The use of such a system is, however, far preferable to shutting off entirely the water supply during cold weather. To keep the water out of the pipes a valve, called a dry valve, is employed. The sprinkler pipes are filled with air under pressure and should so remain throughout the year. When a sprinkler head opens the air escapes, the reduction in air pressure allowing the water pressure to open the dry valve automatically. The water then enters the sprinkler system and is discharged through the open sprinkler heads.

81. *Open sprinklers.*—Open sprinklers are metal orifices placed outside a building just over the windows along the cornice on the side wall or along the ridge pole. Their purpose is to protect from exposure fire and to prevent flames from passing through the windows from floor to floor. The sprinklers consist of an orifice with a horizontal level-shaped disc for deflecting the water into a sheet of spray. This spray can be made to form a solid water curtain along the side of a building.

The failure of the sprinkler system is most frequently due to a valve being closed at the critical moment or to deficient water supply; therefore, in the interest of the assured, the system should be periodically inspected by a competent person.

82. *Chemical fire extinguishers.*—The use of other substances than water or in combination with water as a fire extinguisher attracted the attention of inventors from an early period. Chemical fire extinguishers, both hand and wheel, found in public and private establishments, and chemical extinguishers used by fire departments, are devices for the use of chemicals combined with water. The chemical itself does not add to the extinguishing quality of the water. Its function is to generate a gas to drive the water either to a greater distance or with greater force.

83. *Hand extinguishers.*—There are now many chemical devices for extinguishing fire, but with the exception of those operated by carbonic acid gas, they have proved most unsatisfactory under actual test.

The carbonic acid gas extinguisher consists of a cylindrical copper tank with a small hose attached. It is filled with a solution of bicarbonate of soda, while at the top of the tank, kept separately, is a glass container

of sulphuric acid, closed with a loose lead stopper. In operation the extinguisher is inverted, the two fluids thus mingling and generating carbonic acid gas. This produces considerable pressure and expels through the hose the water charged with the gas, which is a non-supporter of combustion.

With all the good points of extinguishers it must still be said that they have not the simplicity and dependableness of pails of water; consequently they should not entirely replace fire pails. Extinguishers may replace one-half the number of fire pails on a floor, on the basis of an approved three-gallon extinguisher for six pails, but no more. They should be set and located very much as fire pails. Extinguishers should be examined twice a year, tested and recharged, as in this manner valuable knowledge may be obtained by employés as to the operation of the device.

Wheeled engines are similar to hand fire extinguishers in make-up and operation, but instead of three gallons they usually contain forty. They are mounted on wheels to permit easy movement. Each engine has fifty feet of hose and throws a stream from twenty-five to eighty-five feet beyond the nozzle. Such engines are especially valuable for private fire departments in stores, warehouses, hotels and factories, or about large country residences.

84. *Fire pails.*—The oldest vessel used for the purpose of extinguishing fires is the fire pail or bucket. Long before fire insurance was devised the fire pail was the only generally approved instrument for putting out fire. This means that pails or buckets filled with water were set aside to be used for this purpose. The factory mutuals state that one-half of their fires are extinguished by a pail of water. If used at the proper moment, a

fire pail is of greater service than the entire fire department a few minutes later. It is cheap; its purpose is understood by all; and it may readily be kept in condition for use. Everyone can use a pail of water; while the average person, especially when excited, does not understand a patent fire extinguisher or may not know how to turn a standpipe valve and use the hose. The value of the fire pail is well recognized by all insurance companies, by all fire departments, and by others interested in the safety of life and property.

Since the general purpose of all these various appliances is to put out fires and that as quickly as possible, it is apparent that whatever extinguishers are used should be understood by the person responsible for their use and that the appliances themselves be kept in good condition. A fire pail is of little use unless filled and kept within reach. For this reason the pails are usually painted red and marked with black letters "For Fire Only." Other regulations specify the number of pails required, their location, and capacity; and when such regulations are met, the insurance companies as a rule grant liberal reduction in rates.

People with the best of intentions often instal costly fire protection equipment which through neglect is found altogether useless when a fire breaks out. Knowledge of this tendency to neglect things has caused insurance companies to draw up certain rules and regulations, the following of which are examples:

85. *Signaling systems.*—In addition to the means at hand for putting out fire it is necessary that someone should be present to use them. This is not always possible, especially when plants are not in operation, or business is closed for the night, or on Sundays or holidays. To overcome this difficulty systems of signaling have

been devised, all of which may be embraced under the general term of "Signaling systems."

Centuries ago, it was the custom to have towers in each city and village, on which watchmen were stationed throughout the night to raise an alarm in case of fire. This system is still prevalent in certain foreign countries, while on the Island of Nantucket it was not discontinued until 1907.

86. *Electric signal.*—The system for the electrical transmission of an alarm of fire was invented about twenty years after the first telegraph was erected between Baltimore and Washington. Up to that time notice had been transmitted by the lookout system, and as cities grew larger a division into districts took place so that an alarm for one would not arouse the whole city.

The automatic fire alarm operates by the action of heat, notifying the fire department in this way not merely of the presence of fire but the exact location as well, thus reducing to a minimum the time for reaching it.

87. *Special building signal.*—The special building signal runs from a specific building to the fire department headquarters. It operates, however, by hand, not being automatic. To be successful, therefore, there must be someone on the premises to operate it. This feature is recognized by a difference in the insurance rate for a building protected by a watchman during non-business hours.

88. *Automatic sprinkler supervision.*—This is a system of fire-signaling connected with sprinkler devices. It is of value in that it operates when the water flows, and to that extent is more efficient than the automatic alarm that operates under the action of heat only. It is evident that unless notice was received, in a system so complicated as the sprinkler, an accident may occur that

would turn the water on and without any fire do an immense amount of damage.

89. *Watchmen.*—It is difficult to standardize human beings, but with a watchman's service, public or private, efforts have been made to reach as near to standardization as possible. The watchman is a type of workman who will probably never pass away despite all the improvements in mechanical devices that encroach upon his field. Since ordinary prudence ought to forbid leaving buildings and their contents without care or supervision during nights, Sundays, holidays, or any other non-business period, the employment of watchmen against fire or burglary has been the rule rather than the exception. The fire insurance companies recognize in the rate of a building, the presence or absence of an approved watch service, having adopted this practice after long experience with the discovery and prevention of fire.

90. *Safety receptacles for ashes, etc.*—Fires are frequently caused by hot ashes being thrown into wooden boxes or barrels, or into receptacles containing combustible materials. Fires so started during the night or when a place is deserted may gain considerable headway before discovery. Covered metal ash cans almost entirely eliminate the possibility of such a fire. Cans of good, galvanized iron or steel, reinforced with steel staves and having hoops at the bottom, are recommended for this purpose.

91. *Oily waste.*—Spontaneous combustion or ignition is by no means a rare cause of fire. Fibrous, porous, or finely divided materials if soaked with vegetable oil are likely to catch fire. Vegetable oils have great affinity for the oxygen in the air, forming a combination that may generate enough heat to light a fire. For this

reason, cotton waste, sawdust, fine shavings, etc., if at all oily, need special attention. Such materials when collected during the day's work should be put into a metal receptacle known as the "self-closing waste can."

92. *Packing bin.*—A suitable receptacle should be provided whenever excelsior, straw, hay, cut paper, or other loose packing material is used. Since inflammable material adds to the spread of fire in addition to the danger of spontaneous combustion, or quick ignition by sparks, matches, etc., the necessity of confining such material in a proper inclosure is clearly evident.

General standards are not available for some of these devices. Those furnished in this chapter are the outgrowth of experience in one of the largest cities in the country. They cover many points generally found only in building codes, or in office rules, not subject to the notice of the general public.

93. *Necessity for standards.*—The more delicate and intricate a piece of mechanism is the more care it requires. Even the fire pail, perhaps the simplest device for fire fighting, requires a certain amount of care to be kept in good condition and available for use when wanted. Clearly the better the article at its installation the less care will it require and the more efficient will it be when called upon to do its work. It would be pleasant indeed if fire fighting devices could be installed with a guaranty of doing exactly what is wanted when a fire occurs.

There always was some slight effort to keep an oversight of fire fighting devices, even in the days when simplest methods were in vogue. Thus the fire pails were required to be of a certain size, to be kept in a certain manner, and to be used for no other purpose. When sprinkler installation began it was found that

these equipments—consisting as they did of many feet of pipes with valves, water supply and various other features—required a constant inspection. The sprinkler itself—possibly the most vital part unless it be the water supply—once installed must not be permitted to depend upon a fire to test it out. It must be subjected to a laboratory test before the installation.

94. *National Fire Protection Association.*—The National Fire Protection Association, founded in 1896, instituted the plan of devising certain standards for fire fighting devices. The following list illustrates the requirements:

Cast iron mains and their proper construction.

Fire pumps, steam, rotary, centrifugal and electric, their construction and installation.

Hose and play pipes, their construction and care.

Hydrants, their construction and installation.

Valves for automatic alarm.

Carbonic acid gas fire extinguishers.

Dry pipe valves for sprinkler systems.

Fire doors and shutters.

Gate valves for outside and inside use.

Fire pails.

Hose houses for mill yards.

Private fire department.

Open sprinklers.

Reservoirs for pump or sprinkler supplies.

Signaling systems, watch clocks, thermostats, etc.

Steam pump regulators.

Tanks, gravity and pressure.

Wire glass.

Water supplies.

This list is sufficient to show the extension of the business of fire protection. Insurance companies have

given no special attention to the invention of fire protecting devices. They confine their efforts to standardizing those already existing which have been approved.

95. *Laboratory testing.*—If standards are to be established, it follows as a matter of course that there must be some place for testing the various devices. This is now done at the underwriters' laboratory in Chicago, established several years ago and now under the control of the National Board of Fire Underwriters. It undertakes to test the products of any manufacturer and takes up problems submitted by the underwriters. The standards recommended are published as the standards of the National Board of Fire Underwriters, whose headquarters are in New York City. In England the work is done by the British Fire Prevention Committee, which maintains a laboratory or testing station. Its work corresponds somewhat to that done in the United States, although it does not have, perhaps, as in this country, the full official sanction of the insurance companies. The mutual fire insurance companies also maintain a laboratory in Boston for the testing and carrying forward of the work in which they are interested.

96. *Field inspections.*—The work of testing is taking the form that will probably characterize it in the future. It is evident that a manufacturer of fire doors would find it inconvenient to ship every fire door to Chicago to be tested. To overcome this difficulty, an inspector representing the laboratory visits the manufacturing plant, examines the work and places thereon the seal of approval. This is called "field inspection." The inspection at first covered only wires used for electrical purposes, but is rapidly extending and now includes wired glass windows, standard fire doors and shutters, and many other devices.

97. *Place of the engineer.*—The business of fire insurance is gradually becoming scientific, if that term may be used in a somewhat modest manner. More and more the fire engineer is coming to have a fixed place; and as the nation awakes to the fact that it is of more importance to prevent fire than to put it out, so will the demand for his work increase.

An additional fact which has made the work of the engineer necessary is the need for co-operation among the insurance companies. If each one hundred and sixty companies in the field were to adopt its own standard and rules for the installation and making of fire fighting devices, it is clear that there would be no standard which the insured would adopt or even seriously consider. The fire insurance field is largely co-operative. A single company is able to insure only a part of a plant; thus the insured must have the policies of several companies to be fully protected. This being the case it is desirable on the part of the companies to unite on at least the fire engineering branch of the business, a branch in which there is the least doubt as to the success of co-operation.

CHAPTER VII

FINANCIAL ASPECT OF FIRE INSURANCE PROTECTION

98. *Financial phase.*—The financial phase of the problem of fire protection is not unworthy of considerable attention. The whole problem of fire protection is closely allied to the problem of fire insurance; and it is problematic whether either has benefited by the union or whether its development has been as great as it would have been had the close connection not been maintained. The fact remains, however, that when the owner of a considerable property undertakes improvements, having in view a lessening of the fire hazard, he at once considers how much he can save on the rate of insurance. This view of the matter is wrong in that it tends to limit fire prevention to properties sufficiently valuable to pay the cost of prevention at a reduced rate of insurance.

99. *Illustration.*—For instance, the owners of property carrying insurance of one million dollars, found that by introducing sprinklers the saving in the rate would be sufficient in three years to reimburse them for the actual cost of the equipment. Thus, in the course of time the equipment becomes the property of the owners through a saving in the rate.

It can readily be seen that as a fire hazard a property which may only want insurance of $25,000, may be as bad as one carrying one million dollars of insurance, but the saving in the insurance would not be sufficient to pay for a sprinkler equipment.

100. *Relation between cost and saving.*—Fire pails are the cheapest form of fire prevention. They can be placed in a building at so low a cost that the saving in the premium on the smallest amount of insurance is generally sufficient to pay for the installation.

Between these two extremes—the fire pail and the sprinkler—come various other devices, of intermediate cost, such as signaling systems, chemical extinguishers, etc. Experience shows in nearly all cases that in order to secure their installation the saving in the rate of insurance must be sufficient to reimburse the insured for the expense. In other words, the insured entertains the idea that the cost of a fire prevention device should be equaled by a saving in the rate. This attitude has limited the work of fire prevention to a large degree. It is equally true when the insured is asked to consider the re-arranging or changing of his plant; as dividing it into smaller units, placing fire doors at communications, cutting off the more hazardous from the less hazardous, or the manufacturing from the storage. It generally comes back to the question of "How much will I save on my rate of insurance?"

101. *Engineer's recommendations.*—The fire protection engineer is like all engineers in civil life. He must consider the relation between the cost of his recommendations and the gain to his client. He may suggest that the mere limitation of the chances of fire should be sufficient to the insured to induce him to install a protecting device, but when the engineer also offers a reduction in the rate sufficient to cover the cost of the improvement the argument becomes additionally attractive.

The pocket nerve has been defined as the most sensitive nerve in the human body. This is especially true

in the work of fire prevention, for when the increased charge touches the pocket the insured is ever found more amenable to the consideration of installing fire prevention devices.

The supposition that fire prevention and the reduction in fire loss in the United States and elsewhere are dependent upon the fire protection engineer is not altogether true. On the contrary, such ordinary faults as the failure to take care of waste, rubbish, etc., are responsible for more than one-half of the fire losses in the United States. An improvement in the housekeeping of the business-house porter is all that is necessary to reduce the fire loss by 50 per cent.

102. *Examples.*—Under "A" below is given an actual report. It may be added that this method of reporting has been in existence and has done good service for many years.

Under "B" is given an example of a somewhat more minute method already referred to in this work.

REPORT A

6 story and basement brick building, with 1 story and basement brick extension. Front.—Stone, 1st and 6th floors and brick and stone on other floors. Walls.—Independent east 20–16, party west 24–16 walls beam bearing. Parapet Walls.—Equal to more than 3 feet. Roof.—Composition and gravel. Skylights.—Wired glass on metal in roof, thin glass on metal with wire screen protection over stairs, elevators and dummy, wired glass on metal with wire screen protection on extension. Shutters.—Front none, rear and sides none, but rear and side windows are of single wired glass in kalamein covered sash and frame.—Cornice.—Stone. Openings through floors.—Elevators, 2, in one shaft, of 6 inch terra cotta blocks, from basement through roof, opening to floors by kalamein covered doors, with wired glass panels hung by butt hinges to kalamein covered trim, also transoms of single wired glass in kalamein covered sash and frame; power opening in basement to motor rooms, enclosed by terra cotta blocks, the iron stairway forming the ceiling of one room and the ceiling of the other is plaster on expanded metal, each has

opening to basement by kalamein covered doors. Dummy, in shaft of 4 inch terra cotta blocks, from basement through roof, opening to floors by kalamein covered doors hung by butt hinges to kalamein covered trim. Stairs.—Of iron frame, with iron treads and landings enclosed in shaft of terra cotta blocks, openings to floors by kalamein covered doors, with wired glass panels, also transom lights of single wired glass in kalamein covered sash and frame. Floors.—Double, on wood beams, on steel girders and cast iron columns, also about one-half of 2d floor filled in between beams with cinders for deafening. Finish.—Walls plastered, ceilings plaster on expanded metal. Interior partitions are plaster on expanded metal, on wood studding, except some frame partitions on 2d and 3d floors. Height.—74½ feet. Area.—About 5,000 square feet. Building erected in 1907.

ENTIRE BUILDING— Stock of and manufacturing perfumes and toilet articles.

BASEMENT— Empty bottles in crates; bottle washing.

1ST FLOOR— Office and sales room.

2ND FLOOR— Stock, packing and shipping; packing material kept in frame metal lined bins.

3RD FLOOR— Stock and filling; 1 gas stove.

4TH FLOOR— Stock and filling.

5TH FLOOR— Work rooms; 2 filling, 1 closing, 3 pomade washers and 1 mixing machine by electric motor; 2 stills and 3 kettles, steam heated; 1 gas stove, 2 barrels of vaseline in metal cans and in barrel; 200–300 pounds of pomade in metal cans; 5 barrels of alcohol in wood; percolating; stock of perfumes in barrels, tanks and glass.

6TH FLOOR— 5 face powder sifting machines by electric motor; frame metal lined steam heated dry box; stock of essential oils in glass; supply room.

EMPLOY— 75 hands.

HEATING— Steam from two open set boilers under sidewalk, cut off from basement by brick wall, with kalamein covered door at opening to basement.

LIGHTING— Gas and electricity.

PETROLEUM PRODUCTS OR COMBUSTIBLES— As above.

FIRE HEATING FOR MANUFACTURING— As above.

POWER FOR MACHINERY— As above.

POWER FOR HOISTING— Electric motors in basement.

FIRE APPLIANCES— 12 fire pails each floor; 4 inch standpipe, with 50 feet of 2½ inch linen hose attached to each floor, supplied by two tanks (one of 10,000 gallons and one 2,000 gallons) on roof and outside steamer connection; fire alarm signal apparatus, not automatic, approved; 1 Underwriters fire extinguisher on each floor;

watchman, with Holizer Magneto watch clock, station each floor, hourly rounds, records dated and filed.

EXPOSURES— East, adjoining brick dwelling; west, adjoining brick dwelling, with small frame extensions; rear, not serious.

CONDITION— Good.

REPORT B

REPORT ON ORDINARY CONSTRUCTION

5 sty. and B.

LOCATION— Estate of Jno. R. Graham.
OWNER— Agent, G. H. Walker, on premises.
FOUNDATIONS— Stone set in cement mortar.
WALLS— Bearing, Ind. R & L.
Non-Bearing, F & rear.
16″ — B—2.
12″ — 3—5.

FLOORING— B—5, Single ⅞ in.
BEAMS— (1) 3″ × 12″ × 16″ × 20′. Y.P. Bridged.
4 & 5 3″ × 12″ × 20″ × 20′. Y.P. Bridged.

GIRDERS— 1—10″ × 10″ × 12′. Y.P. S.R.
COLUMNS— B. 1 row C.I. 5″ × 8′ × 10 bays.
STAIRWAYS— (1) 1—5 In frame hallway ⅞″, doorways on all floors cut off by wood doors. Exterior windows cut off by ¼″ plain glass in wood frame. Wood stairs.

HOISTS— (1) in hallway. No shaft. H.C. traps.
CEILINGS— 1–2 Boards.
3–5 Open.

SIDINGS— 1–5 Boards.
FIRE ESCAPES— F & Rear, 1–5.
Could not get on roof, trap door nailed.

OCCUPANCY.

B.— ..... Beer apparatus, storage, goods in cases. I stove hole in wall.

1.— ..... Retail stationer & printer. 6 hands. Machines, 1 gas engine on metal, exhaust outside about 3″ from wall. Exhaust pipe ends about 3″ from wooden trough.
4 power job presses.
1 hand cutter.
2 lines overhead shafting.
1 S. C. Waste can.
1 pint S. C. Benzine can, benzine bought as used.
2 gals. oil, ordinary can.
1 ordinary ½ pint oil can.
No fire heat. Sweepings carried out every day. Back of shop crowded.

PT. 2.— ..... Manufacture of Thermometers.
4 hands.
1 lathe, power, from first floor.
1 rolling machine, power, 1 power blower for gas jet.
1 drill press, power, 1 foot power cutter.
1 grinder, power, 1 air tank, tin tube connection.

Fire heat—coal stove, on metal.
1 gas torch, rubber tube.
Packing material—1 tin lined bin for excelsior, 1 bale of excelsior kept inside.

Pt. 2.— ..... offices.
Pt. 3.— ..... paper ruler, 3 hands.
3 ruling machines, power, from first floor.
1 cutter, power.
1 stitcher, power.
1 hand punch.
Heat—coal stove on metal.
1 K. O. lamp. K. O. bought as used.
1 qt. machine oil in bottle.
Sweepings carried out every day.

Pt. 3.— Occupied but could not get in.
Pt. 4.— Used for machine shop, not running, could not get in.

Pt. 4.— ..... machinist. 2 hands.
4 lathes, power from first floor.
1 shaper, power from first floor.
2 drills, power from first floor.
1 hack saw, power from first floor.
1 grinder, power from first floor.
1 grind stone, power from first floor.
1 rolling machine, hand.
Shafting fastened to ceiling.
1 hooded forge on metal.
4 swinging gas jets.
15 gals. oil in ordinary 5 gal. cans.
Oily waste in covered tin can.
Rags piled under work bench.

Pt. 5.— ..... manufacture tin boxes & toys.
6 hands.
1 stamp, power from first floor.
1 blower, power from first floor.
1 cutter, foot, power from first floor.
2 presses, foot, power from first floor.
Shafting on ceiling.
2 gas heaters for soldering iron, on work bench, connected by iron pipes.
5 gals. paint in ordinary 1 gal. cans.
1 qt. shellac in bottle.
1 qt. turpentine in bottle.
Stove hole in wall.

Pt. 5.— ..... Metal spinners, 2 hands.
2 speed lathes, power from first floor.
1 blower, power from first floor.
1 metal saw, power from first floor.
1 polishing machine, power.
1 hand press.
1 foot power cutter.
Shafting on ceiling.
½ gal. calcium carbide in ordinary can.
1 gal sulphuric acid in bottle.
Rubbish in end of shop.
Coal stove on brick floor.
1 forge on brick floor.
1 gas heater for soldering iron, on metal covered bench, rubber tube.

1 K. O. torch.
1 gal. muriatic acid in bottle.

FIRE PAILS—

B.—1 O.K. 3 on shelves, blocked.
1. 4 O.K.
Pt. 2–4 O.K.
Pt. 2–2 O.K.
Pt. 4–1 O.K. 1 not filled.
Pt. 5–2 on shelves, blocked.

CHAPTER VIII

RATING

103. *Early forms of rating.*—From what data or how the first tables of rates for fire insurance were compiled is not known. But it is known that they were not based, as is the practice of to-day, on the amount of property insured but on its rental value. Barbon in 1667 made his tables from such a basis. Although the earliest tables known are those of the year 1681, yet there is evidence to show their derivation from Barbon's office and that they were based on the rental value of property. The tables show the rate from one pound to ten and from ten pounds up to one hundred.

There has never been a time in the history of fire insurance when the same rates were charged for all classes of property. In the beginning a difference was made between buildings of brick and stone and buildings of wood, the rates for the latter being nearly double those of the former. The first policies were written usually for seven, fourteen, twenty-one, and thirty-one years, corresponding closely to the leasehold periods in England. Term policies apparently came into force at the beginning of the business, and policies written for twenty-one years did not take three times the rate for each term of seven years but twice the rate for that period of time. The difference of rate between the brick and stone and the wooden building was the crude beginning of the present minute system of differential rating.

104. *Classification system.*—As already mentioned Barbon insured houses only, Povey being the first to insure the contents. The rate charged for the contents was at first the same as for the building itself and apparently continued in force for some years. After a period of flat rates—the same rate was charged for a brick and stone building and its contents or a wooden building and its contents—an advance was made by the Union Fire Office in 1714 or 1715. This introduced a classification system for determining rates, a system still in force to a certain extent to-day. Risks were divided into Common Insurance, Hazardous Insurance, and Doubly Hazardous Insurance. Between these three divisions was also introduced One-Half Hazardous Insurance. Between the first and second divisions, for instance, there would be Common Insurance One-Half Hazardous, and between the second and third Hazardous Insurance One-Half Doubly Hazardous, thus making practically a fivefold classification.

105. *Prospectuses.*—A few years later, in 1720, when the Royal Exchange and the London Assurance were incorporated, the practice of publishing prospectuses had become established and was extended by these companies. Thus, the Royal Exchange stated that it would insure any college hall, house, or any other building, and all goods, wares and merchandise, except notes, bills, tallies, books of account, ready money, china and glass ware, jewels, plate, pictures, writing, corn, hay and straw not in trade, to their full value, the insured paying five shillings for every £250 on brick and stone buildings and the goods and mechandise therein, and eight shillings on timber, plaster and thatched buildings and the goods and merchandise therein. If the sum insured did not exceed £1,500 the

rates quoted above were the first in force, but if the insurance exceeded that amount the rates were seven shillings and sixpence for each £150 of value in the brick and stone class, and twelve shillings in the other building classes.

106. *Segregation of trades.*—At this time certain trades began to be segregated and classed as coming within certain limits. Thus the risks of brewers, distillers, chemists, apothecaries, powder men, ship and tallow chandlers, sugar and bread makers, dyers, soap boilers, oil and color men were considered more hazardous than others and paid a proportionately higher rate. Also the glass trade, including looking-glass, and china ware trades, being more hazardous, were grouped with this division.

The foregoing paragraph calls attention to the practise then prevailing of increasing the rate of premium when the insurance passed a certain amount. The application of this principle became quite common in Great Britain and lasted until about 1848, when it apparently passed away. It seems never to have secured more than a slight foothold in this country.

Down to 1848, the above were the methods of rating in Great Britain, and for that matter practically in the United States also, the system in other words being nothing more than a rough grouping of the different businesses into a few classes and rates being charged accordingly.

In 1848 a tariff of fire rates corresponding in a measure to the modern manufacturing schedule was introduced into Great Britain. It applied to woolen mills. From that time up to 1906 various other tariffs have been put in force, generally applying to the whole of Great Britain, although occasionally only to parts.

107. *Philadelphia Contributionship.*—In the United States the early insurance practises followed very closely the methods which prevailed in England. One company, whose experience has come down to us, was the Philadelphia Contributionship. It insured houses for a minimum period of seven years. If the building was of brick, the charge was twenty shillings for £100. If the building was of wood, the charge was sixty shillings. In addition to this payment there was a charge for the policy itself of one shilling and twopence for brick buildings and two shillings and sixpence for frame. This practise of charging for the policy continued in force for a long time.

108. *Green Tree Company.*—The third insurance company was founded in Pennsylvania, the occasion of its organization being interesting as it furnishes an early instance of a charge being made for a specific increase of hazard.

A building insured in the Philadelphia Contributionship was ignited from a fire in the trees in front of the house. The companies declared that all insurance would be canceled on such properties unless the shade trees were cut down. The insured protested and answered that if the company did not abolish its rule they would withdraw their insurance and form another organization. The company held to its position and the seceders formed the Green Tree Company. This new company established two sets of rates, one for houses having no trees in front of them and a somewhat higher rate for those having them.

109. *Early charges.*—There are no exact data as to how charges were first determined for fire insurance in the United States. It is sufficient to state that the method was a duplicate of the English system with

some increases to meet conditions then existing in the United States. It is known, however, that when the Mutual Fire Insurance Company was organized in Boston in 1797 an extensive research was made to determine the number of buildings destroyed by fire within a period of thirty-eight years, statistics apparently having been available for that number of years. These records show that the average number of buildings standing throughout the period was three thousand and the loss eighteen and a fraction per cent per annum. On these statistics the company's rates were based. The original insurance companies, of course, could not have had any such data as it was not available.

The early rates were based on certain classes or groups. Class one was 35 cents, the rates then increasing 2½ cents for each class up to the fifth. The sixth class bore an advance of 5 cents over class five. In Virginia there were eight classes; in New York, and Norwich, Connecticut, seven. This method of rating by a division into classes continued in force for many years. There was also adopted in this country the grouping of "Not Hazardous," "Hazardous," "Extra Hazardous," and "Specially Hazardous," the goods embraced under each of these classes being as follows:

Not Hazardous.	Coffee, flour, household furniture, linen, paints ground in oil, etc.
Hazardous.	Chinaware, plate glass, cotton in bales, and firecrackers.
Extra Hazardous.	Apothecaries', fur dressers', printers', and rag stores.
Specially Hazardous.	Barbers', gas makers', and other heavy manufacturing risks.

The building was rated according to one of the foregoing classes, and then to determine the rate on the contents a charge was made accordingly as the contents

fell into the "Not Hazardous," "Hazardous," "Extra Hazardous," and "Specially Hazardous" groups. In the first class an addition of 5 cents was made; in the second group an addition of 10 cents; in the third 25 cents; and in the fourth a much higher rate was charged, a special table of additional charges applying thereto. Such was the system of rating fire insurance up to about 1850.

110. *Special ratings.*—There had been adopted in England a tariff applying to cotton mills. This had its effect in this country and other special methods of rating also began to be adopted, first applying to mills like cotton, woolen, etc. This system of rating manufacturing risks corresponds in a measure to the manufacturing schedule used in different parts of the country to-day and has never been wholly and successfully superseded. It starts with a base rate according to the business done in the mill, sundry charges being added thereto. A copy of such schedule, now in use for at least twenty years, is as follows:

	Minimum Hazard Rate	
	Add for deficiencies	
1	Walls, frame or not standard	.50
	Part frame	.25
2	Roof not standard	.05
	Mansard according to exposure	.05
	Skylights	.05
3	Cornice, not standard	.05
4	Height, each story above five or 60 feet	.05
5	Floors not standard	.05
	Ceilings	.05
6	Floor openings, unless closed in accordance with standard.	.10
7	Shutters, exposed sides, not standard	
8	Communications	.05
9	Heating, other than approved steam heat	.05
10	Lighting, other than approved gas or electric light	.05
11	Ground area: each additional 5,000 square feet	.10
12	Fire appliances, no buckets or not in proper order	.10
13	Watchman, no watchman, or watchman without approved clock	.05
	CHARGE DISCRETIONARY.	
14	Fire heat	.10
15	Benzine or similar product	.10 to .25.

16	Wood working, unless a wood worker	.25
	Hand	.10
17	For each additional occupant	
18	For exposure, bad construction or condition, charge according to hazard	
19	Waste, not properly cared for	.05

HAZARD DEFICIENCIES.

20	Oiling, Varnishing, Painting	.05 and up.
21	Storage, Paints, Oil, Varnish, Turpentine, Alcohol	.10 and up.
22	Drying, except in fire-proof room	.10 and up.
23	Storage or use, hay or straw	.05 and up.
24		
25		

Contents
%
Building

111. *Summary.*—Before entering on the subject of schedule rating it is well to summarize the successive steps leading to the present development of rating.

(a) There is no certain knowledge of how the early rates were made.

(b) They were probably based on the rental value of the property.

(c) They were divided into two classes according to the construction of the building.

(d) The contents were insured at the same rate as the building.

(e) There was a segregation of certain classes of risks and a higher rate charged for building and contents if such risks were in the building.

(f) Classification introduced of "Common insurance," "Hazardous insurance," and "Doubly Hazardous insurance" with the classification of "One-half" and "Doubly Hazardous insurance" between the first and second and second and third, thus making five classes.

(g) The first steps for schedule rating arose when the first tariffs were adopted for sundry mills.

The classifications in paragraph "f" were the Eng-

lish divisions; in this country they were "Not Hazardous," "Hazardous," "Extra Hazardous," and "Specially Hazardous."

The following is a brief sketch of the origin and growth of our modern system of rating:

112. *National Board of Fire Underwriters.*—This board was organized in 1866. The necessity for some form of co-operation had been obvious for many years. A practically successful effort was made to establish such a body in New York City as early as 1826. This body was charged with the general supervision of the business, or rather with the drafting of policy forms, the fixing of rates, and the determination of general conduct. The early organization was more or less tentative in its nature and did not exert a very strong influence. In 1852 a meeting of all the companies engaged in an agency business was held in New York City. There were eight or ten companies represented at the meeting, the questions taken up being much the same as those considered at the present time.

On July 4, 1866, in Portland, Me., occurred one of the most disastrous fires in the history of the United States, excepting those in New York City of 1835 and 1845 and some early fires in San Francisco. It was only a few days previous to this fire that a call had been issued for a general meeting to consider the question of organizing a national board of fire underwriters. The fire naturally lent great impetus to the movement, as a loss of $10,000,000 in those days was almost as difficult to meet as the fifteen times larger loss at San Francisco forty years later.

The National Board of Fire Underwriters undertook in addition to many other things the determining of the rates of insurance for the entire country, and as

the companies' funds were rather low at that time the work in the beginning was fairly successful. The Board's method of fixing the rates was not directly accomplished by its own inspectors and raters but rather through the organizations in the different states and with the voluntary assistance of the special agents of the various companies. The work was very successful for a year or two, but as the companies recovered from the Portland fire, more or less competition again appeared and rates were partly disregarded. This function of the National Board continued to weaken until at the time of the Chicago fire in 1871 it had practically ceased. The loss at Chicago was so overwhelming as to leave no dissenting voice in regard to the necessity of increasing rates not only to, but beyond the point originally fixed by the National Board. The conditions were such that a higher rate was imperative, and the insured, recognizing that a sufficient income must be secured if the companies were to meet losses, were willing to pay.

The Chicago fire was followed a year later by the one in Boston. This fire also served to strengthen the National Board. After a while, however, the policy of rating by a national organization was recognized as unwise. The problem was too large to be handled in that way. The National Board was re-organized and abandoned the rate-making function, but has since done admirable work with the general conditions of the business.

113. *Local organizations.*—After the abandonment of rate-making by the National Board, local organizations again assumed the function. By local organization is meant such as might cover a city, a portion of a state, a state, or even several states. It was usu-

ally composed of the representatives of the companies in these territories, these representatives being familiar with the local conditions. Such organizations exist in the larger cities, as in Boston, New York, Philadelphia, Chicago, San Francisco, Cincinnati, Louisville, St. Louis, and probably elsewhere.

114. *Attack on organizations.*—The organizations charged with the duty of rate making have been attacked in nearly every state. With the exception of some of the larger trusts no form of commercial enterprise has been subject to such violent denunciation as the so-called insurance trust as typified in its rating organizations.

An organization whose object is to secure a fixed price for the article in which it deals seems at first glance to partake of the nature of a trust; and little distinction has been made in many states between a rate making insurance organization and one whose object is to control the price of commodities.

In the eastern states the rate making organizations have been little disturbed, there being strong organizations in New England, New York, Philadelphia, and Baltimore. Throughout the Middle West the conflict has raged fiercely. On the Pacific Coast the function of rate making has been allowed to remain undisturbed in the hands of the companies. In some states the most extreme measures have been adopted, amounting to absolute prohibition of practically any form of organization of the various insurance companies. From prohibition to tolerance there are all forms of control. Thus, in some states the agents of the home companies are permitted to make rates by conference. In other states the local agents of the companies in those states, whether representing a home company or not, are per-

mitted to make the rates. The larger organizations, however, those which control the larger premium paying territories, are volunteer organizations.

115. *Value of organizations.*—As a matter of fact the rating organization is an economic organization. Its express purpose is to perform a certain duty for all the companies that otherwise would have to be performed by each individual company. That duty is the inspection of the property, the determination of the rate according to a schedule duly adopted, the regulation of policy contracts within limits permissible by law, and the determination of general practices not covered by the law.

At the time of the San Francisco fire $40,000 of insurance was desired by an insured. In order to secure this amount a broker was compelled to visit forty different offices, since $1,000 only could be placed in each office or company. It is evident that if the inspection and making of the rate on this risk had not been done by means of co-operative bureaus it would have been necessary for each company to send someone to do the work, with the result that this item of expense would have cost forty times what it did. Hence, in its primary essence a rating organization is economical, doing for all what each would have to do for itself.

It is essentially important to the insured that the rates for fire insurance should be the same under like conditions for all parties concerned. Each insured should pay for insurance a rate in accordance with the experience developed in that class of business, and likewise with the deficiencies and credits shown in his individual plant.

Insurance is a necessity. One may go without oil, without certain forms of groceries, without wearing

apparel, if he feels that the price is extortionate and the control a menace to the public; but fire insurance is something which the business man cannot do without. That he must purchase, not because he wishes, but because his credit is more or less dependent upon it. Therefore, as it is a fixed charge in his business it is far more important that he should get it at a price based on the same conditions as those of his competitors than that he should secure a temporary advantage; for he will remain constantly in doubt as to whether his competitor has not after all secured a far greater one.

116. *Rate making in Kansas.*—The latest phase of rate making has appeared in the State of Kansas. This state has practically undertaken the business of rate making, or rather it requires the companies to file with the State Department their charges for the insurance of property. If the charges are considered too high the commissioner has authority to hold an investigation. This step would appear to establish an equality of rates among the insured, since the law provides that rebating or any other practices tending to reduce the rate shall be severely punished, even to the extent of loss of license.

117. *Duties of rating organization.*—In order to perform its work properly the rating organization must have a reasonable control over the making of the rate, the determination of privileges to be granted on policy forms, a general oversight of the practices with regard to methods of issuing policies, etc.; otherwise it would be possible for an individual company to issue a policy at a certain rate and then grant privileges so broad as to make it actually low.

118. *Types of risks.*—If there were nothing to insure but dwelling houses the method of computing the

rate in fire insurance would be much simpler, as buildings would then be of comparatively uniform occupancy and hence of a uniform hazard. Then the only questions remaining to be considered would be as to materials of construction, the situation with regard to other buildings; that is, exposure, etc. The rater is confronted with a problem bearing no resemblance to this simplicity. Buildings are occupied for all sorts of purposes. The single-family dwelling, detached 100 feet at least from all other properties, is as safe a risk as it is possible to secure. Passing, however, from this type of risk, there comes the dwelling occupied by two families or more. In New York City there are single blocks occupied by hundreds of families. All these risks, however, present something in common—their occupancy; for, while it is a multiple occupancy, nevertheless it is all of one character, that is, dwelling. Hence, the business conducted in these buildings is fairly uniform in character. The statistics for a few years of any company, and especially of a few companies, would suffice if all buildings were occupied for living purposes only to furnish an average on which rates of insurance could easily be based.

119. *Store and dwelling.*—The next step from dwelling occupancy is the risk known as store and dwelling. It may be a one story building with a store in front and a dwelling in the rear, or, more usually, it may be a store on the first floor and perhaps in the basement with all dwellings above.

There has been introduced into the dwelling building a type of occupancy that presents several different kinds of conditions. An enumeration of the uses of the basement and first floor occupancy is sufficient to disclose this. It may be a florist's or grocer's store,

a paint shop, a printing establishment, an apothecary's or shoe shop, etc. In the early days, when the dwelling and store were combined, these risks were usually rated according to business occupancy and put into their corresponding hazardous groups. For a long time the method continued of regarding a store and dwelling as practically subject to the same rate, but later the practice developed of segregating some of these occupancies (as a paint shop when found in connection with the dwelling) and regarding them as more hazardous than others and charging additional rates for the building and dwelling tenants.

120. *Business building.*—After the dwelling, and store and dwelling, comes the building devoted entirely to business purposes. It may be a small corner grocery, totally distinct from any dwelling occupancy. From this small business the type varies through all the groups and sizes and constructions until the modern department store occupying entire blocks is reached, including adjoining blocks with tunnels beneath the street and bridges overhead. In the domain of business buildings there is no limit to the kind of business occupancy and to the problems which the rater may have to solve. Formerly the business building was usually 25 by 100 feet, and 5,000 square feet was an extraordinarily large property. Nowadays the area may be 100,000 square feet, and the problem of how to meet the new condition becomes far more intricate than the mere increase in area would imply.

121. *Groups of risks.*—Risks fall into certain groups according to the occupancy.

Under (a) may be designated the dwelling class, which includes the private dwelling, the multiple dwelling or apartment house, hotels and clubs. These differ

largely, nevertheless their chief purpose is to furnish in some form or other living conditions for tenants.

Under (b) is grouped the class of buildings represented by theaters and churches, each having a different purpose and therefore presenting a specific problem in fire insurance. The theater is typical of any place of amusement, whether a circus, a summer garden or any other place of amusement. Owing to special building requirements the theater presents a problem in regard to the safety of the audience more important than any question of insurance.

Under (c) may be represented stores and dwellings forming a group by themselves and all buildings in which the lower floor is occupied for business purposes and the upper floor for dwellings.

Under (d) may be classed breweries, sugar refineries, manufacturing plants, and risks of like character, representing types of property erected for a specific purpose and of no use for any other. Such and similar risks represent buildings where even the machinery, being enormous, must be erected in the building while it is in course of construction. It is needless to say that these special types form but a small group of risks and call for the special attention of the rater.

In addition to the manufacturing buildings mentioned under (d) there may be manufacturing buildings used for one purpose to-day and another to-morrow. They are usually loft buildings, where power is furnished for driving the machinery, and differ from business or mercantile buildings where goods are bought and sold. They are not furnished so well nor so expensively built, and should be considered rather as manufacturing plants.

A distinction in the different types of buildings

should be made, since the problem of rating a risk in a building of fireproof construction differs from that in a risk of non-fireproof construction.

In brief, the point of emphasis in the foregoing paragraphs is that there are hundreds of classifications used in rating, and that while each building furnishes its own problem that problem may be complicated by each tenant in occupancy.

CHAPTER IX

MINIMUM AND SPECIFIC RATES

122. *Minimum rates.*—Rates may be classified in many ways, the customary way being as "Minimum" and "Specific." The minimum rate is a rate applying to a large class; a class so identical in size, experience, and uniformity of hazard as to make specific rating unnecessary. A type of this class is the ordinary dwelling house, of which there are probably ten million in the United States.

If the ordinary dwelling has a value of $5,000 and a rate at 40 cents per annum there would be for each $100 of insurance 40 cents; for each $1,000 of insurance $4, and for the $5,000 of insurance $20. But in a large portion of the country many policies may be written for three years at twice the annual rate, hence it would be a matter of paying $40 once in three years to secure the insurance of $5,000 for that period. It is evident that if the insurance can be furnished so cheaply any money expended in inspecting or other work would not yield results comparable with the expense and would add so materially to the cost as to necessitate the increasing of the rate. This great body of risks, therefore, may be considered as coming under minimum rates, this minimum rate being the amount fixed for the territory by the organization of insurance companies and subject to no reduction, except, perhaps, for the amount of insurance carried, that is, the co-insurance clause attached.

Minimum rates apply to any large body of risks, such as dwelling houses, stores and dwellings, etc., which are so numerous and of so uniform hazard as to make a fairly safe average on which to base the rates.

123. *Specific rates.*—Specific rates apply to a certain building on property occupying a certain location. The specific rate is made for the risk to which it applies and does not apply to any other.

In a computation of the specific rate it is necessary to consider seven principal factors, namely:

1. Location.
2. Construction.
3. Occupancy.
4. Fire-fighting devices.
5. Exposure.
6. Co-insurance.
7. Losses in that territory.

Under these seven factors may perhaps be grouped all the information necessary for the making of the specific rate.

The specific rate is based on a certain schedule made to apply to the class, and it is necessary to consider schedule rating before proceeding to analyze schedules.

124. *Schedule rating.*—Schedule rating differs from other methods of rating in vogue in the United States up to 1870 with the exception of one or two schedules devised for rating cotton mills and some others, which were in their essence schedule ratings.

Schedule rating may be defined as the making of the rate in such manner as to penalize those items in the construction, occupancy and care, which experience has shown tend to cause fires; and as a system of credits to the risk for features that are helpful either in preventing or putting out a fire. The idea of schedule

rating may be better expressed in the following illustration:

Suppose, for instance, that every hotel were charged a flat rate of $1, the only question to consider being "Is it a hotel?" If so, the rate is $1. Now it is evident that while two hotels may be alike, yet it is very unusual. There are hotels of frame construction in the country far from all fire protection; and then hotels of fireproof construction in the city under the best of fire-fighting devices. If the rate of $1 is high enough to yield a profit on the frame hotel it is evident that it is several times too high for the fireproof hotel in the city. In all probability the system of schedule rating, which endeavors to treat each risk on its own merits, is as necessary for the success of the insurance business as it is equitable to the insured.

125. *Difference in risks.*—A system of schedule rating does not rate all hotels alike. It takes into consideration whether the hotel is frame, ordinary, or fireproof construction, and makes a difference for that one factor alone. It also takes into consideration the height of the different buildings, the number of rooms, the space the hotel covers, the conditions or relation of the kitchen (an important factor in a hotel, as it contains the furnace, stoves, etc.) and whether the hotel is heated by stoves in the individual rooms or by steam from a central point safely installed. These are the simplest of factors. The following shows an early attempt to discriminate in the various features of a risk:

COTTON MILLS.

Note: Surveys to be sent to office for approval, before issuing policy.

Brick or stone, slate or metal roof detached.

Floors laid in mortar, if ceiled underside, or of heavy plank with Norway pine 1¼ inches thick over plank.

Scuttle in roof, with permanent ladders on each side of building reaching to ridge of roof, platforms connected with ladders to one window in each story.

Picker in separate fire-proof building.

Lighted with gas, or by oil lamps enclosed in glass.

Good force pump that can be put in operation inside and outside of mill of sufficient power, and riveted leather hose of sufficient extent to reach all parts of mill, with places for attaching hose in each story, and hydrants outside.

Casks of water in each room with pails constantly filled.

Faithful watch every night and good watch clock.

Lightning rod with numerous points above roof.

No machine shop in mill.

Warmed by steam, pipes to rest on iron brackets, and to be one to two inches from any wood work or combustible substance (pipes should be kept clean and free from all combustible substances.)

Elevators to be cased, and when not in use to have scuttles or doors closed on each story.

Waste to be removed from mill daily, otherwise not insurable.

RATE OF PREMIUM .....100 cts.

ADDITIONAL PREMIUM FOR DEFICIENCIES.

Roof of wood or composition.....	10	cents
Floors not laid in mortar nor of plank.....	10	"
Building of wood, floors not laid in mortar.....	50	"
If no scuttle or ladders.....	10	"
Picker in mill in fire proof room.....	25	"
Picker in mill not in fire proof room.....	50	"
No force pump.....	25	"
No casks of water in each story.....	25	"
No watch, or watch without a watch clock.....	25	"
No lightning rod.....	10	"

Machine shop in mill, with forge..... 25 cents
Machine shop in mill, with forge and wood worked.. 50 "
Warmed with hard coal..... 10 "
Warmed with wood (stove pipe to be cleaned once in two months) ..... 25 "
Steam boiler in the mill..... 25 "
Lighted with open lights, or waste not removable daily .....Not insurable
Additional for age and external exposure."

126. *Variety of schedules.*—The principle once recognized that no two risks were alike and that each should be treated on its individual merits led to a variety of schedules. Schedules, for instance, have been devised for woodworking risks, for theaters, lodging houses, and churches; for light and power stations, car barns and repair shops for car barns; for sugar refineries, breweries, and any other manufacturing plant, etc., and it should be noted that the names of these schedules indicate the class of risk to which they apply.

A fairly successful effort has been made to construct one schedule applying to all manner and kinds of risks. This may be possible. The tendency is in that direction, but as yet a special schedule applying to a certain specific class seems to be more satisfactory than a general schedule applying to all properties.

Two schedules stand out before the insurance world distinct from all others. Each should be treated in turn, since its influence upon the question of schedule rating has been great, the contest between the two not yet being settled.

CHAPTER X

UNIVERSAL MERCANTILE SCHEDULE

127. *Origin of Universal Schedule.*—The Universal Mercantile Schedule is the work of a committee that devoted several years to the subject, bringing the work out in its completed form in 1893. It was tested out in some six preliminary editions, and in its final form was published in the year mentioned. The schedule is an attempt to construct a universal system of rating—a system to abolish all special schedules and permit every risk of whatever kind, character, or occupancy to be rated. Mr. F. C. Moore, ex-president of the Continental Insurance Company, is the chief author of the work, three other gentlemen and six co-operating committees, representing underwriting organizations in different parts of the country, and the National Board of Fire Underwriters, being also associated.

128. *Fundamental principles.*—The seven fundamental principles on which the schedule is based are:

(a) A schedule should recognize a key rate as a starting point, viz.: The rate of a building of standard construction in a standard environment, i. e., in a city presenting the most favorable conditions for the prevention, discovery, extinction and confinement of fires to single buildings; and that the difference between the starting point, or base rate, of one city as compared with another should be explainable by charges for variation from standard. Unless differences between two cities as to the same character of structure

are explainable, jealousies and antagonisms result in inciting adverse legislation.

(b) Inasmuch as all the risks of a city can not have the maximum benefit of the fire department, especially where street water mains are of inadequate sizes, it is clear that all risks in the city should not be rated alike, even though identical in construction and occupancy, but that they should differ according to the sizes of street mains, proximity to hydrants, fire engine houses, etc.

(c) Certain features of construction, as self-releasing floor beams, for instance, which improve a building, are of no benefit to the stock. The stock, therefore, should not receive credit in the rate. A system of rating by adding a fixed sum to the final building to get the stock rate must by a process that recognizes features that are not of advantage to the stock result in an inadequate stock rate.

(d) Fire extinguishing appliances, especially for throwing water, should not receive credit to the same extent in computing the rates of stocks as in the rates of buildings, because water throwing damages stocks to a greater extent than buildings.

(e) Exposures should be treated differently from stocks in the case of buildings. A building may be so constructed as to be a complete protection to its stock, but requires a charge in its own rate for possible damage to its exterior paint, etc., etc.

(f) The rate of a stock should relate to that of the building in proportion as the latter is of poor construction, liable to be totally destroyed, and deficient in fire extinguishing appliances; whereas there should be a rate difference between the rate of a building and its stock if the building is of standard construction and

its fire extinguishing appliances are of the best. And this difference in rate should never be determined as a matter of judgment but by some automatic process to adjust the difference in rate to the conditions. This object the Universal Schedule accomplishes. No other schedule has provided for this vitally important feature.

(g) The fire record of a city should be taken into account in computing rates both at the beginning and the ending of the term for which the rate is computed. This is recognized by the Universal Schedule.

129. *Scope of schedule.*—The schedule has never been applied as published—except perhaps in one instance—but it has served as a basis with certain modifications for nearly all the schedules in use to-day in the larger cities and in different parts of the country, and has the widest use of any schedule up to the present time. The Dean Schedule, or Analytic System, which will receive attention later, comes next.

Schedules and schedule ratings are very much like tariffs in that they are never settled. Such questions are said never to be settled until they are settled right, but the right method of schedule rating does not appear to be imminent, and in all probability the subject will not be settled for many years if ever. The factors to be considered are so many that the efforts of more than one generation will be required before the proper solution is reached.

Life insurance bases its charges on the fundamental principles of mortality. Fire insurance has no such solid foundation; therefore, it will be subject to new interpretations as experience proves the old order of things to be wrong.

130. *How is a risk rated?*—The initial question, however, is not "How were schedules made?" or "What

was their origin?" but "How are they applied?" This is the very practical question, "How is a risk rated?" It can be answered in no better way than by tracing its operation.

Two things are necessary to this purpose—a report on the risk and a schedule on which the risk is to be rated. The example given below of a risk to be rated is not taken from any actual property, but the schedule on which it is based is an adaptation of the Universal Mercantile Schedule.

(a) No. 35 A Street, Manhattan Borough, New York City, is a six story and basement building, dimensions 65 by 100 feet, without any dividing walls, having independent wall averaging eighteen inches of brick, excepting front, which is hollow iron. The adjoining buildings on either side have walls entirely of brick, and the risk itself is occupied by a single tenant.

(b) The floors are of single board one and one-quarter inches thick, on wood joists, fourteen inch centers resting on wood girders, which are supported by exposed cast iron columns on all floors, the roof being supported by wooden posts and having a composition surface.

(c) Elevator and stairways at the front end of the building, both being open and adjoining.

(d) Open dumb-waiter at the rear and pierces second and third floors.

(e) The building is heated by a hot air furnace in the basement, having a metal cold air box, the smoke pipe of which is conducted to the chimney, the walls of which are four inches thick.

(f) The risk is occupied by one tenant, carrying a stock of canned goods, which have no first column charge and the second column charge is 40 cents.

(g) Building is equipped with fire pails, which are approved, but has no other allowance. What is the final rate on building and contents?

131. *Key rate.*—The first point to be considered in making the rate is the key or basic rate for the city. This is usually determined for the entire city, or different districts in the city as the city may vary, and is based on such general factors as the following: Assuming the risk to be in a city under the protection of a fire department, with efficient water supply, etc., the special items to be considered in the key rate are the waterworks, fire engines, fire alarm telegraph, police organizations, fire department organization, fire marshal or coroner, width of streets, building law, electric wires, conflagration hazard, natural gas or oil for fuel, high winds, previous fire record, exceptionally favorable or unfavorable features of the city, chemical engines on wheels, auxiliary steamers, and the number of hook and ladder trucks to every four steamers. Credits should be given when these conditions exist or are in accordance with the standards, charges being made if they do not exist or fail to reach the standard. The schedule, in determining the key rate, assumes the existence of none of these things and makes an initial charge of 20 cents.

132. *Rating by schedule.*—It is assumed in this case that the key rate being duly measured is 20 cents. Turning to the risk itself and to the report thereon, the walls appear the first thing to be considered. The report under the first paragraph describes a building of six stories and a basement. The standard building six stories high should have walls averaging twenty-two inches. The building in the report has walls averaging eighteen inches. In the charges provided is 1 cent for

each four inches in variation from the standard, but where the building is over four stories high there is a double charge. The building in this case is six stories high, therefore there is a charge of 2 cents for each four inches variation. There is but one four inch variation, hence the charge is 2 cents. The front of the building is iron; iron fronts are bad and so an extra charge of 3 cents is made.

The roof is a composition, as shown by the second paragraph of the report, and according to the schedule a charge of 1 cent should be made. The floors are one and one-quarter inches thick with a charge of 5 cents for single flooring and 2 cents for double flooring less than three inches thick. The charge to be made is 5 cents. The finish of the building comes next, and as the report does not state any deficiency, it may be assumed that no charge is to be made.

The area is 65 by 100 feet, or 6,500 square feet. The schedule permits 2,500 square feet without any charge, leaving 4,000 square feet to be charged at 3 cents per thousand, a total charge of 12 cents for area.

The height of the building is six stories; four stories without charge is permitted. The fifth story has a charge of 3 cents and the sixth story of 5, hence the charge to be made is 8 cents.

The report states that there are elevators and stairways at the front end of the building, both being open and adjoining. An open elevator calls for a charge of 6 cents; an open stairway 8 cents. One charge is made where two deficiencies of this character are adjoining. This charge would be the greater of the two, hence 8 cents is proper. A dumb waiter is at the rear of the building and pierces the second and third floors. It

should be charged 1 cent for each floor pierced, or a full charge of 2 cents in this case.

The building is heated by a hot air furnace with metal cold air boxes; this entails a charge of 1 cent. The chimneys are only four inches thick, and as eight inches is the standard a high charge is accordingly made for this deficiency, being 12 cents. Another item in connection with the building calls for notice. In the second paragraph of the report unprotected iron columns are noted; the charge is 10 cents.

A summary at this point shows:

Key rate	20	cents
Walls	2	"
Iron front	3	"
Composition roof	1	"
Floors	5	"
Area	12	"
Height	8	"
Stairways and elevators	8	"
Dumb waiter	2	"
Furnace heat	1	"
Four inch chimneys	12	"
Unprotected iron column	10	"
Total	84	"

The schedule makes provision for other items before this total is reached, but they do not occur in the risk and a sufficient number have been given to show the method of operation.

There should be deducted at this point any item of construction of exceptional value, such as tin or sheet iron between the floors, the grade floor fireproof, all posts, etc., twelve inches square. The property presents no features of exceptional construction; therefore no reductions are made.

133. *Hazard on stock.*—The tenant who occupies the building is a wholesale dealer in canned goods, the hazard of this business being considered so slight that

the building is not penalized because of occupancy. The mercantile schedule was the first to emphasize the fact that the hazard on stock could be divided into two factors—the possibility of fire or the ease with which a fire might start or be started by stock, and the damage to stock caused by a fire. Canned goods, however, do not present in themselves anything hazardous. They would not start a fire of themselves, neither could a fire be easily started in such stock.

134. *Deductions for fire appliances.*—Fire appliances appear next in order, deductions being made for any of the following devices:

Signalling apparatus.
Fire pails.
Standpipes.
Watchman's service.
Fire doors, etc.

Also if the building should be equipped with offices throughout or for offices above the grade floor. The building under consideration is not thus occupied, and apparently has fire pails only, for which an allowance of 5 per cent is to be made; hence from the 84 cents 5 per cent is deducted, or .042, leaving .798.

135. *Exposure.*—The next feature to be considered is the relation of this property to the surrounding properties, that is, its exposure on all sides. The table of exposure provides that any building within one hundred feet, on the right, left, front, or rear, may be deemed as exposing the risk. Beyond that distance no exposure is computed. The exposure table is somewhat complicated and takes into consideration not only the distance but the height of the exposure; whether there is a blank wall toward the exposure, or whether it is pierced with windows, etc. Having determined the

exposure by the table provided therefor, the charges prove to be 8 cents, which, added to the .798, makes a summary of .878.

136. *Co-insurance.*—Up to this point the schedule has presupposed that co-insurance is not carried. Co-insurance will be treated more fully later on, but at this point it is sufficient to state that it is an agreement on the part of the insured to carry a certain amount of insurance. The amount commonly carried is 80 per cent. The Universal schedule does not make any provision for a specific amount of co-insurance, but makes a deduction on the non-fireproof schedule of one-fourth of 1 per cent for each 1 per cent above 20 per cent. Assuming that 80 per cent is carried there is 60 per cent above the 20 per cent, one-fourth of which is 15 per cent. Hence from the .878 there is to be deducted 15 per cent, or .132, leaving the rate .746.

137. *Faults of management.*—This item brings the rate to the final group of factors to be considered, namely, faults of management. There should now be added any charges for carelessness, untidiness, broken lath and plaster, and other similar glaring defects. These charges are made at this point, and are made large in order to secure their correction. When the defects are corrected the charges are removed, leaving the computation of the rate unaffected. Assuming no faults of management the building rate would be .746.

138. *Rate on contents.*—After the first column charge has been added to the building rate there is then deducted a certain percentage, say, 20, of the building deficiencies, since the entire sum of the building deficiencies should not be charged against the contents. There being no first column charge in this case the amount from which we deduct 20 per cent of the build-

ing deficiencies is .84. The building deficiencies are, of course, .84, less .20, the key rate of the city not being a building deficiency. If we deduct 20 per cent of this amount it leaves us 71 cents as the key rate for our contents. The stock takes a second column, or occupancy charge, of 40 cents. Stock distributed over several floors is better than stock concentrated on one floor, hence the insured is entitled to an average height charge for the floors occupied. The basement is subject to a 5 cent charge, being one floor below the grade. The grade floor is subject to no charge. Then from the grade floor up the charge is 5 cents, with an increase of 5 cents for each floor higher than the one below. This charge is made up as follows:

Basement	5 cents
First floor	Nothing
Second floor	5 cents
Third floor	10 "
Fourth floor	15 "
Fifth floor	20 "
Sixth floor	25 "
Total	80 "

Stock is distributed over each of the seven floors; therefore the average height charge is .114, which, added to the .40 occupancy charge and the .71 key rate, gives a total of 1.224. The contents, as in the case of the building, are subject at this point to a reduction for any fire-fighting devices. Only fire pails apply, and 5 per cent deducted from 1.224, is .061, which subtracted leaves a remainder of 1.163. The exposure has already been computed as 8 cents and this now added makes the amount 1.243.

The deduction for co-insurance on the contents is one-half that on the building, as it is not deemed worth so much as is in the case of the building. Damage to contents always amounts to a higher percentage than

that of the building except in a very extraordinary case, so there is deducted for co-insurance 7½ per cent, or .093, leaving a rate on the contents of 1.149.

139. *Simple example.*—It should be understood that the foregoing is a comparatively simple example of the problems presented for consideration by the real work of rating. In a growing American city, the difficulties are almost as numerous as the inhabitants, certainly as numerous as the buildings, since each building possesses an individuality of its own, and the rater must give expression to that individuality in the rate of insurance. The illustration, however, is sufficient to furnish a guide to the application of any schedule. Whether the problem be simple or intricate it is a matter of taking the data furnished by the inspection report and measuring it by the standard of the rating schedule; the result is the rate.

The Universal Mercantile Schedule makes provision for rates on fireproof buildings and on frame buildings, being capable of wide application. A manufacturing plant, presenting as it does a large number of varied processes, requires a somewhat detailed system of occupancy charges. In Philadelphia this has been worked out to a certain extent by means of the so-called coupon system, which gives the occupancy charges; but the Universal Mercantile Schedule is used as the basis on which the building rate and the key rate for contents is made.

140. *Recapitulation.*—As the entire rate may prove of value to the student it is here appended:

Key rate	.20
Walls	.02
Iron front	.03
Roof, composition	.01
Floors	.05
Area	.12

Height	.08
Stairway and Elevator	.08
Dumb waiter	.02
Furnace	.01
Chimneys	.12
Iron column	.10
Total	.84
Deduct 5%, fire pails	.042
	.798
Exposure. Add	.08
	.878
Co-insurance. Deduct 15%	.132
Final building rate	.746

The key rate for the contents is the building rate at the point where the total is .84 less 20 per cent of building deficiencies, or .71.

Key rate	.71
Occupancy charge	.40
Distribution stock	.114
	1.224
Deduct 5%, fire pails	.061
	1.163
Exposure, add	.08
	1.243
Deduct co-insurance, 7½%	.093
Final contents rate	1.150

CHAPTER XI

ANALYTIC SCHEDULE

141. *Origin.*—The complete title of the schedule is the Analytic System for the Measurement of Relative Fire Hazard. The schedule is the work of Mr. A. F. Dean, of Chicago, Assistant Manager of the Western Department of the Springfield Fire and Marine Insurance Company, and is one of the two schedules widely accepted throughout a large part of the United States, the other being the Universal Mercantile.

The origin of the schedule is due to an attempt to formulate a system for measuring exposure. After the table was formulated a frame tariff was devised in order to test it. This occurred the latter part of 1902, and the test was made in the small towns of Illinois. It appears to have met with a favorable reception and a schedule for brick buildings was added and the frame schedule revised. It spread from the smaller to the larger towns and from one state to another, and is said to-day to be in use throughout the Middle West from Nebraska to West Virginia and from Minnesota to Tennessee.

142. *Percentage system.*—The principal departure of the Analytic System from previous schedules is in the extension of the percentage system. The Universal Mercantile Schedule had already introduced this system of percentage, additions or deductions in the credits to be given to the risk. The Analytic Schedule departs from other schedules and makes the deficiency charges

as well as the credits subject to a percentage increase. Thus, in the example given in the previous chapter dealing with the Universal Mercantile Schedule it was noted that the height charge, for instance, was a certain number of cents for the fifth floor and a certain number of cents for the sixth floor; that is, the deficiency charges were a fixed amount. In the Analytic System these additional charges are a percentage of the base rate, and it is this extension of the percentage which indicates one of the widest departures of the Analytic System from other schedules.

In its general approach to the problem the Analytic System does not differ essentially from other schedules. There is the basic rate. To this there are additions for deficiency charges, credits for superior conditions, charges for occupancy, credits for fire-fighting devices, an addition for exposure charge, and finally charges for faults of management, though in the Analytic System these are called "after charges."

143. *Relativity.*—The matter of relativity in the Analytic Schedule is one of its greatest contributions. The rate is determined by percentage charges as well as credits, a consistent whole being bound together in all its parts, and relativity being reached by means of the percentage system. Let us assume that the basic rate of a city is 50 cents. If a charge of 10 cents is added because of a defective wall, this is 20 per cent of the basic rate. If the general conditions of the city are improved so the basic rate falls to 40 cents and the charge of 10 cents for the defective wall is continued, it is then 25 per cent of the basic rate.

The Analytic System declares that the relation between the charges for deficiencies and credits should

always be a fixed percentage of the basic rate; hence, in place of adding a flat charge of 10 cents for a defective wall the charge might be 10 per cent, so that if the city had a basic rate of 50 cents the charge for the deficiency in the wall would be 5 cents, and when the basic rate of the city fell to 40 cents the charge would be 4 cents, still remaining at the same percentage. In other words, a fixed relation should always exist in all parts of the rate.

144. *Basic rate.*—The basic rate in the Analytic Schedule is the sum total of the items not susceptible of analysis and hence are lumped together in one sum. Having determined the basic rate which, of course, differs in different states and for different portions of the same state, and for a city within a state, the schedule is computed by adding to this basic rate percentage additions for deficiency charges arising from height, area, walls, roof, ceilings, skylights, floorway openings, partitions, chimneys, exterior attachments and warerooms. The building may be of superior construction, and a due percentage is allowed accordingly.

145. *Factors influencing rate.*—The matter of occupancy as affecting the rate is divided into three parts: (a) As the cause of fire; (b) as an aid to fire when started, and (c) as an effect of fire, smoke, or water. The causes of fire, though many, are embraced under the two general heads of inert and active; the first embraces those causes practically without hazard, and the second those with a hazard of varying degree.

The combustibility of merchandise is divided into five clauses, known as,

(c1) Low.

(c2) Middling.
(c3) High.
(c4) Quasi-incendiary.
(c5) Incendiary.

Two intermediate grades are recognized—c3½ for a quantity measurement on large open stock, and c4½ principally for minor industrial risks. To assist in determining causes of combustibility there is a labor table dealing with the number of hands, a power, furnace, and dry room table, all providing sub-divisions or charges depending on number, arrangement, etc.

The third factor in occupancy is damageability; that is, what effect fire may have upon the merchandise. Four grades, called "d1," "d2," "d3," and "d4," with three intermediate grades, have been made.

In determining this part of the occupancy charge, the schedule departs from the percentage system, making a fixed charge. Naturally the location of the stock on a certain floor is considered as well as the construction of the building, brick or frame, and the important point of the risk's being in a protected or unprotected town.

Public protection is divided into seven grades, the divisions being made not by the schedule but by adoption of the classes established by the Western Union. Private protection furnished by the individual, as distinguished from public supplied by the community, receives due recognition on the percentage basis.

The principles of the exposure charge are based on radiation, absorption, and transmission. The table of exposure charges is worked out as minutely as may be expected considering that the schedule grew out of an attempt to solve this difficult problem.

146. *Example.*—The following is an example of a completed rate: A two-story brick building in a fourth

class town; occupied on the first floor for banking purposes and above for dwellings:

	Base rate		.49
Area. 60′ × 30′ = 1,800 square feet, on first floor	2%		
Walls. Twelve inches each story. No charge.			
Parapets. Left, the building one story lower. No charge.			
Right, twelve inches high. Deficiency	2%		
Cornices. Not cut off	5%		
Occupancy. Bank—no charge. Dwelling—no charge.			
	Total 9%	or	.04
	Individual Rate		.53
Exposures:			
Left	.13		
Left. Wall damage exposure	.11		
Right	.25		.49
	Building Rate		1.02
Contents:			
Bank. At building rate of 1.02, plus an occupancy of .26, equals 1.28, less five cents (one-half wall damage)			1.23
Dwelling. At building rate of 1.02, plus occupancy charge of .35, equals 1.37, less five cents (one-half wall damage)			1.32

147. *General considerations.*—The problem of rating in fire insurance is one which has received full consideration in the past and bids fair to receive it in the future. No schedule has ever commended itself as the proper schedule to be adopted for all times, places and classes of business. Much discussion has been spent over whether or not rating is a science. It is not a science; it lacks the fundamental laws necessary to any science.

It should be frankly admitted that the data obtainable are extremely meager for definite results. The classifications are more or less at variance, no one system applying to all businesses; some companies use a classification of eighty different groups, others 125, and from that point up to several hundreds. The greatest

part of the business is probably classified under the lowest group.

The business of fire insurance is constantly meeting new hazards. It is evident that if old experience does not meet new conditions there must be new adaptations, a new working-over, and a new point of view.

148. *Limitations of rating.*—It should be pointed out that rating has its limitations. It is not possible to devise a system of rating to enable the underwriter to write a risk without doing more than merely looking up the rate. Rating can never be brought to a mathematical certainty. Even when the best has been done the insurance companies frequently decline to write at the schedule rates but may be willing to write at a higher rate. The difficulties of the problem will be appreciated if a simple illustration is used. The conflagration at Chicago was caused by the kicking over of a lantern by a cow that was being milked in Mrs. Leary's stable. If every cow under like conditions kicked over a lantern and started a conflagration we should have a definite fact to depend upon which would be as fixed as the law of mortality in life insurance. As a matter of fact this was the only cow that ever kicked over a lantern that caused a conflagration, and it is this element of chance which is constantly present in the business. If it were otherwise how simple the problem would be! Knowing that the kick of a cow causes a conflagration we should promptly dispense with lanterns and find some other means for lighting the premises, but the fact that it occurred only once, and in all human probability will never occur again, does not furnish very valuable data on which to base a conflagration charge.

The most that can be hoped from any system of

rating is that it should make equal rates between similar classes of business under similar conditions. If the work of rating in fire insurance can be brought to that admirable position it will have accomplished all that is necessary and all that can be asked. Credits and charges are empiric. If the latter is placed too high an undue proportion of the rate comes from deficiency charges. If placed too low there is no incentive to the insured to correct conditions. A medium must be reached. The same is true concerning the credits. It is not known that 5 per cent is the proper allowance to make for fire pails. They may or may not be worth the sum mentioned. Their efficiency has been demonstrated and it is deemed good practice to make the allowance large enough to insure their installation in every business property. Beyond that it is impossible to go.

Sprinkler risk data are more complete. This has been a necessity to the success of the business owing to the cost of sprinkler installation, and again owing to the large reductions granted in the rate of insurance, making the profit exceedingly small and hence necessitating the utmost care that an undue loss does not occur.

149. *Application of schedules.*—It requires no special training beyond a certain amount of experience to handle the mass of class rating. It is a different problem, however, to approach the subject of specific rating and the application of schedules as intricate as the Analytic System and the Universal Mercantile Schedule. To such an extent have these schedules developed that the work is almost entirely done by men whose exclusive function is rating and who may or may not be familiar with other branches of the business.

The tendency in this direction will be even greater in the future than in the past. It should be emphasized that while the problem of rating is one of the most difficult yet the knowledge concerning it is constantly increasing. The problem should be approached with an open mind, and better results will be achieved if too much is not claimed for any one system.[1]

[1] The author is indebted for material in this chapter to lectures delivered by Mr. H. M. Hess before the Fire Insurance Club of Chicago.

CHAPTER XII

INSURANCE CONTRACT

150. *Policy defined.*—A policy of insurance is a contract that does not differ in its fundamental principles from other contracts. It requires that there shall be an agreement to do or not to do a certain thing for a fixed consideration. A contract once made can not be altered by one party without the consent of the other.

In the beginning of fire insurance the contract, or policy, was a comparatively simple document, and it was customary in those days to include in the contract what was called the "prospectus." This prospectus contained a great deal of the material which has since crept into the standard policy. In writing the contract, or making out the policy, as it was called, the prospectus was referred to and made a part thereof. In the latter part of the eighteenth century Lloyds adopted a certain policy form under which all marine risks were to be written. This was probably the earliest effort to bring the policy contracts to uniform conditions so far as the writing of the policy was concerned.

151. *Early history of contracts.*—Each fire insurance company was privileged to adopt its own form. There had been in different sections of the United States some agreement as to a form of policy, but it was not binding, as the companies lacked legal authority, so that if a company did not choose to write under the policy contract it was privileged to use its own form. The conditions resulting from this are best set forth by the

Court in the case of Delancy v. Rockingham Farmers' Mutual Fire Insurance Company, 52 New Hampshire, 581, June, 1873, as follows:

The principal act of precaution was to guard the company against liability and losses. Forms of applications and policies (like those used in this case) of a most complicated and elaborate structure were prepared and filled with covenants, exceptions, stipulations, provisions, rules, regulations and conditions, rendering the policy void in a great number of contingencies. These provisions were of such bulk and character that they would not be understood by men in general, even if subjected to a careful and laborious study; by men in general they were sure not to be studied at all. The study of them was rendered particularly unattractive by a profuse intermixture of discourses on subjects in which a premium payer would have no interest. The compound, if read by him, would, unless he were an extraordinary man, be an inexplicable riddle, a mere flood of darkness and confusion. Some of the most material stipulations were concealed in a mass of rubbish on the back side of the policy and the following page, where few would expect to find anything more than a dull appendix and where scarcely any one would think of looking for information so important as that the company claimed a special exemption from the operation of the general law of the land relating to the only business in which the company professed to be engaged. As if it were feared that notwithstanding these discouraging circumstances, some extremely eccentric person might attempt to examine and understand the meaning of the involved and intricate net in which he was to be entangled—it was printed in such small type and in lines so long and so crowded that the perusal of it was made physically difficult, painful and injurious. Seldom has the art of typography been so successfully diverted from the diffusion of knowledge to the suppression of it. There was ground for the premium payer to argue that the print alone was evidence, competent to be submitted to a jury, of a fraudulent plot. It was not a little remarkable that a method of doing business not

designed to impose upon, mislead and deceive him by hiding the truth and depriving him of all knowledge of what he was concerned to know, should happen to be admirably adapted to that purpose. As a contrivance for keeping out of sight the dangers created by the agents of the nominal corporation, the system displayed a degree of cultivated ingenuity which, if it had been exercised in any useful calling, would have merited the strongest commendation.

Traveling agents were necessary to apprise people of their opportunities and induce them to act as policyholders and premium payers under the name of "the insured." Such emissaries were sent out. The soliciting agents of insurance companies swarm through the country, plying the inexperienced and unwary, who are ignorant of the principles of insurance law and unlearned in the distinctions that are drawn between legal and equitable estates. Combs v. Hannibal Savings Insurance Company, 43 Mo. 148, 162; 6 Western Insurance Review, 467, 529. The agents made personal and ardent application to people to accept policies and prevailed upon large numbers to sign papers (represented to be mere matters of form) falsifying an important fact by declaring that they made application for policies, reversing the material step in the negotiations. An insurance company, by its agent, making assiduous application to an individual to make application to the company for a policy, was a sample of the crookedness of the whole business.

When a premium payer met with a loss, and called for the payment promised in the policy which he had accepted upon most zealous solicitations, he was surprised to find that the voluminous, unread and unexplained papers had been so printed at headquarters and so filled out by the agents of the company as to show that he had applied for the policy. This, however, was the least of his surprises. He was informed that he had not only obtained the policy on his own application, but had obtained it by a series of representations (of which he had not the slightest conception) and had solemnly bound himself by a general assortment of covenants and warranties (of which he was unconscious), the number of which was equaled only by

their variety and the variety of which was equaled only by their capacity to defeat every claim that could be made upon the company for the performance of its part of the contract. He was further informed that he had succeeded in his application by the falsehood and fraud of his representations—the omission and misstatement of facts which he had expressly covenanted truthfully to disclose. Knowing well that the application was made to him and that he had been cajoled by the skilful arts of an importunate agent into the acceptance of the policy and the signing of some paper or other, with as little understanding of their effect as if they had been printed in an unknown and untranslated tongue, he might well be astonished at the inverted application and the strange multitude of fatal representations and ruinous covenants. But when he had time to realize his situation, had heard the evidence of his having beset the invisible company and obtained the policy by just such means as those by which he knew he had been induced to accept it, and listened to the proof of his obtaining it by treachery and guilt in pursuance of a premeditated scheme of fraud with intent to swindle the company in regard to a lien for assessments or some other matter of theoretical materiality, he was measurably prepared for the next regular charge of having burned his own property.

With increased experience came a constant expansion of precautionary measures on the part of the companies. When the court had held that the agents' knowledge of facts not stated in the application was the companies' knowledge, and that an unintentional omission or misrepresentation of facts known to the company would not invalidate the policy, the companies, by their agents, issued new editions of applications and policies containing additional stipulations to the effect that their agents were not their agents but were the agents of the premium payer; that the latter was alone responsible for the correctness of the applications, and that the companies were not bound by any knowledge, statements or acts of any agent not contained in the application. As the companies' agents filled the blanks to suit themselves and were in that matter necessarily trusted by themselves and by the premium payers, the confidence which they

reposed in themselves was not likely to be abused by the insertion in the application of any unnecessary evidence of their own knowledge of anything, on their own representations, or their dictation and management of the entire contract on both sides. Before that era it had been understood that a corporation—an artificial being, invisible, intangible and existing only in contemplation of law—was capable of acting only by agents; but corporations pretending to act without agents, exhibited the novel phenomena of anomalous and nondescript, as well as imaginary beings, with no visible principal or authorized representative; no attribute of personality subject to any law or bound by any obligation, and no other evidence of a practical, legal, physical or psychological existence than the collection of premiums and assessments. The increasing number of stipulations and covenants, secreted in the usual manner, not being understood by the premium payer until his property was burned, people were as easily beguiled into one edition as another, until at last they were made to formally contract with a phantom that carried on business to the limited extent of absorbing cash received by certain persons who were not its agents.

When it was believed that things had come to this pass, the legislature thought it time to regulate the business in such a manner that it should have some title to the name of insurance and some appearance of fair dealing.

152. *Standard policies adopted.*—In 1873 the State of Massachusetts adopted the first standard policy in the United States. In 1886 the State of New York adopted a standard policy, and since that time the practice has spread until in many states of the Union a uniform policy is in force. The State of California is the latest to adopt a standard policy, the law having been passed to take effect July 1, 1909. The later forms have been improved to a certain extent, but in the main principles there is little if any departure from the earlier forms.

Although coming some years later than the Massachusetts standard policy that of the State of New York has attained a much greater vogue and has furnished a basis for other states. Even in those states where no standard is required it is the practice of insurance companies to use the New York standard form. Having thus the largest use of any policy and well illustrating the principles of the insurance contract it may form the basis for a consideration of the standard policy. The interpretations placed upon it have been sufficient to make its meaning fairly clear and to give a certain fixity to it, enabling both insured and insurer to act intelligently.

153. *Provisions of the law.*—The law provides that a printed blank form of a contract or policy of fire insurance, together with the provisions, agreements and conditions which may be endorsed thereon or added thereto shall be filed with the Superintendent of Insurance. The law also provides that no fire insurance corporation may issue a contract under any other form than the one prescribed, and it must conform in blanks and size of type, in context, provisions, agreements and conditions, with such printed blank form of contract or policy; and no other is permitted, except the following:

(a) Name of the corporation; location; place of business; date of incorporation or organization; whether it be a stock or mutual; the names of its officers; the number and date of the policy, and if issued through a manager or agent these words, "This policy shall not be valid until countersigned by the duly authorized manager or agent of the corporation at ....."

(b) Printed or written forms of description or specification; or schedule of the property covered by any particular policy; or any other matter furnished clearly to express all the facts

and conditions of insurance on any particular risk not inconsistent with or a waiver of any of the conditions and provisions of the standard policy.

(c) If the Superintendent of Insurance approves and the standard form makes no provision therefor, any statement which the corporation is required by law to insert in its policies, if the same do not conflict with the standard policy, is permissible. Also the name, with the word "agent" or "agents" and place of business of any insurance agent or agents, either by writing, printing, stamping or otherwise, may be endorsed on the outside of such policies.

CHAPTER XIII

NEW YORK STANDARD POLICY

154. *General provisions of New York standard policy.*—The New York standard policy has been indexed line by line, and for the convenience of reference is usually referred to in that manner.

Line "a" reads as follows: "In consideration of the stipulations herein named and of ..... Dollars Premium."

The point is likely to be overlooked that it is not the mere paying of so many dollars premium which entitles the insured to indemnity, but equally with the premiums are the stipulations contained in the policy and which with the premium form the consideration of the contract.

Line "b" reads:— "Does insure ..... for the term of ....."

Line "c"—"From the ..... day of ..... 19—, at noon, to the.....day of..... 19—' at noon."

The question has arisen as to what is "noon" under the standard policy. Living as we do for practical business purposes under standard time, which differs materially from the sun or local time, it was almost inevitable if a fire occurred which would make certain policies liable for indemnity or which would relieve them of indemnity in event of a fire starting and being put out between the few minutes intervening between the standard time at noon and the local time, that the

matter would have to be tested in the court. It has been so tested and the decisions have generally favored the local time. In Massachusetts there is a statute to the effect that standard time is the time referred to in the word "noon" of the standard policy.

155. *Direct loss by fire.*—Line "d"—"against all direct loss or damage by fire, except as hereinafter provided."

Direct loss by fire includes, of course, the loss which may be occasioned by water used by the Fire Department in putting out a fire. The property would not have to be touched by the fire—it would be sufficient that water was used and damage resulted. That would be a direct loss by fire. The fire itself must be what is known as "vicious" or "uncontrolled." No loss could be claimed, for instance, if one should hang a garment too near the stove and the garment were singed or scorched. The fire in that case is one strictly under control, and in the stove where it ought to be, and loss from it is not a loss under the insurance policy.

156. *Limitation of amount.*—Line "e"—"To an amount not exceeding .....Dollars." The amount stated in the policy is the limit of indemnity. The company is not liable, whatever the loss may be, beyond the amount stated; neither is it liable beyond the amount of the loss, although it may only be a small part of the amount stated. The amount stated has no bearing except as fixing a limit to the amount which may be collected for a loss. The contract of insurance is a contract of indemnity. The insured is entitled to recover from the company that which he has lost not exceeding the amount stated on the face of the policy. The policies might be for $700,000—to quote an actual case—and the loss $75.00, which was the amount collected.

The fact that the contract is one of indemnity has been lost sight of in many cases, and so far lost sight of that laws have been passed forbidding a payment in certain cases on the indemnification basis. What are known as valued policy laws prescribe that if a building (they never apply to contents) is totally destroyed the amount stated on the face of the policy is the amount to be paid. These laws have been severely attacked, as they should be, but are still in force in several of the western states. To repeat: A contract of insurance is a contract of indemnity. It does not attempt and should never be made to reimburse the insured for other than actual loss. Fire insurance at once loses its true function whenever it is considered to cover anything except actual indemnity.

157. *Description of property.*—Line "f"—"to the following described property while located and contained as described herein, and not elsewhere, to-wit." A blank space is then left for the description of the property to be written in. As a matter of fact the description of the property is usually in the shape of a printed "form," as it is technically called, and this form is attached to the policy to meet the conditions of the description. In line "f" there is one word which is interesting as pointing out how the insurance contract has grown. That word is "while." It came into the standard policy in this manner: A buggy or carriage was insured, the policy stating that it was in a barn or stable. It was destroyed by fire while away some miles in a repair shop. The owner promptly called on the insurance company to pay the loss, but they denied liability, taking the position that they insured this carriage while it was in a barn and did not insure it at any other point. The case went to the courts and the

courts ruled that the owner was entitled to recovery because the language giving the location of the carriage at the time insurance was taken out was merely descriptive language and not a warranty that the carriage was only insured in that location. Because of this decree of the court the companies, in order to protect themselves and fix the locality where the policy attached, placed the word "while" in the policy.

158. *Limitations of contract.*—From this point onward the lines are numerical, and it will not be necessary to quote them in full. A brief running comment will doubtless serve the purpose.

Lines 1 and 2 state that the company shall not be liable beyond the actual cash value of the policy at the time any loss or damage occurs, and make provision for the method of ascertaining and estimating such actual cash value, providing for depreciation, and also providing that it shall not exceed what it would cost the insured to repair or replace with material of like kind and quality. These two lines, also lines 3 and 4, have more bearing on loss settlements, which will be noted in that connection.

Lines 7, 8, 9 and 10 provide for the voidance of the policy if there shall have been concealment or misrepresentations on the part of the insured, or if the interest of the insured has not been truly stated, or in case of any fraud or false swearing touching any matter relating to the subject of insurance, whether it shall occur before or after a loss.

The contract assumes good faith on the part of both insured and insurer. The moral hazard is a problem which has always confronted the underwriter and probably always will. Many of the provisions which seem to be somewhat harsh have been incorporated into the

contract because of past experience where moral hazard has been involved.

159. *Voidance of contract.*—Lines 11 to 30 inclusive provide that the policy shall be void if certain things are done, unless permission for the doing thereof shall by agreement be endorsed upon the policy. The things requiring such endorsement to avoid cancellation of policy contract are:

(a) If there is any other contract of insurance on the property of which the insuring company has no knowledge. In other words, there must always be permission for other insurance than that which the company carries.

(b) If the insured property be a manufacturing establishment and it be operated later than ten o'clock at night, or cease to be operated for more than ten consecutive days. Ten consecutive days may be held to include Sundays and holidays; that is, ten consecutive days, not ten working days.

(c) If the hazard be increased by any means within the control or knowledge of the insured.

(d) If mechanics are employed in building, altering or repairing more than fifteen days at any one time.

(e) If the interests of the insured are other than unconditional and sole ownership. This does not mean that the company would not insure if the ownership were not as stated, but means that the fact must be stated to the company at the time.

The earliest case ever tried in the English courts, involving the question of fire insurance, brought into question this very fact of ownership. A certain property had been insured for many years by an insurance office and was sold. The policy of insurance was not transferred to the new owner, but the property being

destroyed by fire shortly after the sale, the new owner brought suit against the insurance office on the ground that the policy followed the title to the property and that he was entitled to indemnity under the policy. The company denied liability, taking the position that they insured a certain individual; that the contract was between them and that individual and that it could not be transferred to cover some other individual's property without their consent. The courts sustained this position and this is the accepted law so far as this question is concerned since that date. The foregoing famous case was that of Roger Lynch and John Lynch, appellants, against Robert Dalzel, Henry Cartwright, and John Everett, respondents, decided in the House of Lords, the 13th day of March, 1729, reported in the 3rd of Brown P. C., 497, also the fourth of the same reports, page 431-3.

It may well be emphasized that the contract of insurance is a personal matter with a certain individual or individuals. The company does not in fact insure the property; it insures the individual or agrees to indemnify him for a certain loss by fire. The contract is not transferable without the consent of the company.

(f) If the insured property be a building and stands on ground not owned by the insured in fee simple.

(g) If the insured property be personal property, covered by a chattel mortgage. Here again the company may insure but prefers to know that fact. It would not be necessary in case of real estate to admit that there was a mortgage or state that fact except as it might come out in case of the mortgagee's interests being involved, but in the case of personal property it is absolutely a requirement of the policy that notice

of an existing chattel mortgage be given to the company.

(h) If with the knowledge of the insured, foreclosure proceedings be commenced and notice given of sale of any property covered by the policy by virtue of any mortgage or trust deed.

(i) If a change take place (other than by the death of the insured) in the interest, title or possession of the subject of insurance (except that there may be a change of occupants without an increase of hazard), whether by legal process or judgment or by voluntary act of the insured or otherwise.

As to what constitutes an increase of hazard there are many different opinions. It is evident that where property occupied for private dwelling purposes changes to any other occupancy there would be an increase of hazard. In such case the company should be notified. From such a simple case there are any number of gradations up to property already used for manufacturing purposes where the increase occasioned by any other tenant may not be appreciable owing to the already existing use made of the building. A change of occupancy is a change of hazard from an insurance point of view, and the question arises as to whether this change in occupancy or use increases the chance of fire.

(j) The policy must not be assigned before a loss, that is, without the consent of the company.

(k) If illuminating gas or vapor be generated in the described building or adjacent thereto for use therein permission is required from the company to use even such simple devices as portable acetylene lamps, since this, technically at least, generates gas on the premises. Of course, permission would equally be required for any other method of generating, but the simplicity of

the portable lamp is taken as an illustration to emphasize the fact that permission is required.

(l) If any usage, custom, trade, or manufacture to the contrary notwithstanding, there be kept, used, or allowed on the above described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, greek fire, gunpowder exceeding twenty-five pounds in quantity, naptha, nitro-glycerine or other explosives, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard, which last may be used for lights and kept for sale according to law in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light.

These lines, being practically the 23d to 28th inclusive, are among the most important in the policy. The extensive use, for instance, of benzine or gasoline in every household for ordinary cleaning purposes, as the cleaning of a pair of gloves, requires, of course, permission on the policy. No permission to clean a pair of gloves is given but permission to use a certain amount of benzine. Efforts are constantly made to secure this privilege—not in a specific but in a general form—especially when a substance becomes as widely used as gasoline and similar products. The utmost that has been done to grant this general privilege has been to form what is known as a "work" and "materials" clause which reads somewhat thus:

"PRIVILEGED to do such work and to use such materials as are usual in the business of....."

Whenever benzine or any of its products and the other substances referred to might be used in the business this general privilege would be considered as covering the use. It is exceedingly doubtful whether the

work and materials clause adds anything more to the contract than the policy itself contains. If a property is devoted to the business of manufacturing benzine paint and the company insures the risk special permission for the use of benzine is unnecessary for the simple reason that the company has insured this property while engaged in a certain business which involves the use of this material; that is, they have entered into a contract knowing precisely what they were insuring and to that knowledge will be held in the event of a loss. They will not be permitted to deny liability in case of loss on the ground that the policy contained no specific permission for the use of this substance. This was decided in the case of Harper Brothers in the State of New York, and as a matter of fact, is simply common sense. However, the majority of cases are not so easy as the above.

Take the business of cloak and suit-making. The use of benzine is not usual in the manufacturing of garments. It is customary, however, to have a small quantity on the premises so that in the event of a garment becoming stained or spotted during the process of manufacture the damage may be instantly removed and the garment not destroyed. In all such cases where it is not absolutely a part of the business but is generally used permission is given without charge. The privilege will usually permit one quart and may prescribe the manner in which it must be kept. It is interesting to note in this connection that the New York standard policy makes no provision for any benzine, but the practice of using a small quantity is so common that it has led to the privilege being granted in the latest standard policy to be adopted, namely, that of the State of California, where the policy permits one quart of gasoline without notice to the company.

(m) If the building described, whether intended for occupancy by owner or tenant, be or becomes vacant or unoccupied and so remains for ten days.

Here again this would be considered probably as ten consecutive days. A vacant building is not as desirable a risk as an occupied building. The mere presence of a human being on the ground and in charge of property is of value.

160. *Special limitations of liability.*—Lines 31 to 35 inclusive provide that the company shall not be liable for loss arising from the following conditions:

(a) Invasion, insurrection, civil war, or commotion, etc., or by order of any civil authority.

(b) By theft.

(c) By neglect of the insured to use reasonable means to save and preserve the property at and after fire or in danger of fire in the neighborhood.

(d) By explosion of any kind unless fire ensues (and then for the damage only by fire), or a loss by lightning, although damage caused by lightning may be assumed but is subject to a specific agreement.

Lines 36 and 37 provide that if the building or any part of the building falls, all insurance represented by the policy on either the building or its contents immediately ceases. This is based on the simple rule that the company insures the whole building or insures the building in a certain form. If a building should be thrown over by a tornado, assuming that no fire arises, the insurance immediately ceases because the company did not insure a wrecked building. It would not have insured a mass of rubbish; therefore, the insurance ceases. Furthermore, the measure of damage in such cases is not the damage to the building before it was blown down but such damage as was occasioned by the

fire, assuming the fire took place after the building was blown down. If the fire had started before the building was blown down the insurance company would probably have to meet all the loss.

161. *Items excluded from liability.*—Line 38 forbids the company to assume liability for loss to accounts, bills, currency, deeds, evidences of debt, money, notes and securities.

This is one of the most misunderstood lines in the standard policy. Dozens of forms have been printed excluding the company from liability for the items mentioned in line 38, when as a mere matter of fact the standard policy forbids the company to insure any of these items. In a state where a standard policy is the law the insurance of such things would be beyond the powers of the company and such insurance would probably be held illegal. If, however, insurance was taken on one of the items mentioned in a state where the standard policy was not law, although the standard policy might be used, the liability would undoubtedly be good. It is well to point out that almost in the very beginning the companies refused to insure such items. It is evident that the difficulty of ascertaining a loss and either proving or disproving it would be almost insurmountable.

Lines 39 and 40 and a portion of 41 provide that insurance may only be taken on certain things when they are mentioned specifically. It is exceedingly difficult to use general language and make the policy cover these items, such as awnings, bullion, drawings, dies, implements, etc. All these are more than usually susceptible to damage and it is difficult to prove the loss, and for that reason the company desires to know whether it is to cover any of these items.

162. *Liability based on actual value of property.*—The remainder of line 41, also lines 42, 43 and 44 provide that there shall be no liability to the company for a loss except the actual value destroyed by fire if it be occasioned by the ordinance or laws regarding the repair of buildings or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the plate glass, frescoes, decorations, etc., than that which the policy shall bear to the whole insurance on the building described.

A loss arising in regard to an ordinance within the fire limits of a city may occur in this way: A frame building situated in a certain place before fire limits were established would be permitted to stand, but if destroyed by fire and the owner wished to rebuild it would be necessary to erect a brick or perhaps a fireproof building. It is evident that the amount of money received from the loss of the frame building would not erect a building of ordinary or of fireproof construction; so for this loss occasioned by ordinance, the company is not liable. Provision is sometimes made whereby a much higher rate is paid, usually double, and the additional loss is assumed.

163. *Renewals, cancellations, etc.*—Lines 45 and 46 merely provide that if there be an application, survey, plan or description of property referred to it becomes part of the contract and beyond that is also a warranty by the insured.

Lines 47 and 48 state that unless duly authorized in writing no person shall be deemed the agent of the company in regard to the matter of insurance.

Lines 49 and 50 make provision for the renewal of the contract under the original stipulations and consideration of premium for the renewal, and also point

out that should there be an increase of hazard at the time of the renewal it is the duty of the owner to give notice of that fact; otherwise the renewed policy is void.

Lines 51 and 55 cover what is known as the cancellation of the policy. A contract of insurance probably differs from some other contracts in that either side is at liberty to cancel it. On behalf of the company five days' notice must be given of such cancellation. This provision is to prevent an undue mishap to the insured in suddenly finding himself without insurance. At the request of the insured, however, the policy may be cancelled at any moment. The provisions of cancellation provide that if the premium shall have been paid and the policy cancelled by the company it shall return to the insured the actual pro rata share of the premium unearned, but if cancelled at the request of the insured the company has the privilege of cancelling at what is known as "short rate," being somewhat higher than the pro rata share.

164. *Other Provisions.*—Lines 56 to 59 declare that if there is a mortgage interest on the property the provisions of the policy shall attach as set forth. The mortgagee is not held to that strict responsibility peculiar to the owner. This probably grew out of the fact that parties were unwilling to loan money on property where there would be difficulty in regard to insurance. They would hardly wish to assume responsibility for many of the provisions of the insurance contract, and to that extent have they by special mortgage clauses been relieved of a certain amount of responsibility.

Lines 60 to 66 make provisions for having the insurance cover the property if it has been necessary to remove it to a place of safety during a fire. It provides that that part of the policy in excess of that re-

quired to cover the property at the original location shall cover five days after the removal of the property, and if moved to more than one location said excess shall cover thereunder for such five days in the proportion that the property of any one location bears to the value of all in such new location. This is, perhaps, an extremely cumbersome provision in order to meet the conditions of covering property under special emergencies.

Lines 67 to 107 inclusive deal with the question of loss settlement and are considered in a chapter dealing with that subject.

Lines 108 and 109 state that wherever the word "insured" occurs it shall include the insured or his legal representative, and wherever the word "loss" occurs it shall be deemed the equivalent of "loss or damage."

This latter clause, "loss or damage," would, of course, cover the loss of property damaged by water or smoke rather than loss by fire.

Lines 110, 111 and 112 merely cover certain provisions which are applicable to mutual insurance companies only, providing that if there be any special agreement in their charter applicable to that organization they apply to and form part of the policy.

Lines 113 to 116 inclusive stipulate that the policy is made and accepted subject to all that has gone before and to the provisions, agreements, and conditions endorsed herein and added hereto. They also provide that no officer, agent or other representative has power to waive the provisions or conditions except those which may be waived by the conditions of the policy itself and which are, if waived, subject to (in order to note that they are waived) endorsement upon the policy.

Lines 117, 118, 119 and 120 furnish the blank spaces and the language pertinent thereto providing for the

signing of the policy and the countersigning by the officer or agent.

The standard policy represents the evolution of the insurance contract. As a document it is of great ingenuity, representing as it does the ability of man to work out through the centuries a business contract quick and effectual in performing its work. With the exception of leases covering property and bills of lading it is perhaps a contract more commonly used in the business of the world than any other.

CHAPTER XIV

CLAUSES AND WARRANTIES

165. *Riders.*—In the preceding chapter was considered the standard policy itself. The various clauses used in connection therewith must now be considered. When the standard policy was adopted provision was made that certain clauses, called "riders," could be attached to the policy, covering a specific manner of granting the privilege for a certain thing, which privilege the policy permits.

In the State of New York the standard riders are the following:

166. (a) *The average clause.*—This clause limits the liability of the company to no greater proportion of any loss or damage to the prescribed property than the sum insured bears to a certain percentage of the actual value of the property at the time of the loss, and also provides that if the insurance be divided into two or more items this clause shall apply to each separately.

No subject in fire insurance is so fundamentally important as the question of co-insurance, or average. There should always be a fixed relation between the value of the property and the amount of insurance carried. By a fixed relation is meant a definitely stated relation. Marine insurance always has this relation, and the contract was based on the fact that the full insurance was carried, that is, insurance to the full value of the

property. A failure to carry the full amount makes the insured liable for a proportionate part of the loss.

Now the question arises, as to whether there should be any such provision in insurance. If every loss in insurance were total there would not be the slightest necessity for an average or co-insurance clause. The necessity arises only because losses are not total, being the merest fraction of the value of the property up to a total loss. If the losses were total everyone insured would feel obliged to carry insurance to the full value, but when it is considered that less than 10 per cent of the losses are total it can readily be understood that the insured may often be inclined to take the nine chances and carry less insurance than the total amount or even a fixed percentage. The average or co-insurance, is merely a provision for equaling the rate of insurance on property. A simple illustration will present this more clearly:

167. *Average illustrated.*—Two owners possess property of the same value. Assume that in one case full insurance is carried and in the other insurance of one-fourth without any provision in either for an average clause. In the event of fire damaging the property to one-fourth of its value in each case the party who carries insurance to the value of one-fourth would receive the full amount of his loss, and the party who carries full insurance would receive the amount of his loss in full also, but one party would have paid four times more than the other, and to just such extent would injustice be done.

From its very inception, therefore, the plan of establishing a fixed relation between the insurance carried and the value of the property has been recognized. The common value fixed is 80 percent.

168. *Co-insurance.*—All that the average clause requires the insured to do is to carry insurance equal to a certain percentage of the value of the property. If he fails to do this, then he is a co-insurer, that is, he insures himself to the extent of such deficiency and having done that he loses such a part of the loss.

Assume that the 80 per cent average or co-insurance clause is carried. When the settlement is made it is ascertained that the actual or sound value is $20,000. It is evident that with a value of this amount the insurance carried should have been $16,000. The loss develops the fact that only $8,000 of insurance was carried, or one-half of the amount which the insured stated that he was carrying. Such being the case, the insured is then co-insurer for that amount. The loss is assumed to be a partial one and may be placed at $8,000. If the insurance carried had complied with the average or co-insurance clause, and had been $16,000 the insured would have recovered the $8,000 loss, but as he failed to comply with this clause by the sum of $8,000—in fact, only carrying one half the amount he was supposed to carry—he is co-insurer to the extent of that one-half. Therefore, the company will pay one-half of the loss, or $4.000, the insured losing the other amount. Expressed as a rule it may be stated that the insured receives that proportion of the loss which the insurance carried is to that which he should have carried. This example may be epitomized as follows:

Sound value	$20,000
Insurance carried	8,000
Loss	8,000
Company pays ½ loss, or	4,000
Insured loses other ½, or	4,000
Amount of insurance which should have been carried	16,000

There are many cases where full insurance is carried. Inasmuch as there is usually a reduction of the

rate of insurance when this is done advantage is taken to secure a lower rate. It is evident, however, that it may be somewhat difficult to comply with the amount of full co-insurance, as stocks are apt to vary, and experience would seem to show that the insured may lose in such a case.

Loss settlements in New York City show that a saving of between 4 and 5 per cent has accrued to the companies owing to failure of the insured to comply with the conditions of the average or co-insurance clause; or, to put it differently, the insured has become a co-insurer to that amount. In a manufacturing plant where values are more likely to fluctuate insurance to 90 per cent of the value is generally regarded as the best working rule.

(b) Is also an average clause but makes provision for no appraisal in case the claim for loss on the property does not exceed 5 per cent of the amount named.

169. (c) *Electricity clause.*—Is a clause forbidding the use of electricity. This clause is interesting historically because it brings out another feature in the growth of the standard policy. It has been shown that the standard policy may be varied in certain cases only and those cases must be provided for in the policy itself. Now, with the advent of electricity, it becomes necessary to have provision in the policy for this form of lighting or power. In order to accomplish this, in the opinion of the Attorney General it was first necessary to have electricity mentioned in some form in the standard policy. This was done by attaching a clause which forbids the use of electricity, and then having been forbidden on the policy unless permission was given thereon, permission could be given. It was a method perhaps

of "Beating the devil around the stump," but it maintained the integrity of the standard policy.

170. *Original clauses.*—The three clauses, a, b, and c, mentioned above, were not originally filed when the standard policy was adopted, but were filed in the year 1901 and are known as the riders of that year. The original clauses filed when the policy was first adopted are the following:

(a) The application or survey clause, is that which covers that point in a policy where if there is a written application for insurance and a survey of the property on file, it makes them a part of the policy.

(b) Percentage value clause is that which provides that if at the time of a fire the insurance on the property exceeds a certain percentage of the cash value the company shall not be liable to pay more than its proper pro rata share, and further provides that should the whole insurance at the time of the fire exceed the said percentage the pro rata return of premiums is to be made of such excess.

(c) This is a percentage value clause applying to each item in the policy as "b" applies to the whole policy.

(d) This is a co-insurance clause which provides that if at the time of fire the whole amount of insurance on the property shall be less than the actual cash value the company shall be liable for such portion only of the loss or damage as the amount insured by this policy shall bear to the actual cash value of such property.

This is the clause filed for use in case of co-insurance when the policy was adopted. In a large part of New York City it is superseded by the average clause which differs slightly in wording but accomplishes the same purpose.

(e) Is a co-insurance clause for application to specific items of a policy.

(f) Is a co-insurance clause for floating policies.

(g) Is what is known as the percentage co-insurance clause and provides that if at the time of fire the amount of insurance is a certain percentage—usually seventy-five—of the actual cash value, the company in case of loss or damage shall be liable only for such portion as the amount insured by their policy shall bear to the percentage of insurance which was supposed to be carried. These clauses undoubtedly came into existence when the properties grew somewhat large and the companies wished to be sure that a certain amount of insurance was being maintained, otherwise a smaller amount of insurance might have been carried, perhaps a quarter or a third in place of three-fourths. Then in time of fire the company would have met with a whole loss; but by limiting the payment on their policies to the proportion of the percentage agreed upon to be carried it is immaterial how much insurance was secured as the policies bore a proportionate loss only under any circumstances.

(h) Is a percentage co-insurance clause for applying to specific items of a policy.

(i) Is a percentage co-insurance clause with a certain limitation clause. The principal point in this clause is that if the percentage of insurance carried exceeded the amount called for, the company did not become liable for any greater amount but merely paid their pro rata share of the percentage agreed upon at the time the policy was taken out.

(j) A percentage co-insurance or limitation clause, the same as the preceding, except that it has application to specific items of the policy.

(k) Known as the assessment, instalment, or credit clause and makes provision that if any assessment or instalment of any part of the premium for which credit is given be not paid when due the whole premium is considered earned and the policy is void until the payment has been made.

(l) Provides that if the policy becomes encumbered by a mortgage, trust deed, judgment or otherwise, the entire policy is void unless endorsement is added to the policy noting that fact.

(m) Is the lightning clause. The lightning clause illustrates one of those cases where the company or companies assume a certain liability permitted by the standard policy and agree upon the form in which the liability may be assumed. The standard policy permits the liability for lightning and the companies have agreed upon the form in which that permission may be given, and in granting this privilege of accepting liability for fire or damage caused by lightning this clause must be used.

(n) This is the mortgagee clause. The principal thing in connection with this clause is that it relieves the mortgagee from certain conditions which apply to the owners of the property. It is provided that the loss under the policy shall be payable to the party named as mortgagee or trustee, and that the insurance thereon as to that interest shall not be involved by any act or neglect of mortgagee or owner of the property, nor by foreclosure or other proceeding, or notice of sale relating to the property or change in the title or ownership, nor by the occupation of the premises for more hazardous purposes than that assumed by the policy. If, however, the mortgagor neglects to pay the premium it shall be paid upon demand by the mortgagee.

The mortgagee, however, is supposed to notify the company of any change in ownership and, of course, of hazard that may come to his knowledge. It is well to emphasize that the general effect of the mortgagee clause is to make the loaning of money upon real estate comparatively easy. To re-state for emphasis, lenders of money would hardly care to loan if they had to assume the duty of watching the property from the insurance standpoint.

(o) Is the mortgagee clause where the owner has no interest in the insurance and is merely provided to cover that condition.

(p) Is the mortgagee clause with full contribution.

(q) Are blank forms for agency certificates and renewals.

171. *Additional clauses.*—The above completes a summary of the standard clauses which are filed; they are illustrative of the general character of such clauses in those states where standard policies are in force. There now remains for consideration another group of clauses, warranties, and privileges which do not have quite the legal authority of the preceding, not being filed with the departments but having grown into existence in compliance with a general demand that certain privileges be granted in a certain fixed manner. They also to a limited extent affect the rate of insurance; Among them may be mentioned the following:

I. Automatic alarm clauses, automatic sprinkler clauses and special signal building clauses, and others of like nature. These cover the warranty or guaranty of the insured that, having received a certain consideration in the rate of insurance, he will during the life of the policy maintain the working efficiency of these

devices in good condition. They exact of the insured generally that he shall use due diligence in their maintenance, but they do not rise to the exactions usual of a warranty, nor do they possess the same form in all parts of the country, usually being worded by the insurance organizations within the territory covered.

II. Certain warranties dealing with conditions which likewise have an effect upon the rate of insurance, as

(a) A warranty that the building shall be occupied for dwelling purposes only, perhaps by a limited number of families.

(b) A warranty that the building shall be occupied for dwelling purposes only, as an apartment house, but without limitation as to the number of families.

(c) Warranty by the insured that a clear space clause shall be maintained. This usually applies to lumber mills and provides for a certain space between the mill itself and the lumber which is piled.

(d) Private warehouse warranty, which usually calls upon the insured to maintain certain conditions in the building, principally dealing with the manner in which stock shall be handled, the amount which shall be open, etc.

These are sufficiently illustrative of the varied purposes of these clauses and warranties which have come into use.

There may frequently be added to the policies specific forms of warranties dealing with the specific risk in question. A form of this is the amount of steam which may be carried in a boiler, the warranty stating that the insured shall not maintain a pressure of over fifteen pounds, or, again, the warranty may be that benzine shall not be used on the premises. These, however, are mat-

ters which arise in connection with individual risks and for which general language is not adapted, but each must be drawn to meet the conditions of the special case.

CHAPTER XV

FORMS AND POLICY WRITING

172. *Forms.*—The form is that part of the contract added to the policy to describe the property insured. It may be written or typed directly on the policy itself in the blank space provided, but as a rule it is a separate sheet attached to the policy.

The purpose of the form is to give the location of the property, a description to show what is covered, and it may or may not contain a memorandum as to the clauses which are to be added; that is, the form may merely indicate which clauses the company may add in writing the policy, or in case of large properties, it may contain these forms all duly printed. All companies have sets of forms for the more common kinds of risks, such as buildings, household furniture, churches, and properties of like nature.

In the case of manufacturing or mercantile occupancies a specific form applying to the individual risk is, or should be, drafted. In the case of larger properties where there are a good many companies on the risk it is customary to have printed forms, which are complete in themselves. In the case of smaller risks they may be merely typewritten.

Example A below is a form used covering buildings, while Example B is a form used for covering contents.

A.

Form 3145

$..... On the .....building and additions, including steam, gas and water pipes, fittings and fixtures, plumbing, heat-

ing and lighting apparatus and fixtures, dynamos, motors, engines, boilers, pumps, tanks, elevators, with appurtenances and connections, cabinet work, fixed mirrors and their frames, plain, plate and ornamental glass, frescoes, papers and decorations, window shades, carpets, oil cloth on halls and stairs, awnings, skylights, fire escapes, yard fences and fixtures, vaults, stoops, railings, flagging and all permanent fixtures belonging to the building situate No. .....
.....
.....

B.

HOUSEHOLD FURNITURE FORM

.....
.....

On household and kitchen furniture, within or attached to building, useful and ornamental, including beds, bedding, linen, wearing apparel and materials for same, umbrellas, canes, billiard and pool tables with appurtenances, tool chests and tools, trunks, toys, fishing rods and tackle, guns, bicycles, photographic cameras, baby carriages and games, sporting goods, and all articles used for amusement, travel, study or research, printed books and music, pictures, paintings and engravings and their frames (at not exceeding cost price), and shadow boxes, chandeliers, gas and electric light fixtures, bronzes, statuary and other works of art and objects of virtu, pianofortes, organs and other musical instruments, scientific instruments, sewing machines, curtains, portieres, window screens, window shades, carpets, oilcloth and other floor coverings in halls and on stairs, stoves, plate, plated ware, diamonds and other precious stones, jewelry and watches in use, clocks, mirrors, china, glass and crockery ware, fuel, food and family stores, the property of the assured
or any member of the family, household guests or servants, all while contained in, on and or about or attached to the .....
.....building and additions, extensions and connections occupied as .....
dwelling, situate .....

The entire question of form writing and its possibilities will be appreciated when it is stated that there are several thousand forms in common use in the United States. These are printed forms and do not include the typewritten forms which may be prepared for a special case or where only one or two copies may be needed. The policy itself, since it has become standardized, does not present any opportunity for the use of variation in that portion of the insurance contract, but on the form itself, which is still permitted to be drafted, there is a large opportunity.

The form attempts to accomplish the following:

(a) To give the exact location of the risk.

(b) To give the correct name of the insured.

(c) To state the property covered.

(d) To give such a description of the property as will make it clear beyond peradventure what the insured wishes to have covered and what the company is assuming to insure.

(e) It will contain at least a notation that certain clauses are to be added to the policy.

(f) It may contain the clauses themselves printed in full. It is well to remember that all of the cases which have come into the courts concerning fire insurance policies have arisen from a failure to make clear in the policy contract just what was intended to be insured.

173. *Drafting a form.*—To draft a form which will accomplish its intended purpose is one of the most important features of the insurance business and concerning which there is not the fullest intelligence. The tendency in nearly all forms is to overdo and use more words than are necessary. A short statement, clear, concise, and comprehensive, is far better than a long rambling one lacking these qualities.

The insured constantly seeks to use general language to make the insurance as broad as possible, and practically requiring the company to insure everything he may have on the premises at the time of the fire. The insurer, on the other hand, always seeks for the specific, that is, the company always wishes to know what it is doing. An insurance company never desires to cover, for its own interest, if it can avoid doing so, an indefinite thing; it always desires the positive. It is evident that between two such opposites there will be more or less effort to gain their individual ends, the insured seeking the general and the company the specific.

174. *Printed forms.*—From the viewpoint of the insured the danger in printed forms lies in the fact that

such forms may not have been drafted originally to cover his property but may be adapted forms from some other risk. It has happened from such causes that at the time of a loss the policy appeared to cover a great many things but apparently did not cover those things which the insured wished to have covered. There is always risk in adopting the ready-made article, the danger being that it takes too much for granted and does not carefully consider the personal aspect of each and every risk, especially where the risk passes at all beyond the ordinary hazard. The insured or his representative should always take great care that the form is drafted accurately; as briefly as possible; in general terms where permissible; and completely describing the business and the things which he wishes covered.

Volumes have been written concerning forms, but the entire subject may be included in the rules laid down, viz: The form should be explicit and avoid all indefinite expressions. The question is "What does the party wish to insure?" and adequate language should be used to describe it.

Another point to be mentioned in this connection, is the effect upon the interests of the insured and insurer as to whether the one or the other prepared the form. It is an accepted principle in the construction of contracts that doubtful or indefinite language will be construed against the person who drafted the document. This is true in the case of the insurance contract as it is in any other. When all policies and forms were prepared by the companies there was no question as to whom the language would be construed to favor. In case of doubt it would be against the company. In these days when the employment of brokers is becoming wellnigh universal and the form for the insured is prepared

by his representative, the broker, it becomes the language of the insured, and as such would be construed against him in the event of a loss.

175. *Concurrent policies.*—It is perhaps needless to point out that all policies should be concurrent, i. e., they should agree word for word and letter for letter. Some of the most difficult problems in the settlement of losses have occurred owing to the non-concurrency of the policies covering the risk. All the various rules drafted for the settlement of such losses would have been avoided if sufficient care had been exercised in the beginning that the policies covered alike. Too much emphasis cannot be laid upon the fact that the most extreme care should be exercised in this respect.

CHAPTER XVI

LOSS SETTLEMENTS

176. *Losses.*—Insurance is written not because people merely wish for it but because a loss may or rather will occur. It has been shown that the average rate of insurance is something over $1 and the average rate of loss is between fifty and sixty cents; hence in amount about one-half of the insurance collections is subject to settlement under loss. It has been stated that in 1,000 policies thirty-two on an average are subject to a loss. This, of course, represents all sorts and conditions of policies, simply treating them as policies and basing the average accordingly. If a loss never occurred, insurance would cease, but whether it occurs or not, all that the previous chapter explained is necessary to bring the contract into effect.

177. *Adjusters.*—The person who settles losses is called an adjuster. In England the term "assessor" is used. The business of adjusting was originally in the hands of the companies and their representatives. Lately, however, there has grown up the business of public adjusting. These adjusters hold themselves in readiness to take up for the insured the settlement of a loss.

The companies themselves for a great many years handled all their own losses, each company acting for itself. In the course of time, however, as risks grew larger and the companies more numerous, it became customary for all companies represented to appoint from

their number a committee of adjusters. Out of this simple method has grown the Loss Bureaus, or Loss Committees, of larger cities, and the committees or bureaus which cover several states. These committees or bureaus handle the adjusting for the companies and are probably able to do so more cheaply and more effectively than where each company was represented directly. The individual company, of course, is not relieved from the necessity of conducting its own loss bureau, but by the co-operative method it is enabled to reduce expenses in the settlement of certain groups of losses.

178. *Losses in standard policy.*—Lines 1 to 6 of the standard policy, as well as other lines to be noted later, deal with the question of losses.

Line 1 limits the liability of the company to the actual cash value of the property at the time any loss or damage occurs. It likewise states that loss or damage shall be ascertained according to the actual cash value with a proper deduction for depreciation no matter how that depreciation may be caused.

Line 2 states that in no event shall the cash value exceed what it would cost the insured to repair or replace the property with material of like kind and quality.

The ascertainment or estimate of this actual cash value is made by the insured and the company, but (line 3) if they differ, then by appraisers, who are appointed by a method which will be noted farther on.

The amount of the loss having been determined the sum for which the company is liable shall be payable within sixty days after due notice of the amount of the loss settlement and the satisfactory proof has been received by the company.

179. *Repairs and replacements.*—Line 4 states that it is optional with the company to take any or all of the articles at the ascertained or appraised value. It is also provided that it has the privilege of repairing, rebuilding, or replacing the property loss or damage with other of like kind and quality within a reasonable time, provided that it gives notice of its intention so to do within thirty days after the receipt of proof, but (line 6) the insured is not permitted to abandon the property to the company. In other words, the company can if it chooses take the property and pay the face of the policy, thus reducing the amount of the loss by the amount received from the salvage of the property taken. The insured, however, does not have the option of making a settlement with the company or of stating that he will take the face of the policy and abandon the property to them.

The company prefers at all times to make a settlement wherever possible. It does not care to engage in the business of handling damaged property by means of salvage if it is possible to avoid doing so. It is sometimes necessary to do this in order to protect its interests but it is done only as a last resort.

Neither does the company care to handle merchandise for the purposes of salvage, nor to repair, replace, or rebuild the premises if it be a building that has been damaged. It is exceedingly difficult, in the first place, for a company to repair, replace, or rebuild with like kind and condition. The chances of fulfilling those two requirements—kind and quality—are very small. Furthermore, if the insured should be so minded he might possibly convince the court that the company had not carried out its part of the bargain and performed its share of the contract.

There is an historical case which occurred in Tennessee where a building was damaged by fire. Failing to effect a settlement the company elected to rebuild. The insured, when the work was completed (although the companies thought they were carrying out the exact specifications), objected to accepting the property and was able to convince the jury that the company had failed to carry out its contract with him, and so he received a cash settlement. This might not have been so bad had it not been that the building also became his property as it was erected on his land. With such a possibility confronting it, the company is extremely reluctant to undertake the repairing, replacing, and rebuilding of any property injured by fire.

180. *Provisions for settlement.*—Lines 67 to 109, in addition to lines 1 to 6, deal with the settlement of losses and should now be considered in detail. The insured is called upon to act according to the following schedule whenever a loss occurs:

(a) Give to the company immediate notice in writing of any loss.

(b) Protect the property from further damage.

(c) Separate the damaged from the undamaged personal property; put it in the best possible order, making a complete inventory of the same and stating the quantity and cost of each article and the amount claimed thereon.

(d) Within sixty days after the fire, unless the time is further extended in writing by the company, he shall render a statement to the company signed and sworn to by said insured stating his knowledge and belief as to the time and origin of the fire; his interest and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances

thereon; all other insurance whether valid or not covering any of said property.

(e) A copy of all descriptions or schedules in all policies.

(f) Any changes in the title, use, occupation, location, possession, or exposure of said property since the issuance of the policy.

(g) By whom and for what purposes any buildings herein described and the several parts thereof were occupied at the time of fire.

(h) He shall furnish if required verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and furthermore,

(i) If required shall furnish a certificate of a magistrate or notary public not interested in the claim as a creditor or otherwise, nor related to the insured, living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly ascertained loss to the amount of such magistrate's or notary's certificate.

(j) The insured must as often as required exhibit to the person appointed by the company all that remains of any property described.

(k) He shall submit to examination under oath and subscribe to the same.

(l) He shall produce for examination all books of accounts, bills, invoices and other vouchers, or certified copies thereof, if the originals be lost.

(m) He shall permit extracts and copies to be made of these documents.

These lines—from 67 to 85 inclusive—practically cover the duty of the insured and his attitude toward the question of loss settlement. Needless to say, each line has been subject to a legal decision, and probably

will continue to be so subject so long as man endures and fire policies are written.

181. *Appraisal.*—Lines 86 to 91 provide for the appraisal in event of an absolute disagreement between the insured and the company. The lines state that the loss shall then be ascertained by two competent and disinterested appraisers, the insured selecting one and the company the other. These two shall select a third. The two appraisers then take the estimate and appraise the loss, stating separate sound values and damage. Should they fail to agree then the third appraiser, or umpire, has the deciding vote. The award in writing of any two of the three determines the amount of such loss, and the parties thereto are obliged to pay the appraisers respectively selected by them, and they shall bear equally—the insured and the company—the expenses of the appraisal and umpire.

Lines 92 to 95 provide that the company shall not be held to have waived any condition or forfeiture of any requirement, act, or proceeding as shown in its attitude to the appraisal, neither shall the loss under an appraisal become payable until sixty days after due notice and separate proof shall have been received by the company. This, of course, includes an award by appraisers when an appraisal has been required. This provision for the loss being payable sixty days after the settlement is reached is an exceedingly old provision in fire insurance contracts, dating back to the very beginning and is for the purpose of preventing cheating.

182. *Payment of loss.*—It is generally held to be poor policy to pay a loss too soon, especially when the old question of moral hazard is involved as closely in a business as it is in the business of fire insurance. The provision of sixty days has in many instances proved

sufficient to enable not only a proper checking of the claim but at the same time to unearth many fraudulent claims.

It is not customary, however, in minor losses to wait, but to pay the claim immediately and always to pay the larger losses whenever the discount duly provided for is accepted by the insured.

The strongest asset that an insurance company can possess is the reputation of paying its losses promptly. It is too great a business asset to be lightly trifled with.

The personal connection always enters into the dealings of any business, and the personal equation of the adjuster and the insured are not unimportant factors in reaching a settlement; but it should be noted that where both parties honestly desire to secure a fair settlement there is very slight chance of friction occurring. If one party or the other does not desire such a result then the chances of friction are many and can be utilized by either.

183. *Difficulties of settlement.*—Whenever a calamity like the San Francisco fire occurs, and the insurance companies play a somewhat leading part in straightening out conditions, one is likely to hear much of the difficulties of settling losses. As a matter of fact, those in position to speak with authority of the San Francisco situation know that the volume of money which passed from the companies to the insured at that time was enormous, comparatively speaking, and the friction exceedingly slight. The few cases were made much of, but they were few in comparison to the entire number of risks to be settled and the volume of money which changed hands.

The element of competition in liberal methods used in conducting the business of fire insurance is not an

unimportant item, and while a company may often wish to do differently, it may by the competition of its neighbors be obliged to do as they do.

It must not be gathered from what has been stated that the settlement of losses is a difficult matter or one attended with any serious complications. In proportion to the volume transacted it is probable that the business of fire insurance is conducted with as little friction and with as few cases reaching the courts as any other business of like magnitude. In fact, it is probably conducted with less friction than most businesses of an equal importance.

184. *Standing of companies.*—The great essential fact in the settlement of losses is that no company desires to be known as not settling promptly and equitably. To obtain such a reputation would be to put itself practically out of business. No agent would care to represent such company; no broker would care to do business with it, and the insured would not care for its policies. There are too many companies in fire insurance for any company to stand too strictly upon technicalities.

Most of the laws in force relating to insurance companies and to the adoption of standard policies have been occasioned not by the doings of the many but by those of the few. Our penal laws are not made because everybody needs them, but because of that small portion of humanity which apparently needs such restrictions.

CHAPTER XVII

BROKERS, BROKERAGE, MORAL HAZARD, AND UNDERWRITING

185. *Brokers and brokerage.*—The broker in fire insurance is the individual who represents the insured. He takes charge of the insurance interests of his clients, sees that the proper amount of insurance is secured, the proper kind of policies issued, the rates charged correctly computed, and attends to all the details in connection with that part of the insured's interests. He is paid by commission, which is a certain percentage of the premium paid by the insured. It forms part of the rate of insurance and is deducted by the broker when paying the premium. Although the commission varies in different parts of the country 15 per cent is probably general over a large section of the United States. It may vary from 10 to 25 per cent and may be more in some cases. It is less than 10 per cent on a few classes of risks where the rates are very low and for that reason the premium also.

The broker first appeared in the business shortly after the great fire in New York City in 1845. While that fire ruined many insurance companies the demand for insurance called a larger number of others into existence than the business warranted. The companies began to solicit business from the brokers and thus the broker became an established factor. There was much opposition at first to the broker, opposition which continued not for a year, but for two or three decades and even later, and is not wholly absent to-day.

The broker fills a legitimate place in the business of fire insurance, especially in the larger centers where insurance is more or less difficult and technicalities enter largely into the problem. For that reason it is reasonable that there should be a broker to relieve the insured of the many details connected with the business. It is the duty of the broker properly to protect the interests of his clients, and in doing that he needs to know as much as the underwriter who assumes the risk. It should be borne in mind that the tendency of the world is to have a large number of services performed on a commission basis. This is true of all lands where with the growth of wealth business becomes more and more sub-divided into different departments, each department furnishing sufficient employment for a group of individuals to devote themselves specially to its performance.

The intricacy of the business of modern fire insurance makes it a specialty with which the insured, dealing only with his individual risk, can hardly hope to be familiar. He will be sufficiently employed if he takes care of his own business. These necessities make the demand for the broker legitimate, and he seems to fill the place to the satisfaction of his clients.

186. *Moral hazard.*—The question of moral hazard is involved in all commercial transactions where credit enters. It has always been present in fire insurance and is generally considered to be present to an unusual degree as compared with other businesses.

Moral hazard means the possibility that the insured may burn his own property. Judgment differs as to the amount of loss occasioned thereby, but it is sufficiently large to be deserving of the most careful consideration. Probably the most conservative judgment

would place the loss from this cause at about one-tenth of the total. It has been placed at one-third, at one-half, and in some cases even higher, but in the best judgment one-tenth would cover the loss.

The simple fact that fire destroys property and this when successfully burned destroys with it the evidences of the self-firing makes it more or less easy to commit this crime. The widest knowledge is sought, using not only the ordinary reports, the fire records, but all other sources of information to keep track of the insured and to form an estimate as to the moral hazard. It is considered, of course, that if the insured's record is not clear on this phase of underwriting then the risk should be declined, since no premium would compensate nor be sufficiently large.

In making the inspection such factors as the general prosperity of the business, the manner in which it is conducted, the condition of the market covering the thing offered for insurance at the time, projected changes in style, the financial standing—in fact everything that can throw any light on the subject is considered, but the problem still remains to-day as insoluble as at first. It is interesting to note that historically the problem was considered almost as serious fifty or seventy-five years ago as it is to-day. Those were the days before immigration had set in, so it cannot be entirely due to the advent of foreigners.

187. *Underwriting.*—From the earliest days of insurance contracts the name of the insurer or insurers has been written at the bottom of the document. The insurers signed their names underneath stating that they would assume only the share of the risk to the amount set opposite their names. From this position of the name insurers came to be called underwriters.

The term is in use to-day for any person or corporation that assumes a risk involving the principle of insurance.

Now that the various other divisions of the business of fire insurance have been considered, the interesting question remains as to what is embraced under the general term of underwriting. Perhaps a better view can be reached from a negative standpoint:

(a) It is not the mere organization of a fire insurance company.

(b) It is not the care of the financial part of the company's transactions nor the successful management of the details incident to its affairs.

(c) It is not the inspection of risks.

(d) It is not determining the rate to be charged in a given case.

(e) It is not drafting the policy form or otherwise completing the contract or policy.

(f) It is not a knowledge of the law of insurance and the standard policy.

It is not one but a mingling of these things, not allowing any one of them to predominate, and regarding each as a part contributing its portion to the whole.

Underwriting is the ability properly to estimate the factors which must be considered when dealing with a specific risk, and then having carefully considered them to decide to accept or to refuse. The whole problem of underwriting, therefore, lies in this acceptance or rejection.

188. *Problems of underwriting.*—There are companies which operate in a limited zone, as the small mutual companies, which in the conduct of their busi-

ness call for less skill than that of the stock corporations engaging in a world-wide business and attempting to handle all classes of risks that may be offered.

The lines of insurance should be accepted so as to distribute the loss fairly and evenly throughout the classes of risks. Lines must be accepted in such a manner that there will not be an undue amount in a class subject to loss at one fire. If, for instance, there were ten lines of $5,000 each of a certain class and one line of $50,000 it is evident that the burning of the $50,000 risk would entail a loss equal to the burning of the other ten lines. The fundamental principle upon which successful underwriting is based is the ability properly to distribute the lines. The one who places or determines the lines is the underwriter of the company whatever his official name may be. To determine what lines to accept, the amount, the class, the location, calls for the best ability.

In the early days of underwriting lines were accepted for amounts which would astonish the modern underwriter. Modern underwriting is based wholly on the principle of small lines well distributed. In the country the problem is rather what to accept than how much. In the city it is not only what to accept but how much. In the country the conflagration problem does not enter, but in the city it is ever present, every city presenting this twofold problem. If it is estimated that a conflagration in a city might burn one hundred blocks then it is evident that $10,000 at risk in each block, would mean a loss of $1,000,000. The practice of underwriting in small lines well distributed is indeed the only safe rule. The underwriter may not always choose.

CHAPTER XVIII

ORGANIZATION OF LIFE INSURANCE COMPANIES

189. *Life insurance defined.*—Life insurance is a provision against a hazard which is certain to occur. Here, of course, the element of uncertainty is the time of death. All policies of life insurance—and this is true of accident insurance—are not policies of indemnity, as in the case of property insurance. There are legitimate limitations as to the amount of insurance which may be carried on an individual life, but these are based on moral and financial conditions and have little, if any, relation to indemnity conditions. In other words, it is obviously difficult, if not impossible, to approximate, beyond a certain point, the value of any life.

190. *Early conditions unfavorable to insurance.*—The theory of probabilities, as has already been explained, was what gave birth to the idea of insurance. Although Pascal developed the theory by applying its mathematical principles to various gambling games, it was not until almost a century later that solid mathematical foundations were laid on which insurance premiums could be based. Unfavorable sanitary and hygienic conditions held back the development of life insurance for some years. In addition to this handicap not only countries but continents were devastated by plagues. This state of affairs placed a temporarily insurmountable obstacle in the way of forming insurance institutions whose business was to rest upon calculations as to the length of life.

From early history, especially from the time when Guilds were formed, there were various attempts at forms of help to a family when death occurred. Probably the nearest approach to modern insurance, however, was the provision made by a traveller who, before going into a distant land, secured a sum which might be used as a ransom if he fell into the hands of pirates. All such projects were, of course, merely the early beginnings to which the present remarkable status of life insurance may be traced.

191. *First English societies.*—In 1699 the Society of Assurance for Widows and Orphans was founded in England. It had many elements of a modern life insurance office, but had them only in a partial degree. Its organization was somewhat similar, it had the premium feature, and contained among other things the unique provision that the clergy or laity "except such as lived in the marsh and unhealthy parts of England" might be admitted by proxy if known to the trustees of the office or to some two subscribers or substantial housekeepers living within the bills of mortality. In 1707 this society had about eleven hundred members. From then on until 1760 there were many organizations for the purpose of insuring lives. The successful ones owed this success largely to the fact that they did not promise a specific sum to the beneficiaries, but at the end of the year divided among them the sums that were subject to distribution that year. Hence, the amount which the beneficiaries received varied according to the number of deaths during the year. This meant, naturally, that the greater the number of beneficiaries the less there was to divide. In 1720 the London Assurance and Royal Exchange companies were chartered. Both had the privilege of doing life insurance business

but neither developed it, in the early years at least, to any great extent.

It was in the year 1760 that steps were taken in Great Britain to found an insurance company on a true basis. Although all that had been done previous to this time was excellent educational work, it did not furnish foundations for the later development of life insurance. As nearly as can be estimated, the amount of insurance on lives in Great Britain in this year, 1760, amounted to 350,000 pounds. Two years later "The Society for Equitable Assurance on Lives and Survivorships" was incorporated after several difficulties had been overcome. The project was successfully launched, so that it may be said that modern life insurance dates from the foundation of this society.

All life insurance premiums were based on the tables furnished by the bills of mortality of London and the Breslau Tables. These, in turn, were based on tabulated statistics including healthy and unhealthy lives and persons engaged in all kinds of employments. Naturally, the tables based on these conditions showed a much higher death rate than the picked lives which the society insured.

192. *Five periods of development.*—In England future development of life insurance fell into fairly definite periods. From 1698 to 1760 was termed "the speculative period," largely because of the uncertain data upon which the societies were organized. From 1762 to 1815 was called "the transition period"; societies gradually found it possible to build more substantial foundations, although the development was slow. The third period, from 1816 to 1844, was called the "Golden Age." Considerable success rewarded the efforts of these twenty-five years. The Fourth Period, from 1844

to 1855, was known as "the period of Bubble Companies." Apparently almost any one could organize a company in that period, in fact many were organized, and on the flimsiest foundations. In due course, however, the crash came and only the solid companies survived. The fifth period began in 1857 and for Great Britain and the United States may be called "the period of the modern insurance company." From that time, except for slight setbacks, the growth has been steady.

193. *Life insurance in the United States.*—The earliest recorded policy in the United States reads as follows:

> Insurance is hereby made by Benjamin Lincoln, Esq., on his natural life, age about 56 years, for and during the space of twelve calendar months, to commence from the date hereof, and we, the assurers, do agree that the life of the said Benjamin Lincoln shall be rated at the sum of $1,000 lawful money, for which we have received the premium due us of 5%. In case he shall, during the said term, happen to die, then we will well and truly pay unto his heirs the sums we have hitherto subscribed.

The wealth of the Colonies was not such as to make such provisions feasible. Life insurance in this country began in 1759 when the Presbyterians of New York and Philadelphia secured a charter from the Colonial Government of Pennsylvania. The object of this body was primarily the insuring of the ministers of the Presbyterian Church. Ten years later the clergymen of the Episcopal Church organized companies in the colonies of New York, Pennsylvania and New Jersey. These two institutions may be called transition life insurance companies. Their work was not actual charity, neither was it true insurance. The members did not pay the entire premium, a portion being contributed by other parties

interested in the project; to the extent, however, that they were partially self-supporting, they marked a distinct advance from a purely charitable enterprise.

In 1801, it is stated, there were not one hundred policies of life insurance in the United States. The Insurance Company of North America, to be sure, had been chartered in 1794 as a stock company and under its charter could write life insurance. It wrote very little, however. The slow growth of life insurance in this country was due mainly to the same causes as operated in Great Britain and on the continent, namely, the uncertain living conditions. Smallpox and many other epidemic diseases were prevalent.

194. *Three early companies.*—In 1818 Massachusetts chartered the Hospital Life Insurance Company with a capital of $500,000, but required that it should pay into the state one-third of its profits from life insurance, after deducting legal interest on the paid-up capital. This tax, seemingly, was sufficient to prevent the development of this branch of the company's business, if, indeed, the time was not too early for such development. The State of New York organized a life insurance and trust company in 1830 with capital of $1,000,000, and previous to this time there had been organized in Pennsylvania the Pennsylvania Company for the Insurance of Lives. All three companies are actively engaged and successful to-day as trust companies, but have done very little, if anything, with life insurance.

195. *Developments since 1835.*—The true beginning of life insurance in the United States dates from 1835. In this year the New England Life Insurance Company was chartered in Massachusetts and the Girard Life & Trust Company in Pennsylvania. Seven years later the

Mutual Life of New York was organized. In 1843 the New England company completed its organization, and the Mutual Benefit of New Jersey was chartered. It was in this year, too, that the New York Life Insurance Company completed its organization. Although there were ten companies in existence, the insurance in force at this time was estimated not to exceed $6,500,000. By 1860 this had increased over twenty-five times, to $166,000,000.

It was generally believed that the Civil War would show a lessening of life insurance. The contrary, however, proved to be the fact. While the southern business was of necessity disturbed, the increase in the north was so great that a larger, rather than a smaller, amount continued to be put in force each year. From 1870 to 1880, the period of the great panic, the insurance business went through a process of reorganization. Many companies had been organized and some seventy-one in this decade went out of business. It is estimated that in these ten years the insurance in force decreased from $2,000,000,000 to $1,500,000,000. In 1880 an advance step was taken and from that time until 1905 it was simply a matter of recording each year a larger success than the past. In the latter year there occurred what is known in history as the "Armstrong Investigation," and while it was thought that the results would be disastrous, they proved to be quite beneficial, so that the business, after pausing very briefly for readjustment, has steadily advanced.

196. *Internal divisions.*—In many respects an insurance corporation, in its general structure, resembles any other corporation. One of the Hartford companies, for example, divides its organization into the following groups:

BOARD OF DIRECTORS

Deliberative Bodies	Committees of the Board: Executive, Finance, General Conduct
Officials Charged with Executive Functions	President Vice-Presidents Treasurer
Officials Charged with Administrative Functions	Comptroller Secretary Supt. of Agents
Officials Charged with Advisory Functions	Actuary Medical Director Counsel

OFFICE DEPARTMENTS:

Agency	Real Estate Loans
Financial	Policy-Writing
Actuarial	Policy Loans
Medical	Inspection
Legal	Policyholders' Bureau
Bookkeeping	Editorial and Advertising
Auditing	Supply
Claims	Mail
	Filing

Committees of Officials and Chief of Depts.	Agency Methods and Conduct Review Clerical Efficiency Claims Office Methods and Systems

197. *Three main departments.*—Such a tabulation usually tells its own story, because the majority of the officials or departments might be common to any corporation. There are, however, three departments of a life insurance company which call for a special word:

(1) The Actuarial Department—This department determines the amount of the premiums. Upon its careful solution of the problems involved and upon its correct determination of the charges, rests the success of the company—that is, success in the sense that the company will be receiving for the risk assumed the sum which it ought to receive. The work of the actuary is special and, in addition to calling for mathematical ability, requires a broad general training.

(2) The Medical Department—The medical department is the door, so to speak, through which the applicant must pass before he can even be considered from the premium standpoint. This and the actuarial department are of equal importance. The medical director, who is of course a trained physician, must have in addition to that training expert judgment in passing upon lives for the purpose of insurance. Such a qualification is not, and cannot be, the result of school training, but is a special viewpoint which direct experience alone is able to give to a satisfactory degree.

(3) The Agent—The insurance agent is the real business-getter in life insurance, and the active force behind any company's development and success. Men may take the initiative in seeking out a company in order to protect their property by policies of insurance, but rarely do they do so in life insurance. It is even said that if one does so he should be examined three times and then rejected. This is because a person so rarely seeks life insurance that companies feel that there must be

something unusual about the applicant's case which the ordinary method of investigation will not reveal. Probably 99 per cent of all life insurance policies are sold by the direct solicitation of the agent. In fact, the business would stop to-morrow if the agent ceased to preach the gospel of life insurance. The rewards in this field are large to the successful agent, since he earns not only the initial commission but also the renewal commission, which normally runs through several years. Thus the agent can build up a business which gives him a steady income for his past labors.

The most effective form of agency organization, perhaps, has not yet been decided upon. There is the home office system where everything radiates from one central office, and the so-called branch office system where branches are built up in important centers. There has always been a difference of opinion as to the relative merits of each. It is safe to say, however, that the branch office system is gradually being superseded by the plan which controls the agency organization direct from the head or home office.

198. *Economic importance of life insurance.*—The status of life insurance as an economic factor can quickly be grasped by considering a few general statistics dealing with the various features of all the business, December 31, 1913, for example:

(a) ASSETS—These totaled $4,351,747,000, the following being the most important features:

Real Estate	$147,000,000
Mortgage Loans	1,454,000,000
Policy Loans	589,000,000
Stocks and Bonds	1,948,000,000
Cash	55,000,000

(b) LIABILITIES—Exclusive of capital, which amounted to $11,000,000, these totaled $4,209,000,000, leaving the net surplus over and above all liabilities $131,000,000. The principal items were:

Reinsurance Reserve	$3,677,000,000
Dividends for 1914	102,000,000
Deferred Dividends	276,000,000

(c) INCOME—This amounted to $839,000,000, the principal item being:

Premiums	$628,000,000

This item should be divided into two groups, as follows: New premiums, $74,000,000; renewal premiums, $430,000,000; interest, $188,000,000.

(d) DISBURSEMENTS—These totaled $594,000,000, principal items being:

Death Claims	$193,000,000
Endowments	52,000,000
Lapsed, Surrendered and Purchased Policies	87,000,000
Dividends	96,000,000
Commissions	56,000,000
Salaries, Medical Fees and Other Charges	51,000,000

(e) INSURANCE IN FORCE—The total was $18,000,502,971; the increase during the year 1913 being $1,033,055,496.

These statistics, taken from the reports made to the Insurance Department of the State of New York, cover the business of eleven companies of New York State, twenty-three companies of other states, and one foreign company. They are what are known as ordinary life

insurance companies. Four of the companies are doing the principal industrial business and these figures are included in the reports which have been quoted. One is a New York company, two are located in New Jersey and one in Massachusetts.

The economic importance of life insurance may be seen by comparing the assets with savings bank deposits in the United States. These insurance assets for the year 1913 totaled $4,727,000,000. This shows that the amount devoted to life insurance approximately equals the savings bank deposits of the United States.

199. *Investments of insurance companies.*—The large sums carried as reserves by life insurance companies, and which must necessarily be carried, make the question of their investment of more than passing interest. The life insurance company stands in a unique position in regard to its investments. Its practice is different from most other corporations, since it is seldom, if ever, subject to a sudden or unusual demand upon its funds. There is no danger, as in the case of fire insurance, of a conflagration hazard which may call for 40 per cent of all the assets engaged in the business of fire insurance as in San Francisco in 1906. The life insurance company can determine with considerable accuracy the calls that will be made upon it during a given year. It can very well apportion in advance the expenditures and can also fairly well determine its income. This peculiar position, therefore, makes it possible for life insurance companies to consider long-term investments which in many other cases would not be possible. Since the Armstrong Investigation in 1905 the rules governing life insurance investments have been brought within a somewhat strict compass, and in due time the companies will be expected to dispose of so-called stock holdings. This

is a natural consequence of the view taken during that year that stock holdings meant ownership and are not strictly investment securities. As a matter of fact, it was held that in owning stock the insurance companies were putting themselves in the position of owners and might, perhaps, in order to insure the success of an enterprise, be led to devote an undue part of their income to one or more enterprises solely because they wished to protect their stock holdings. To adjust matters, the broad rule was laid down that within five years all stock holdings must be disposed of and likewise any real estate beyond that needed for the home office purposes and beyond that acquired by foreclosure proceedings in connection with loans. When the assets totaled $2,000,000,000 a compilation of the different types of investments showed the following results, round figures only being used:

Foreign Government Bonds	$50,000,000
United States Bonds	3,000,000
State and Municipal Bonds	75,000,000
Railroad Bonds	660,000,000
Electric Light, Water and Gas Bonds	25,000,000
Miscellaneous	42,000,000
Total bonds owned amounted to	$855,000,000
Mortgages on Real Estate	$550,000,000
Real Estate Owned	160,000,000
Railroad Stocks	50,000,000
Trust Company Stocks	42,000,000
Bank Stocks	21,000,000
Electric Light, Water and Gas Stocks	5,000,000
Miscellaneous	10,000,000
Total stocks amounted to	$128,000,000

In the proportion of stocks to bonds this would be about as one to six. The other investments at this time were:

Premium Loans and Notes	$120,000,000
Cash	92,000,000
Collateral Loans	59,000,000
Unpaid Premiums	37,000,000
Accrued Interest and Cash Assets	17,000,000

One investment feature, worthy of more than passing notice, is the item "Premium Loans and Notes." In 1903 these amounted to less than $200,000,000. At the close of business in 1913 the loans on policies amounted to $589,000,000. In a period of ten years, then, this type of loan, which in a sense is an investment, had practically tripled.

200. *Insurance of premium loans.*—The increasing tendency on the part of the insured to borrow against the cash value of a policy is viewed with a good deal of apprehension by insurance leaders. The main object of insurance is to provide for the beneficiary. If the insured cuts down this benefit by loans, the purpose of the insurance is defeated. The panic of 1907 was largely responsible for the increase in the loan item. Here is what really happened. During the panic many people were led to raise capital by means of loans on their life insurance policies, other sources being closed. This caused the practice of borrowing to spread, since panic conditions drew attention to the fact that an insurance policy was available at any moment for a loan upon its cash value.

Unlike a savings bank, an insurance company cannot protect itself by a sixty-day provision. In most cases, if the cash value of the policy exceeds the required loan,

the insurance company must let the applicant have the money. A loan may be slightly better than cancelling the policy, since the policy is still in existence and to that extent has some hold on the insured. But the practice of considering the cash value of an insurance policy much the same as a savings bank deposit is having, and undoubtedly will continue to have, a bad effect on the main purpose for which the life insurance premium is paid—that is, the protection of the beneficiary.

201. *Life insurance as an investment.*—In a sense, perhaps, the modern method of selling life insurance as an investment is responsible for emphasizing the loan feature of policies. Loans at first were infrequently taken out, and were given merely to take care of premiums if the insured did not have the money at the time the payment was due; but long ago this condition passed and loans have become a harmful feature.

It should be observed that although the insurance company receives a fair rate of interest on these loans—higher usually than their average return from other sources—they are not thereby better off than as though they had the funds in some other form of investment. It is a special type of loan, one which cannot be called and one, in fact, about which the companies can do nothing so far as collecting it is concerned, unless the insured chooses to pay it. If he pays the interest, the loan may continue until the policy terminates and then be struck off in settling the policy. An insurance company should invest its funds to the best of its ability but the policy loan feature ties them up as a special investment. One curious fact about this type of loan is that it is seldom repaid. This emphasizes its danger to the business of life insurance. Apparently it is not regarded in the same light as other loans but is considered by the insured

as something which belongs to him, to which he is entitled, and which he will use as he pleases.

202. *Insurance companies not savings banks.*—Some insurance literature compares life insurance with the savings bank deposits in such a way as to give the idea to the insured that life insurance has in addition to insurance protection, all the advantages of a savings account. One insurance company emphasizes this point by a circular setting forth the advantage in favor of life insurance in the following tables:

If Death Occurs at End of Year	Amount Invested	Amount Invested Accumulated at 3½% Interest Annually	Insurance Return	Balance in Favor of Insurance
1	$21.70	$22.46	$1,000	$977.54
2	43.40	45.70	1,000	954.30
3	65.10	69.76	1,000	930.24
4	86.80	94.67	1,000	905.33
5	108.50	120.44	1,000	879.56
6	130.20	147.11	1,000	852.89
7	151.90	174.72	1,000	825.28
8	173.60	203.30	1,000	796.70
9	195.30	232.87	1,000	767.13
10	217.00	263.48	1,000	736.52
11	238.70	295.16	1,000	704.84
12	260.40	327.95	1,000	672.05
13	282.10	361.89	1,000	638.11
14	303.80	397.01	1,000	602.99
15	325.50	433.37	1,000	566.63
16	347.20	471.00	1,000	529.00
17	368.90	509.94	1,000	490.06
18	390.60	550.25	1,000	449.75
19	412.30	591.97	1,000	408.03
20	434.00	635.15	1,000	364.85
21	455.70	679.84	1,000	320.16
22	477.40	726.09	1,000	273.91

If Death Occurs at End of Year	Amount Invested	Amount Invested Accumulated at 3½% Interest Annually	Insurance Return	Balance in Favor of Insurance
23	$499.10	$773.96	$1,000	$226.04
24	520.80	823.51	1,000	176.49
25	542.50	874.79	1,000	125.21
26	564.20	927.87	1,000	72.13
27	585.90	982.81	1,000	17.19
28	607.60	1,039.66	1,000	

The advantage is in favor of Life Insurance for over 27 years.

Such comparisons are sure to make the insurance applicant feel that the cash value of the policy stands the same as the savings bank deposit and that he may draw on it at will. But he does not realize, unfortunately, that he cannot have it both as a savings bank deposit and as life insurance.

CHAPTER XIX

MORTALITY TABLES

203. *The basis of mortality tables.*—Premium payments and the interest return are, of course, important matters in connection with life insurance. The real, underlying plan of life insurance, however, is founded on what are known as mortality tables. These tables in turn are based on actual statistics and aim to show the general rate of mortality and, in particular, the rate at each age of life. Insurance companies may derive mortality tables from two sources: (a) the general population of any territory as shown by the census returns, including, of course, the births and deaths within the territory, and (b), so far as the life insurance companies are concerned, tables derived from their own experience.

204. *Halley's table.*—In the beginning, naturally, insurance companies had no previous experience as a guide so that all tables of mortality had to be founded upon such general statistics as were available. The earliest attempt—and it is interesting historically—to derive such a table in what might be called modern times, was that made by Halley, the English astronomer, in 1692. For some years the journal published by the Royal Society had been dormant. Halley, among others, was interested in its revival and offered to contribute an article to the first revived number. In casting about for some topic, he hit upon the idea of preparing a table of mortality. When he came to look for his statistics he found no information which he could use outside of

Breslau in Silesia. Accordingly, he based a table on their records, which are the oldest known records of this form.

So far as the source is concerned, tables of some value can be derived from a limited range of data. For example, the length of life of the rulers of a country, such as Great Britain, might be used as a foundation. A somewhat broader table, but still in the same class, could be based on statistics covering the peerage of Great Britain. In this latter case, more lives would be involved, which would make the table of greater value. In the same way, certain bodies, such as municipalities where employés are fairly steadily employed under civil service rules, furnish comparatively good data for the compiling of mortality tables. This same principle would also operate in the case of large corporations, especially those maintaining benefit funds.

205. *Principles of compilation.*—To compile a mortality table, the following essential facts must be known:

(a) the number of people,
(b) their ages,
(c) the death record,
(d) the ages at death.

Given these statistics and assuming that the population was stationary, a fairly reliable table could be computed. If, however, the tabulation is affected at all by emigration or immigration or by other factors, then the results may be quite deceptive although the first set of facts may exist.

206. *The Northampton table.*—An error of historic interest may be found in the Northampton Table of Mortality, published in 1783. This table, which enjoys the unique distinction of being the first to be used by life insurance bodies, was compiled by Dr. Price and

was based on two parishes in the town of Northampton. It was, in fact, a record of the deaths in these two parishes, with the ages at death. There was also a record of the baptisms which had taken place. In the period under observation, 1735-1780, Dr. Price noted that the number of deaths exceeded the number of baptisms. The additional deaths, he assumed, were caused by immigration into Northampton at the age of about twenty. As a matter of fact, his assumption was erroneous, as there were a large number of Baptists in the community whose children were not baptised. The wrong assumption led to wrong conclusions. As a result of the error, Dr. Price's table over-estimated the death rate and, while it was safe for a life company for annuity purposes, it was grossly in error because it under-estimated the term of life. For a long time this table was the only one in use. It may even be found in use to-day in certain parts of the United States.

207. *The Carlisle table.*—The second table, more scientific and still in use, is the Carlisle Table, so called because it was based on the statistics of two parishes in the town of Carlisle, England. It was compiled in 1815 by Joshua Milne, who based his figures on the census of 1780 and the deaths in the two parishes from 1779 to 1787. Although using only a few lives, Milne's table proved remarkably accurate and is to-day held in high esteem for some purposes.

208. *Other tables.*—There have been as many as five other tables based on population statistics in England. One of the most important was that of 1851, based on statistics of births and deaths from 1848 to 1853 in sixty-three districts of England and Wales.

It is evident that, however valuable such tables as have just been described may be when based on general

statistics, the data cannot be as exact, even within a small compass, as the carefully kept records of a life insurance society.

As soon as such a plan was practicable, the insurance companies turned to their own previous experience for data. Mr. Arthur Morgan, actuary of the old Equitable society, published the experience of that company in 1834. This was a valuable contribution to the subject, although, as the experience of merely one company, it was necessarily narrow. Some seventeen English life insurance companies combined their experience in 1843 and published a table generally known as the Actuaries or the Combined Experience Table. This new table was based on 84,000 policies running from 1762 to 1833, some 14,000 of the policies having terminated by death. The table brought out several interesting facts which have been verified by later experience—that the mortality among women between the ages of twenty and fifty was greater than that among men, and that above that age the reverse appeared to be the case. These facts do not hold good, however, when dealing with annuity experience, and that fact must be noted in the two forms of contract. The conditions under which the two forms are taken out are usually quite different.

209. *The American Experience tables.*—In the United States, the English tables were, with adaptations, the best guide until sufficient experience had developed to compile tables on this side of the Atlantic. Probably the most famous—perhaps because the first, but also because it has stood the test of years—is the American Experience Table of Mortality, which ranks as the standard table in the United States. It was compiled by Sheppard Homans and appears to have been published originally in connection with an act of the

Legislature of the State of New York, May 6, 1868. Much interest was aroused as to how the table was compiled, although the exact manner is still more or less a matter of conjecture. One assumption was that the statistics of the Mutual Life Insurance Company of New York were used as a basis; in this connection, however, it has been observed that the statistics available for the older ages could hardly have been sufficient to serve as the basis for such a table. Some adaptation, evidently, must have been made, but just what or how extensive is not known. In any event, the table stood the test well and answered the purpose admirably. In fact, it made a very important place for itself on this side of the Atlantic and is the table usually prescribed by all the State laws.

There have been many other important tables based on different periods and used for different purposes. Investigations have been and are still being conducted both in England and in this country, and we may look for improved tables as the work progresses, just as we may expect changing conditions in the length of life itself under improved sanitary and hygienic conditions.

The American Table of Mortality, which is now in general use for computing the premium of American companies, is here reproduced. It assumes that there are 100,000 living at the age of ten and for each year up to 95, when the table runs out, shows the number surviving at the succeeding year. The percentage of mortality is also shown, that is, the number who died within the year in proportion to those living. The life expectancy is also shown. As yet, these percentages are, of course, tentative and provisional, but they are of considerable interest in connection with a study of the general subject. It should be remembered that the chief con-

cern of the actuary is not in the expectancy of life, but rather in the chance of loss when a policy is issued.

AMERICAN TABLE OF MORTALITY

Age	Surviving	Per Cent of Mortality	Expect. of Life	Age	Surviving	Per Cent of Mortality	Expect. of Life
10	100,000	.7490	48.7	53	66,797	1.6333	18.8
11	99,251	.7516	48.1	54	65,706	1.7396	18.1
12	98,505	.7543	47.4	55	64,563	1.8571	17.4
13	97,762	.7569	46.8	56	63,364	1.9885	16.7
14	97,022	.7596	46.2	57	62,104	2.1335	16.0
15	96,285	.7634	45.5	58	60,779	2.2936	15.4
16	95,550	.7661	44.9	59	59,385	2.4720	14.7
17	94,818	.7688	44.2	60	57,917	2.6693	14.1
18	94,089	.7727	43.5	61	56,371	2.8880	13.5
19	93,362	.7765	42.9	62	54,743	3.1292	12.9
20	92,637	.7805	42.2	63	53,030	3.3943	12.3
21	91,914	.7855	41.5	64	51,230	3.6873	11.7
22	91,192	.7906	40.9	65	49,341	4.0129	11.1
23	90,471	.7958	40.2	66	47,361	4.3707	10.5
24	89,751	.8011	39.5	67	45,291	4.7647	10.0
25	89,032	.8065	38.8	68	43,133	5.2002	9.5
26	88,314	.8130	38.1	69	40,890	5.6762	9.0
27	87,596	.8197	37.4	70	38,569	6.1993	8.5
28	86,878	.8264	36.7	71	36,178	6.7665	8.0
29	86,160	.8345	36.0	72	33,730	7.3733	7.5
30	85,441	.8427	35.3	73	31,243	8.0178	7.1
31	84,721	.8510	34.6	74	28,738	8.7028	6.7
32	84,000	.8607	33.9	75	26,237	9.4371	6.3
33	83,277	.8718	33.2	76	23,761	10.2311	5.9
34	82,551	.8831	32.5	77	21,330	11.1064	5.5
35	81,822	.8946	31.8	78	18,961	12.0827	5.1
36	81,090	.9089	31.1	79	16,670	13.1734	4.7
37	80,353	.9234	30.3	80	14,474	14.4466	4.4
38	79,611	.9408	29.6	81	12,383	15.8605	4.0
39	78,862	.9586	28.9	82	10,419	17.4297	3.7
40	78,106	.9794	28.2	83	8,603	19.1561	3.4
41	77,341	1.0008	27.5	84	6,955	21.1359	3.1
42	76,567	1.0252	26.7	85	5,485	23.5552	2.8
43	75,782	1.0517	26.0	86	4,193	26.5681	2.5
44	74,985	1.0829	25.3	87	3,079	30.3020	2.2
45	74,173	1.1163	24.5	88	2,146	34.6692	1.9
46	73,345	1.1562	23.8	89	1,402	39.5863	1.7
47	72,497	1.2000	23.1	90	847	45.4545	1.4
48	71,627	1.2509	22.4	91	462	53.2466	1.2
49	70,731	1.3106	21.6	92	216	63.4259	1.0
50	69,804	1.3781	20.9	93	79	73.4177	0.8
51	68,842	1.4541	20.2	94	21	85.7143	0.6
52	67,841	1.5389	19.5	95	3	100.0000	0.5

210. *Computing the premium.*—A simple illustration will show the principles according to which an insurance premium is computed. It is desired, say, to insure 1,000 persons for $1,000 each. We will assume that they wish to pay for this in one payment. We will also assume that each member of the entire group is fifty years of age at the time the insurance is taken out and that all will die within a three-year period, the deaths being at the rate of 200 the first year, 300 the second and 500 the third. To meet this condition it is evident that the company must have on hand at the end of the first year $200,000 to pay one thousand dollars to each beneficiary for each of the 200 deaths. In the same way, there must be $300,000 at the end of the second year and $500,000 at the end of the third year. But only these respective parts—that is, $200,000, $300,000 and $500,000—will be required at the end of the first, second and third years respectively. The company need not, therefore, collect the entire $1,000,000 at the beginning, since only a proportion will be demanded at the close of that year. Let us further assume that the interest will be 3 per cent. At the close of the first year, as we have seen, $200,000 must be paid. But what is the present value of this sum? The present value of $1 for one year is .970874, and for $200,000 would be $194,174.80. The present value of the $300,000 due at the end of two years is $282,778.80; the present value of $500,000 needed at the end of the third year is $457,571. Totalling these three amounts at their present value, then, we have $934,524.60, and as there are one thousand persons whose lives are insured, each would pay one-thousandth part of this, or $934.53. This sum, then, at the beginning of the three-year period would provide for the payments of the whole group.

Passing now to an example taken directly from the American Mortality Table, suppose you wish to find the sum of money for which a policy can be issued for a person, age fifty, providing for a $1,000 payment at death. Refer to the table on the preceding page and you will find that out of 100,000 persons who were aged 10, only 69,804 reached the age of 50. You will further note, on looking at the 51st year, that 962 is the estimated number of those who will die within the year. Accordingly, if a company insured the whole group, it should be in a position to pay out $962,000 for the deaths of this year. But the present value of this sum is only $933,981, since with interest at 3 per cent it would amount at the end of the year to $962,000. Now, likewise, for each succeeding year the table shows the amount required and the present worth is easily ascertained. The sum of all these will show that each person at the age of fifty would pay $555.22 to insure $1,000 being paid to each person at death.

211. *The law of increasing mortality.*—The fact that the death rate increases in the older ages is provided for by adjusting the insurance premium so that in the younger ages an increased sum is collected in order that the proper reserves may be set aside. The annual premiums normally exceed the death claims for the first thirty or forty years; after that, the losses by death largely exceed the annual premiums. Failure to recognize this law of increasing mortality in the older ages has brought most of the trouble to the assessment insurance companies. If enough is not collected at the younger age to establish the proper reserve for the older age, it naturally becomes necessary to increase the assessment or premiums at the older age.

CHAPTER XX

POLICIES AND PREMIUM RATES

212. *Classification of policies.*—In considering life insurance policies, one of the first classifications might be into "participating" and "non-participating policies." Participating policies entitle the holders to a share in the company's profits. The payment of such amounts is often referred to as "dividends," although in the ordinary sense of the word there is no such thing as a dividend to holders of life insurance policies. There would, of course, be no reason for "dividends" if life insurance costs could be figured exactly. Mortality tables and interest calculations can, at best, furnish only the basis for close approximations. What is meant, then, is that the companies to be on the safe side arrange premium payments which will absolutely protect them against failure. This is done by means of so-called "dividends," that is, by paying back to the insured certain sums of money on the policies taken out.

Some, however, prefer a lower annual charge without the feature of dividend participation. To such parties policies are issued on what is known as the "non-participating" basis; that is, they pay a fixed annual charge for the policy so long as the term shall run or so long as they shall live. Thus, they have the advantage of knowing just what the insurance is going to cost them and just what the return will be. It may safely be said, however, that most policies are issued on the participating basis, the dividend feature being a not unpleasing one to the average individual.

213. *Kinds of policies.*—A life insurance policy may be issued, and in the majority of cases is issued, for life; that is, the amount of the policy is payable to the beneficiary on the death of the insured. An endowment policy is payable at death or at a fixed period of time. For example, a twenty-year endowment policy would be payable if the insured died within twenty years or, if the insured were to live, would be payable at the end of the twenty-year period.

Term policies are infrequently written and are usually issued for some specific purpose, as to cover a life for a short term of years. Such a policy may be taken out to cover loss for a certain period, as, for example, on the life of an inventor while he is engaged in developing an invention; or such a policy might be taken out to cover the head of an institution where it was felt that the successful development of the plant depended so much on his life that in the event of death the money invested might be a total loss. Such a form of risk may be insured by the term policy. As might be expected, this type of policy is cheaper than the other forms since it covers only a limited number of years, usually a term of years in early or middle life when the death rate is less than in the later years.

214. *Annuities.*—An annuity, as far as its working principles are concerned, might be said to be the reverse of life insurance, the company paying an annual sum to the annuitant, after having received in one payment a sum for this purpose. In other words, in an annuity, as contrasted with life insurance, the company and the insured change places. In an annuity, the risk is carried, not by the company, but by the annuitant, for if he dies prematurely the company is relieved from the obligation of further annual payments. The business of an-

nuities is much smaller in the United States than in England, the idea apparently not appealing strongly to the American people. Possibly conditions may later change so as to make annuities more popular in this country. The annuity is without doubt a most useful form of investment, since it provides a stated sum payable according to definite terms, thus avoiding the dangerous practice of entrusting large sums to persons who, because unskilled in money matters, are often likely to make unwise investments.

215. *Classification of risks.*—Theoretically, a life insurance company accepts only such risks as are up to its standard. Some provision, to be sure, is made for "substandard" lives, but comparatively speaking it is slight since standard lives are the ones which insurance companies are more desirous of insuring. It will readily be seen that this policy differs radically from that of property insurance, for while there are different standards, as in fire insurance, to which a risk should attain, rarely, if ever, does it do so; the substandard condition, therefore, is the one most frequently met. From the standpoint of the insurance companies, risks have been classified as "preferred," "ordinary," and "doubtful." In the doubtful class are the underweights and overweights. The following reasons have been set forth by an authority for their being in that class:

(1) The Underweights.

(a) They are abnormal and die short of their expectation.

(b) They are prone to tuberculosis and nervous diseases.

(c) They are frequently underfed and overworked and suffer from dyspepsia and indigestion.

(2) The Overweights.

(a) They are abnormal.
(b) They are prone to develop heart disease, apoplexy, and premature arteriosclerosis, diabetes, rheumatism and gout.
(c) They frequently take little exercise, eat heartily, and are often intemperate in their use of malt liquors.
(d) They frequently succumb to accidents and surgical operations.

From the insurance standpoint occupation is important. Some occupations are obviously so hazardous (aviation, for example) as to cause a company to decline the risk, although other conditions might be favorable. Insurance might be granted in such a case but the rate would be almost prohibitive. As a rule, the company expects the applicant to continue in the same line of occupation as that in which he was engaged at the time the policy was written for him, but statistics regarding the hazards of various occupations have never been complete enough to make possible any hard or fixed rule about change of occupation. A change that did not involve a radical degree of increased hazard would be permitted without any question. The matter of race, of course, is taken into consideration, since it is well known that longevity varies widely in different races. This is true not only in different countries inhabited by their respective races but also where different races are found under the same climatic conditions.

216. *Influence of climate on mortality.*—The territory in which one lives or the part of the earth he occupies has to be considered. In the Temperate Zones, for example, which are the more highly settled and civilized,

living conditions are fairly stable and all protective influences that make for long life are enforced by the general authorities. In the Torrid Zone, however, the Anglo-Saxon race does not flourish. Fifty years ago the restrictions were quite severe, even in the United States, where yellow fever was looked upon as a dangerous epidemic. To-day one may live in practically any part of the United States without suffering thereby from an insurance standpoint. There are differences, of course; some sections are more healthful than others but the differences in healthfulness are not as yet considered sufficient to affect insurance policies to any extent. Once a company is satisfied that certain regions are not those in which lives should be insured, they will cease to solicit insurance in those regions.

217. *The moral hazard.*—The moral hazard, of course, exists in life insurance as in every form of insurance and possibly in every station of life. It is not enough that the insured shall have passed the medical examination and otherwise have qualified. The ordinary qualifications are important, to be sure, but in addition the company endeavors to ascertain something of the moral standing of anyone who applies for insurance. This information is secured by means of research work and special investigations conducted quite independently of the usual sources of information. The extreme care exercised is fully warranted, since a contract of life insurance is, so far as the company is concerned, one which it cannot cancel after the policy has once been issued and the premium paid. For so long thereafter as the insured shall pay the premium the policy continues in force. The insured, of course, may cancel the policy at any time, although, as has just been mentioned, the insurer may not. For this reason, therefore, it is ex-

ceedingly important that the company use the utmost care that its policy shall not be issued to cover risks which, from the moral standpoint, would be undesirable. Again, referring to suicide, it may be said that this has always been one of the specific problems. It is a fact that suicide in the United States is on the increase. Statistics show that for each one hundred thousand of the population in sixty-five cities the increase was from 12.3 in 1890 to 20.6 in 1909.

218. *Features of the insurance contract.*—The modern policy contract, in its general features, represents a somewhat simple condition. Formerly it was filled with prohibitions; now it is filled with privileges. Brief mention may be made of such points as are found in the majority of policies.

The premium is due at the time stated in the contract and is payable only at the home office of the company unless other provision is made.

The contract is not subject to alteration, and the policy with the application, if there be one, tells the whole story. Other matters cannot be brought into it. There may be a few exceptional cases but they would be so rare as to be negligible.

Due notice of an assignment, if made, must be given the company.

The average life insurance policy is incontestable from date of issue except for suicide and usually is incontestable for that feature one year after issue. In connection with suicide, an attempt was made to do away with the special provision for one year. It was found, however, that with this restriction removed, the number of suicides apparently increased so that the suicide clause was restored as a protection to the insurance companies. People contemplating suicide would, just

before taking their lives, secure policies so long as they could get those which were incontestable from date of issue.

It might naturally be assumed that insurance applicants could be relied upon to state their ages correctly, and yet there have been sufficient cases of misstatement to warrant rules being made to provide the proper means of adjustment. The rule generally in force at the present time is that if the age has been misstated the correction may be made and the proper payment under the policy for the given age be made the basis of settlement.

Thirty days of grace had by custom become established for the payment of premiums. In many states it is now the rule and one month is allowed by law during which payments may be made.

The beneficiary of an insurance policy in the early days could not be changed without his or her consent. This provision proved an unwise handicap in some cases; in fact, if it had been retained in insurance policies it might, and probably would, have retarded the growth of life insurance. The practice has, however, been changed so that to-day the beneficiary can usually be changed if the policy holder, when he takes out his insurance, expresses his desire to have this privilege embodied in the policy.

219. *Paid-up policies.*—A life insurance policy that has been allowed to lapse after having been in force for three years does not become a complete loss to the insured. It is supposed to be of some worth, is carried as a policy for that amount and is payable at the stated time as though it had been carried to completion. If a policy which has a paid-up insurance value is permitted to lapse or is cancelled, it is customary, if the insured so desires, to grant a paid-up policy for the amount.

220. *Cash value.*—At the end of three years, the cash value feature comes into play, so that the policy, if cancelled, has a certain value; that is to say, the insured, under the terms of the policy, is entitled to a certain amount if he gives up his right to the policy. This feature of the cash surrender value of a policy was introduced into the business, on this side of the Atlantic at least, by Elizur Wright, one of the early Commissioners of Massachusetts. He held that as the payments in the early days of life insurance constituted, in part at least, a reserve for the payment of the policy, the insured should not lose this total sum if he found it necessary to allow his policy to lapse, but should have the benefit of a certain cash value. This provision is now a recognized principle in all life insurance contracts.

221. *The medical examination.*—Practically all forms of insurance are written only after some form of examination, or "inspection" as it is termed in fire insurance, of the risk to be insured. The medical examination in life insurance corresponds, in a sense, to the property inspection in fire insurance. In early days, in fact for several decades, there was no medical examination in connection with life insurance. Under the existing conditions it was hardly necessary, since the entire process was a slow and formal affair and the work of the societies confined to local territories, where applicants were generally known to two or more trustees of the society. To-day, the medical examiner of a life insurance company is an important official. An applicant for insurance covers the general questions to which the company desires answers before it issues a policy, but he is not obliged to write out answers to purely medical questions. A typical medical examiner's report runs as follows,[1] and a consideration of these questions will reveal

[1] See pages 210-11.

the points emphasized by the company in considering the application.

One or two questions which involve a moral viewpoint may be worthy of special attention. Under 14 (d) and (e), questions are asked in regard to intoxicating liquors, and under 36, with subdivisions running from (a) to (h) inclusive, the subject is covered still more fully. The word "temperate" does not mean the same thing to everyone. To one applicant it might mean a moderate use of alcoholic liquors; to another it might mean excess or almost total abstinence. The word is open to so many interpretations that nowadays it is generally taken to mean, not total abstinence, but rather the use of alcoholic liquors only to a certain extent. A statement as to what that extent is must come from the applicant. One who does not use such liquors would be a total abstainer. As a matter of fact, but very little trouble is experienced in finding out the exact status in each case since the applicant is usually quite willing to state whether he does or does not use liquors, and in the event of his using them, to indicate the frequency of his indulgence. Notice under question 36 (b) and (c) that the times of use, daily, weekly, and monthly, are taken up quite minutely, forming a record which runs back over two years.

The use of drugs, apparently, stands on a different moral basis from the use of alcoholic liquors. Probably no applicant for insurance would confess to the use of drugs. To detect a user of drugs, therefore, calls for the keenest discernment and discrimination on the part of the medical examiner.

MEDICAL EXAMINER'S REPORT

1. (a) What is your full name?.....(b) Age at last birthday?.....
2. Are you married?.....
3. (a) What illnesses, diseases or accidents have you had since childhood?.... { (The Examiner should satisfy himself that the applicant gives full and careful answers to this question.)

Name of Disease	Number of Attacks	Date of Each	Duration	Severity	Results	Date of Complete Recovery

3. (b) Have you stated in answer to question (3) (a) all such illnesses, diseases or accidents?.....
4. State every physician whom you have consulted in the past five years.

Nane of Physician	Address	When Consulted	Nature of Complaint Give Full Details Above under Q. 3 (a)

5. Have you ever raised or spat blood?.....
6. (a) Are you now in good health?.....(b) If not, what is the impairment?.....
7. (a) Have you a rupture or hernia?.....(b) If so, do you wear a suitable truss?.....
8. Have you undergone any surgical operation?.....
9. (a) Have you lost any part of an arm or leg?.....(b) Have you any bodily malformation?.....
10. Have you any impairment of sight or hearing?.....
11. Have you been successfully vaccinated?.....
12. (a) Have you gained or lost weight in the past year?.....(b) If so, how much and from what cause?.....
13. (a) Have you ever been under treatment at any Asylum, Cure, Hospital or Sanitarium?.....
    (b) If so, when, how long, and for what?.....
14. (a) What is your present occupation?.....(b) How long have you been engaged in this occupation?.....
    (c) What other occupations have you been engaged in?.....
    (d) Do you contemplate making any change, temporary or permanent, in your occupation?.....
    (e) Are you now engaged in any way in the sale or manufacture of beer, wine or other intoxicating liquors?.....
    (f) How long have you been so engaged?.....
15. (a) Have you ever changed your residence on account of your health?.....
    (b) Do you contemplate making any change in your place of residence?.....
16. Have you ever been examined for a policy in any company or association which was not issued as applied for?.....

17. Family Record of Applicant	Living		Dead		
	Age	Health	Age	Specific Cause of Death	How Long Sick
Father					
Mother					

Brothers		Living		Dead		
Number Living	Number Dead	Age	Health	Age	Specific Cause of Death	How Long Sick

Age of Father's Father, if living?..... If not, age at death?.....

Age of Father's Mother, if living?..... If not, age at death?.....

Age of Mother's Father, if living?..... If not, age at death?.....

Age of Mother's Mother, if living?..... If not, age at death?.....

Sisters	
Number Living	Number Dead

18. Was there any suspicion of tuberculosis or consumption, or insanity or cancer as a cause of death among those mentioned above?.....

19. (a) Has any member of your household suffered from tuberculosis or consumption during the past year?.....

(b) If so, give details?.....

Dated at.....State of.....

the.....day of.....190.....

WITNESS:

.....M. D.

I certify that my answers to the foregoing questions are correctly recorded by the Medical Examiner.

.....

Signature of the person examined.

20. Figure?..... 21. General appearance?.....

22. Apparent age?..... 23. Race?.....

24. (a) Weight?.....lbs. (b) Did you take this by scales?.....

25. Height by measurement?.....feet.....inches.

26. Measurement of abdomen at level of umbilicus?.....inches.

27. Measurement of chest at full inspiration?.....inches.

28. Measurement of chest at deep expiration?.....inches.

29. State the pulse rate? (Count a full minute).....

30. Is the pulse intermittent or irregular?.....

31. Do careful inquiry and thorough physical examination show any evidence of past or present disease of: (If yes, give full details.)

(a) Brain or nervous system?.....

(b) Heart?.....

(c) Arteries?.....

(d) Respiratory organs?.....

(e) Abdominal viscera?.....

(f) Rheumatic or gouty nature?.....

(g) Syphilitic origin?.....

(h) Skin, middle ear or any part of the body?.....

32. Did you examine the heart and lungs through any clothing other than the undershirt?.....

33. (a) Is the urine voided at this examination clear or turbid?.....

(b) Specific gravity?..... (c) Reaction?.....

(d) Presence of albumen?..... (e) Of sugar?.....

(f) Do you know that the applicant passed this urine?.....

34. If the applicant is ruptured, examine the hernia and state:

(a) Is it reducible?..... (b) Is a suitable truss worn?.....

35. (a) How long have you known the applicant?.....

(b) How intimately?.....

(c) Give some mark of identification?.....

36. Make careful inquiry before answering these questions:

(a) Does the applicant use wine, spirits or malt liquors?.....

(b) If so, what kind and how much in any one day at the most?.....

(c) If the applicant uses any of them daily, weekly or monthly, state kind and average for the past two years?.....

(d) Has the applicant used any of them to the extent of intoxication during the past five years?.....

(e) If a total abstainer, how long has the applicant been so?.....

(f) Have you any suspicion that the applicant uses wine, spirits or malt liquors in otherwise than a strictly temperate manner?.....

(g) Have you any suspicion that the applicant now uses or ever has used opium, chloral, cocaine or other narcotics?.....

(h) Has the applicant ever taken treatment for alcoholic or drug habit?.... If so, how many times and when?.....

37. Has the applicant's occupation been correctly stated?.....

38. Are there any unsanitary conditions in the applicant's residence or place of business?.....

39. Has the applicant's family and personal history been fully stated?.....

40. Do you without reservation recommend the applicant for insurance?.....

41. Was any third party present, contrary to Company's rules, while you were asking the applicant questions? If so, why?.....

CHAPTER XXI

INDUSTRIAL AND ASSESSMENT INSURANCE

222. *Industrial insurance defined.*—Industrial insurance is substantially life insurance, but owing to certain principles in connection with its sale it has come to enjoy the special definition, "Industrial Insurance." It has been well stated to be mass insurance as distinguished from class insurance; and when we consider that in Great Britain some seventeen million policies of this type are in force, we can appreciate its appeal to the great mass of the population.

The descriptive word "industrial" it took from the beginning. In 1849 the attempt to establish this type of insurance was made in England by a company called the Industrial and General, and because of its origin this term has remained. The solicitations of the Industrial and General were among the industrial wage earning classes.

Industrial insurance is not handled as the exclusive activity of any one company, but is sold by companies doing an ordinary life insurance business; it is, however, by them separately handled and managed.

223. *Early efforts in the United States.*—In the United States as early as 1847 efforts were made to sell policies on the weekly and monthly payment plans. None of these efforts were successful, and as a matter of fact amounted to but very little up to the year 1874. Apparently, this period of educational work was necessary in order to prepare the public for this type of insurance. Possibly, too, the early efforts were not made by

those who could carry the idea through on a large scale.

224. *The first company.*—To John F. Dryden of the Prudential Insurance Company belongs the credit for successfully establishing this form of insurance in the United States. Mr. Dryden came to Newark, New Jersey, in 1873, and a bill was passed by the legislature chartering the Widows' and Orphans' Benefit Society. Nothing came of this movement. In the Spring of 1875 the charter of this society was amended to the Prudential Friendly Society, and two years later it became the Prudential Insurance Company of America. Business operations on a true industrial insurance basis began on November 10, 1875, the first application being written on the life of Mr. W. K. Drake, cashier of the German Bank of Newark. The object of the society was set forth as follows: "It is the special aim of this society to enable people of small means to provide themselves with relief in sickness or accident; (2) for a pension in old age; (3) for an adult burial fund; (4) for an infant burial fund. The contributions charged for the above named benefits have been computed by eminent actuaries of America and England, and are such as careful study and close calculation have shown to be equitable and necessary. They are as low as the Society can afford, for the benefits granted, and are high enough to make it safe."

The first of the four features just set forth was discontinued after a few years of experience, and the second did not meet with much favor. On the third and fourth branches, however, a great business was built. The first is now coming into very active reconsideration, and insurance to cover sickness for the masses will doubtless be established in time.

225. *Growth of the Prudential.*—The growth of the Prudential Insurance Company of America was phenomenal, showing that there must have existed a real demand for this form of insurance. The first policy was issued November 10, 1875, and by May 22, 1876, the number of policies amounted to five thousand. There were financial problems connected with the growth of this company, which simple as they look in the light of present day achievements, were not simple in those times. For the year 1876 the total income was about $14,495 and the total expenses $16,253. The deficiency, together with the necessary reserve, had been paid in by the stockholders. This was at the end of fifteen months of operation, showing how difficult was the work of placing the society on a sound financial basis.

226. *Conditions in 1885.*—Three years later, in 1879, there were sixty thousand industrial policies in force in the United States, and some four companies were engaged in the business. In 1885 it commanded the notice of Mr. August F. Harvey, one of the leading actuaries of the time, who spoke of it as follows:

I also made inquiry into some matters connected with the industrial business. It is comparatively new here, but the results of the trial, so far, favor its excellence and its permanency. The great advantage to persons of very limited means of being able to carry a moderate insurance for a low weekly cost, collected at their homes, extends beyond the mere convenience of the matter to the individuals concerned. The system relieves such beneficiaries from their worst anxiety—the dread of burials at public expense—and has actually, in many of the more populous quarters of the large cities, where extreme poverty prevails, had a marked influence in the reduced number of calls for aid in the public press; it promotes small savings in

people of higher advantages and encourages a thrift among the better classes who patronize the Company, which has its effect in the increment of the public wealth. I inquired particularly with reference to the public assertion, that the plan of furnishing insurances on infant lives was to invite child-murder, or such neglect as to bring its fatal results within the category of crime. If the statement is true in any degree, the foundation for it is so limited that it has not been particularly noticed.

In an earlier paragraph the total insurance in force at the close of business, December 31, 1913, was stated to be $18,000,502,971. Of this sum, industrial business amounted to $3,656,000,000, and it is safe to say that there were from ten to twelve million policies in force.

227. *Four basic principles.*—Industrial insurance has four basic principles upon which its success is based. They are as follows: (a) the weekly payment principle; (b) the principle of family insurance; (c) the necessity of a collector; and (d) the adjustment of the amounts of insurance to a premium having five cents or any multiples thereof as a unit.

228. *Assessment insurance.*—Assessment insurance is a form of life insurance based on the principle that it is unnecessary to carry any large reserves but that as the benefits become due the sums needed can be collected by means of an assessment. Probably the early conditions under which insurance was sold in the United States up to, say, the early 60's, suggested the assessment plan. At that time there were comparatively few clear or sound ideas as to the proper foundation for a life insurance company. The whole question of what should be regarded as the necessary reserve was none too well understood by those engaged in the business gen-

erally, and probably was not understood at all by the common people.

229. *Origin.*—Assessment insurance in this country appears to have originated in Meadville, Pa., in 1868, when a society was organized under the name "The Ancient Order of United Workmen." It was formed originally for other purposes, but as an insurance protection for the members, one dollar per member was paid to the beneficiary on the death of any other member. This type of insurance must have met the existing conditions of that time, as it spread rapidly throughout Pennsylvania and passed into other states.

230. *Weak points.*—The primary difficulty with assessment insurance is that if only the necessary collections are made to pay the expenses as the institution goes along, no reserve accumulates against the larger claims which are sure to be made in later years as the members grow older. Enough new blood cannot be brought in to keep down the increased cost. The result is that as the society grows older the increased assessments mean an increased cost; this, in turn, frequently results in the dropping out of the older members who, by so doing, lose their insurance.

231. *Fraternal insurance.*—On a strictly business basis, assessment insurance no longer exists in the United States. In the form of fraternal insurance, however, it does exist and is a very important factor in the business of life insurance. The last available report, that of December 31, 1913, shows that the fraternal orders reporting to the New York State Insurance Department had insurance in force of $6,193,259,000, and assets amounting to $134,000,000. The difference between fraternal insurance and regular life insurance, from the reserve standpoint, is forcibly illustrated by

the fact that the assets of the former represent about 2 per cent of the policy liability, while in the ordinary insurance business, with policies in force aggregating $18,000,000,000 and assets of over $4,000,000,000, the proportion is about 22½ per cent. Assessment and fraternal insurance companies, however, have done an extraordinarily successful work in arousing the public to a realization of the importance of insurance, not to mention the immense sums which they have collected and disbursed in the form of death benefits. It should be remembered by one planning to take out life insurance that there is a wide gulf between regular life insurance and fraternal. The impregnable law of mortality—that the deaths increase with increasing age—is one which may bring confusion even to the best laid plans of the fraternal type of organization.

CHAPTER XXII

CASUALTY INSURANCE

232. *Casualty insurance defined.*—Under the general heading "Casualty Insurance" are embraced all forms of insurance which do not strictly come under fire, life or marine. Of the fifty-one types of insurance listed in the first chapters of this work, nearly thirty would fall under this group. The term "accident insurance" is frequently used in referring to these types of insurance. Accident insurance means that form of insurance which covers dangers to the body of a person, including death if caused by accident. Historically, however, the name accident insurance came to be applied to a large body of insurances because these different types of insurance came into existence shortly after the invention of the steam railway. Someone conceived the idea that because the dangers of accidents in that form of travel were greater, people would buy insurance against them; at the same time the originator of the idea pointed out that although the dangers were great, they were subject to certain laws which could be worked out. His statement proved to be correct. From its inception accident insurance has been one of the most popular, widespread, and successful branches coming under the head of casualty insurance.

233. *General status.*—Before passing to a consideration of specific branches, however, the general status of casualty insurance business, as shown by the statistical returns, should be considered. As in the other forms of insurance, the figures filed with the New York State In-

surance Department for the close of business December 31, 1913, are used. These reports show sixty-four companies engaged in casualty insurance with total assets of $170,000,000, represented principally by

Stocks and Bonds	$112,000,000
Uncollected Premiums	19,000,000
Real Estate	10,000,000
Mortgages	11,000,000

The liabilities were $92,000,000, represented in part by

Special reserve for liability and Workmen's compensation loss	$16,000,000
Unearned premium reserve	52,000,000
Unadjusted and Adjusted but unpaid losses	7,000,000
Other liabilities	11,000,000

The liabilities of $92,000,000 did not include capital, which is $43,000,000. The net surplus was $34,000,000.

The income for the year was $135,000,000, the principal items being:

Premiums	$122,000,000
Interest in Dividends	6,000,000
All other sources	5,000,000

The excess of income over disbursements was $11,000,000. The disbursements totaled $124,000,000.

Claims	$53,000,000
Commissions	29,000,000
Dividends	5,000,000
Salaries, travelling expenses and inspections	17,000,000
Taxes	3,000,000
All other disbursements	16,000,000

The companies just noted were the stock companies and there were twenty-six associations based on the assessment principle. They had insurance in force of $92,000,000; assets of $3,750,000; income was $2,856,000, and disbursements $2,684,000.

The special form of insurance dealing with titles and the guarantee of mortgages may be considered as coming under the general casualty branch. Since these returns are made separately, the statistics are presented apart from the others. There were eleven such companies, with total assets amounting to $53,000,000; liabilities exclusive of capital $17,000,000, and capital $19,000,000. Reported surplus was $16,500,000; income $5,967,000; disbursements $6,229,000.

234. *Accident insurance.*—In taking up some of the leading branches of casualty insurance, accident should, historically, come first. Those who proposed this form of insurance in England in 1848 were considered bereft of reason; notwithstanding this fact, however, the Railway Passengers Assurance Company was established the following year (1849) by a special act of Parliament and this company stands as the first one in the world to undertake insurance against accidents to the person or body. The original charter did not plan for a very wide scope of liability. It was limited, rather, to those accidents arising in connection with railroad travel. But the plan was broadened to include accidents arising from any source and the necessary amendment to the charter was secured from Parliament on July 17, 1852. The company was successful from the start.

235. *The Travelers' of Hartford.*—In the United States, accident insurance was introduced by J. G. Batterson of Hartford, Conn. While travelling abroad,

Mr. Batterson noticed the operations of the newly-formed companies, purchased one of the tickets and became convinced that there was an opening in the United States for a similar company. On his return he organized in Hartford the Travelers' Insurance Company, the pioneer in the United States.

236. *Growth of accident insurance.*—As already indicated, accident insurance has been constantly enlarging its scope so as to cover not only injuries to the body from physical contact with another body, but also so as to cover against certain kinds of diseases. In 1897 there were twenty-six companies which issued insurance against the following diseases: typhoid fever, typhus fever, scarlet fever and smallpox. This list was later extended, many companies including diphtheria, measles and Asiatic cholera. By some companies an annuity was granted for life in case of permanent disability, and, furthermore, the benefits arising from injury in a railroad accident were doubled—that is, if an accident occurred owing to a railroad disaster, the specified benefit was twice that of an accident arising from other sources. It is difficult to conceive of the broad range which has come to be included under this type of policy. It may even be said that in a short time there will not be any human ill that will not be covered by some form of insurance.

237. *Various kinds of accidents.*—The premiums for this type of insurance in the United States now aggregate nearly $25,000,000. During the first year of the business, from April, 1864, to April, 1865, the receipts were $32,148. A well-known compilation has been made setting forth the proportion of accidents arising under different circumstances. The table runs as follows:

	Per cent
Accidents to pedestrians	24.14
At home (indoors)	18.80
Horses and vehicles	18.16
At home (outside)	15.98
Recreation	6.15
Railroad travel	4.77
Bicycle accidents	4.06
Street car travel	2.74
Use of firearms	1.73
Animal bites	1.52
Assaults	1.20
Steamship travel	.70
Miscellaneous	.05
	100.00

When it is recalled that this form of insurance was invented to cover the possibility of accident in railway travel, and when it is noticed that railway accidents constitute only a small part of the accidents for which claims were paid in the above table, it can readily be seen that accident insurance was extended to cover a very wide field. In modern life accident insurance is probably one of the most necessary forms to carry, particularly so since the cost is comparatively trivial. The causes of accidents over a wide range is illustrated by a compilation covering claims paid in the year 1912.

Cranking gasoline launch—bar slipped and cut lip.
Playing baseball—ball struck finger—dislocated finger.
Playing tennis—sprained ankle.
Riding horseback—horse fell—thrown under horse.
Fishing—fell on rocks.
On steamer—slipped while playing shuffle and injured knee.

Bathing—knocked down by wave—injured foot.
Playing golf—handle of stick was rough and cut hand.
Rowing—bruised palm of hand with oar.
Playing ten pins—slipped and sprained thumb.
Playing with medicine ball—fractured finger.
Getting over fence—jumped on stone and sprained ankle.
Playing ball—collided with runner and fractured nose.
Playing handball—slipped and fell and injured knee.
In boat—knife which was on seat struck hip.
In swimming—was drowned.
In swimming at Y. M. C. A.—struck head on bottom of pool.
Playing tennis—burned arm on cigarette.
Getting out of rowboat—slipped and fell.
Shooting pigeons—gun kicked—injured shoulder and arm.
In bathing—stepped on sharp shell.
At picnic—lighting gasoline torch—burned hand.
Fishing and wading—cut foot on stone.
Playing golf—fell and sprained finger.
Walking on mountain—came in contact with poison ivy.
Camping—cut down tree—cut foot.
Bowling—crushed finger between balls.
Riding on merry-go-round—fell and dislocated shoulder.
Camping—spilled hot grease on hand.
Walking in woods—limb of tree struck eye.

238. *Injuries self-inflicted.*—It may seem strange that persons will mutilate themselves to obtain money benefits, but the experience of the companies shows that such is the fact and emphasizes the importance of carefully guarding against this practice. The ordinary elements of moral hazard which would apply to life insurance must be covered, of course, but in addition there must be taken into account people who apparently possess the peculiar art of inflicting injuries upon themselves for which they can collect funds on their accident policies. The number of people who did this increased

so rapidly that an organization was finally established to check up the claims made on the different companies. The experience of a certain company shows how carefully the provisions of accident policies were studied by unscrupulous persons. For many years this company paid the same indemnity for the loss of either hand. Statistics over sixteen years showed that in 92 cases the right hand was lost, the indemnity paid being $48,511, and that in 111 cases the left hand was lost, for which the indemnity amounted to $88,879. This seemed disproportionate, and the only theory in explanation seemed to be that in many cases the insured selected the hand which was of least value, disposing of it to the insurance companies. Although this is a broad statement it seems to be confirmed by the fact that the right hand is more exposed to danger and more likely to be injured than the left. Further confirmation is found in the fact that the policy was changed so that a larger indemnity was paid for injuries to the right hand. With the change in the policy, statistics changed, and in two or three years 21 right hands were lost at an expense of $71,000 as against two left hands at an expense of $2,500. This evidence, then, appears to be fairly conclusive.

239. *Liability insurance and workmen's compensation.*—From its importance to the community and from the volume of business, liability insurance and workmen's compensation are the most important types of insurance in the whole casualty field and deserve most careful consideration. To get into touch with the subject it is necessary to go back to early history and consider what is called the law of negligence as it grew out of the common law.

240. *The law of negligence.*—There are cases where

one is liable in damages to another for injury growing out of things other than contracts. These cases generally fall under what is termed "negligence," the implication being that the party has failed to do something which he should have done to guard his premises carefully, with the result that one rightfully there has been injured and has a claim for damages. To sustain a claim in these cases the injury received must be one recognized in law as a violation of a person's right.

241. *Negligence defined and illustrated.*—Negligence itself is defined as "an omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or the doing of something which the prudent and reasonable man would not do." The connection between the accident and the cause must not be too remote. The party against whom suit is brought must not be expected to have forestalled or foreseen every type of accident that might have happened. For example: a van was washed in the public street. The weather was cold. The water froze and a passer-by slipped on the ice. He brought suit for the resulting injury but the case was dismissed, the court taking the position that there was not a true cause of action. The connection between the two things—the washing of the van and the freezing of the water—not being close enough. Another famous case illustrating the theory is that of Wilkins vs. Day. Some laborers were employed to carry a roller from one field to another across a road. They left it, however, in a ditch near the field with a portion of the handle lying on the edge of the road. Mrs. Wilkins happened to drive past the place; her horse shied, and she was thrown out and killed. Suit was brought by her administrator and recovery was allowed, the posi-

tion being that the work was done in a negligent manner and that for this the defendant was responsible. Still another interesting example is the famous Squib case, which arose at a fair in Milborneport, October 28, 1770. The defendant in the case lighted a squib—a form of firecracker—and tossed it into one of the booths at the fair. The party who owned the booth, wishing to avoid injury to his goods, picked it up and tossed it to another, who in turn tossed it to a third, where it burst in the face of a fourth person, destroying the sight of one eye. When the case came to trial there was much argument as to who really was the responsible party. The courts decided that the person who first lighted the squib was responsible and damages were collected from him. He was what is known as the proximate cause, and that was the controlling fact. This is sufficient to set forth in brief form the negligence theory of the law.

242. *The law modified.*—For centuries it was only under negligence that damages could be recovered where there was an injury to the person, and the same rule applied whether the person was an employé of another or a stranger. No larger rights were enjoyed by the employé in bringing suits than were enjoyed by a stranger. If the party sued was liable, he was liable under the general law of negligence and not from any other relation existing between the two parties. Up to the year 1837 it was the law in England and the United States. If A was hurt by B's neglect, B was bound to compensate A whether A was an employé or not and he was not bound to compensate him any more because he was an employé. In 1837, and from that period on, the harshness of this law when it came to the employer and employé was recognized, and there developed certain

modified rulings where the employer and employé were concerned. Common law had worked out the following rules for an employer in connection with his employés:

(1) It was his duty to provide a reasonably safe place to work.
(2) It was his duty to provide reasonably safe tools and appliances.
(3) It was his duty to be reasonably careful in hiring agents and servants for the work they are to do, and
(4) It was his duty to provide suitable room for carrying on the work.

243. *The employer's three defences.*—When it came to actions between the employer and employé the courts developed out of these four seemingly simple principles certain rules which apparently were more favorable to the employer than to the employé. Three "defences," as they have come to be called, were embedded in English law and constitute historic landmarks. They are as follows:

(1) If the employé who is injured had failed to use reasonable care himself and if this failure contributed to his injury, he cannot recover from the employer in his action at law. In other words, he must show that he was free from contributory negligence if he wishes to make out his case. This defence of the employer in a suit for negligence has been a part of the common law of England and the United States since the middle of the 18th century.

(2) The second rule that developed was known as the "fellow servant" rule. If the employé was injured by the negligence of a fellow servant, that fact would shut off his recovery against the employer at common law. This fellow servant rule developed out of the well-known

case of Priestly v. Fowler, 3 M. & W. 1, decided by Lord Abinger in the Court of Exchequer in 1837. In 1858 this decision was in another case confirmed in the House of Lords. It was adopted in Massachusetts in 1842 and in New York State in 1851. The fellow servant rule was the second defence of an employer when suit was brought by an employé. A butcher's helper who was injured by a wagon driver hired by the same employer sued the employer for damages. The judge who made the decision considered somewhat minutely the possible actions that might arise if every case where one employé was injured by the negligence of another furnished grounds for a legal action. In his illustration he even went so far as to assume that the master might be responsible for an illness arising from the negligence of a chambermaid to put properly aired sheets on a bed. Referring to this decision Lord Esher said, "I think it may be suggested that the law as to non-liability of master with regard to fellow servants arose principally from the ingenuity of Lord Abinger in suggesting analogous cases in the case of Priestly v. Fowler." This defence seemed so harsh, however, that many of the United States courts trimmed it down to somewhat narrower proportions, in the following ways:

(a) They ruled that it would not apply as a defence to the employer if the negligence of the fellow servant was a failure of one of his duties which rested upon the employer himself, such as the duty to provide a safe place to work.

(b) They ruled that the superintendent in general charge of work and so acting was not a fellow servant within the meaning of the fellow servant rule but really represented the employer himself, in fact, was the employer.

(3) The third and final defence of the employer was known as the "assumption of risk." This defence was that the employé had assumed the normal risk of the business; that is, an employé entering employment must be held to assume to consent to the ordinary risks incident to the employment and if he is injured thereby he cannot recover from his employer for the ordinary risks of the trade.

Needless to say, the claims which might arise under these three main divisions are very numerous, and while the law became fairly well defined, the whole process of collecting damages for injuries under such cases furnished one of the most unsatisfactory developments of law.

What has so far been said is a necessary foundation for the study of liability insurance. After the first crude experiments in this field, some one conceived the idea that an insurance business could be founded which would assume the obligations of an employer, not only for liability to accidents to the public in general, but also for liability to his employés. Naturally, the latter feature was the more important. Out of this idea grew the famous form of insurance known as "employer's liability," a development which was probably hastened by the adoption of so-called "employer's liability laws." The origin of certain forms of these laws may possibly be traced back to Germany, but we are chiefly interested in their development in England, since the English laws, more or less modified, were the ones taken over by our own country.

244. *First policy in the United States.*—The first policy in the United States was issued in 1886 by an English company which had been formed especially to engage in this type of insurance. It is since that date

that employer's liability insurance has grown to its present large proportions; and under its new form of workmen's compensation, it is undoubtedly destined to be one of the leading branches, if not the leading branch, in point of premiums.

245. *Types of liability insurance.*—The liability insurance companies issue policies as follows:

(1) Public liability insurance, which covers the liability of the employer to persons not in his employ who may visit his plant on business or come in contact with the business in some other way.

(2) Employers' liability for contractors, covering the liability of contractors and others employing labor on work not confined to any given locality.

(3) Public liability insurance for contractors.

(4) General liability insurance, covering liability of the owner of a building for injuries or death caused by defects in or about the building or its operation for the use of tenants.

(5) Elevator liability insurance.

(6) Teams liability insurance, covering liability of the owner of horses or vehicles for accidents caused.

(7) Theatre liability insurance.

(8) Vessel liability insurance, which protects the owner against damages for injuries or death of any of the crew or other persons visiting the vessel and in some cases of the passengers.

(9) Physicians' liability insurance, covering the liability of physician, surgeon or dentist for injuries or death caused by alleged malpractice in the profession of the insured.

It will thus be seen that there are many varieties of liability policies. The same principles, however, operate

in most of the policies, although different bases are used for computing the premium.

The expenses in liability insurance are exceedingly heavy, approximately 50 per cent of the total premium. The company, therefore, must see that its losses do not exceed 40 per cent if it expects to have a margin of 10 per cent for profits and contingencies.

CHAPTER XXIII

WORKMEN'S COMPENSATION

246. *Workmen's compensation defined.*—The basic difference between workmen's compensation and employer's liability is that under employer's liability about one accident in eight and one-half that occurred in industrial plants was subject to compensation. This is the record running through a series of years, leaving seven accidents and a half to be borne by the individual.

Workmen's compensation aims to charge to the industry the cost of the human material, so to speak, as well as the cost of the other material used in the business. If, say the advocates of workmen's compensation, you pay for the machinery and raw material which you use, why should you not pay for the humans you use up in turning out your product? There seems to be no room for difference of opinion on this point. The accepted view of workmen's compensation is that those engaged in an industry should be compensated by that industry. Workmen's compensation, in other words, should be regarded as part of the cost of a product, as an element of the cost of production finally paid for by the ultimate consumer of the product.

247. *Acts of foreign countries.*—In the United States we lag behind other nations, so much so, in fact, that the workmen's compensation acts of foreign countries should be briefly reviewed.

The first workmen's compensation act was passed in Germany in 1884. Germany, therefore, has had considerable experience with workmen's compensation. The experience has been in the main satisfactory.

Germany began with a limited class of workmen who were compensated. That class has been extended somewhat, although the present proviso in Germany is not as broad as in many other countries. Generally speaking, the present German law is limited to workmen in industries. This limitation will, in a general way, be found in nearly all the countries in which workmen's compensation has been adopted as the basis for establishing the obligation of the master to the servant in the event of injury. Seamen are usually treated separately, under a special act fitted to their conditions. The same is true of miners, and sometimes of railroad men. Occasionally the provisions of these acts cover agriculture, as is true at present in Great Britain, Denmark, France and Italy. France and Belgium include employés in commerce, by which is meant the ordinary clerical employé. Great Britain adds employés in domestic service. Altogether, there are twenty countries in continental Europe, including England, in which workmen's compensation in some form is now operative. Several Canadian provinces, too, have workmen's compensation laws, based largely upon the English act. All of these acts have some limitations, although the general purpose of the acts is to compensate for substantial injuries. It is almost universally stipulated in these acts that the injury must arise out of and in the course of the employment—that is, must be an occupational injury.

248. *Limitations in foreign countries.*—There is a further limitation in many countries regarding the amount of annual wages to which the act applies. In some cases those earning more than these stipulated amounts get no benefit of the workmen's compensation, having only their rights at law; in others they get the

benefit of their compensation up to the stipulated amount, and nothing beyond that. In England the amount is $1,250. In Germany it is about $750 in some kinds of employment, and unlimited as to workmen in industry. In Norway the limitation is $325 per year; in Denmark, $650 per year, with a further limitation to $410 for agricultural pursuits. Belgium limits wages to $480; Italy to $420; and Austria to $480. The measure of recovery, that is the proportion of wages usually assessed for compensation, is 50 per cent in a great many countries, England among them. In Germany the compensation is two-thirds the wages, this percentage, however, being subject to variations under some conditions. For instance, an injured workman may accept so-called "hospital benefits," in which case he receives only 60 per cent of his wages. There are also certain cases where the Court, or the officer who has jurisdiction, allows full wages for a limited period of time, as, for example, in a case where the injured might be in extreme suffering, necessitating the immediate spending of large amounts of money for nurses and expert medical services. Norway, Denmark and Austria provide 60 per cent; Holland, 70 per cent.

249. *Fatal injuries.*—Provisions for fatal injuries vary with the different countries. Great Britain provides simply for three times the annual wages, not to exceed $1,500. Denmark follows the English rule and provides four years' earnings, with a trivial allowance for funeral expenses. In Italy five times the yearly wages are allowed. Other countries generally allow a percentage. Germany, for example, allows twenty days' wages for funeral expenses, and thereafter compensation proceeds on the theory of a pension to the survivors, equal to 60 per cent of the earnings. Austria

allows $10.00 for funeral expenses, and a pension of 50 per cent to the survivors. Sweden provides a trivial allowance for funeral expenses, and an annual pension not to exceed $80. The provision in Holland is practically the same as that in Germany. In Belgium the pension is but 30 per cent of the yearly wages; in France it is 60 per cent. Pensions, where they exist, continue so long as the dependency continues and then cease. Pensions to minors usually cease when they become of age, to widows when they re-marry, and to other relatives when the dependency ceases for any cause.

250. *Losses.*—The next proposition involved in workmen's compensation is the distribution of losses. Five continental countries—Germany, Austria, Holland, Norway and Italy—distribute the loss by means of compulsory insurance.

251. *Forms of insurance organization.*—In Germany insurance organizations are customarily divided according to trades and are called "Trade Unions." The arrangement is representative, every employer being obliged to be a member of the trade union in his particular locality, where those of his industry are also gathered. These trade unions in one form or another handle both the accident and the sickness. The accident obligation is discharged entirely at the expense of the employer; the sickness is divided between the employer and employés, the employés paying two-thirds, the employer one-third. The arrangement, then, is representative in its character.

In Austria a different plan is followed. There the insurance organization is of the same character and compulsory, but the trade unions, or guilds as they are sometimes called, are territorial.

In Norway, the insurance is a state monopoly, operated entirely by the state, and it is a rule there to require contributions for loss only, the state paying all expenses.

In some of the other countries, with both voluntary and compulsory insurance, there are state institutions. Private or mutual insurance companies are usually permitted to operate, however, and generally they operate very successfully against the state institution, sometimes almost to the exclusion of state insurance. This condition exists in Holland, where private institutions are permitted to exist in addition to a state institution.

The German rule is to collect merely the premium necessary for immediate disbursements. If a claim is paid in Germany, it is paid by the post office. If any particular guild or bund has occasion to pay one of its number anything, the members go to the post office and get the money. At the end of the year the statistics are made up by the government. The sum is divided among the members of the guild. Assessment is made, and members are supposed to pay their premiums at once. If they do not, the government collects the premiums as taxes. When premiums are paid, the advances are returned to the post office, and the debt is discharged. The post office receives 5 per cent interest, which is also provided for in the assessment.

There are five more prominent countries representing the other plan of workmen's compensation, where the distribution is accomplished by voluntary insurance—Great Britain, Sweden, Belgium, Denmark and France. In Belgium there is a compulsory insurance for miners. In France and Denmark there is compulsory insurance for seamen. Otherwise, the insurance in all five countries is purely voluntary, as it is in this country.

252. *Sick fund.*—As a general rule, trivial injuries

are not admitted for compensation. In some countries, notably Germany and Austria, the first period of incapacity is taken care of by the sick fund. In both countries there is a sick fund running alongside of the accident fund. To this sick fund the employé has to contribute two-thirds, the employer one-third. The accident fund is paid entirely by the employer in Germany; and nine-tenths by the employer in Austria.

The first period is variously provided for. In Germany thirteen weeks must elapse before the accident fund begins to apply; that is, if a man receives an injury from which he recovers in thirteen weeks or less, his compensation is charged to the sick fund. The sick fund, it should be remembered, is supported two-thirds by the employés and one-third by the employer. If the injury incapacitates the employé for more than thirteen weeks, everything beyond that becomes a charge upon the accident fund, solely at the expense of the employer.

In Austria the same rule applies, except that the time is five weeks. After this time the case becomes a charge to the accident fund.

In connection with the German sick fund, if the sickness is in the nature of a disease not due to accident, the sick fund carries the case for twenty-six weeks instead of thirteen.

In England certain occupational diseases are treated as accidents, and are so compensated. The English compensation act, however, provides no compensation for the first week, nor is there any other provision for this interval. Whatever sickness provision exists is through the friendly societies, and through voluntary insurance, just as in this country.

Norway follows the plan of Austria, excluding the first five weeks, which are chargeable to a sick fund.

This sick fund has a provision that is a little peculiar. There, the workmen contribute six-tenths of the sick fund, the state two-tenths, the employers one-tenth, and the commune or local government one-tenth.

253. *Legislation in the United States.*—In the United States there is a Federal act covering certain employments, such as the construction of drydocks. But so far as the individual states are concerned, there were not in force in this country, prior to September 1, 1910, any workmen's compensation acts. On that date an act became effective in New York State which covered some eight dangerous employments. The act was declared unconstitutional by the Court of Appeals on the ground that it was taking property without due process of law. This led to an agitation for the amendment to the State Constitution. The amendment was duly passed and the Workmen's Compensation in New York State based on this constitutional amendment came partly into force January 1, 1914, and became fully effective six months later.

After having taken the matter under consideration, the various states have moved with commendable zeal to remove the employer's liability condition and to provide compensation acts. In twenty-two states these acts are now in force, and in the near future similar acts will doubtless be passed in the other states. These compensation acts provide, primarily, for the wiping out of the three defences previously enjoyed by the employer and place the whole question of accidental injury on a basis of compensation.

254. *Compensation acts summarized.*—The general summary of these twenty-two laws runs about as follows:

In sixteen of the states the law is elective, a provision

mainly for the purpose of covering some constitutional condition, as wherever the law is elective it has usually been adopted by the great percentage of employers and employés. In six of the states the law is frankly compulsory.

The laws do not provide for payment until a certain period of time, known as a "waiting period." In fourteen of the states it is two weeks and, in the others, one week. Medical or surgical aid, although no other money compensation, is furnished during this waiting period. The benefits provided are based, naturally, on dependency, which varies according to circumstances. For example, the case under consideration may be a widow with children, or orphan children, or there may be cases where there are partial dependents or no dependents. Where there are no dependents, burial expenses only are provided, these expenses averaging about $100 in each of the states. In the case of dependents, however, there are greater variations, and it is probable that we shall go through a process of evolution before the proper amounts can be determined.

The compensation, of course, is based on the salary which the injured party has earned, and the benefits based on this salary run from 50 per cent up; in two of the states it is 66⅔ per cent, and in one, 65 per cent. To illustrate: In Arizona, a widow would receive 2,400 times the daily earnings, which, allowing 300 working days to the year, would be the equivalent of eight years. In New York State, the widow receives 30 per cent of the weekly salary for life. As a rule, dependent children receive, up to the age of eighteen, 10 per cent of the weekly wage in addition to what the mother will receive. Orphan children normally would receive more, as there is no widow in their case to be taken care of or

to assist in the care of the children. For partial dependents the compensation is pro rata, that is, it is based on the contribution which the deceased made when he was living. For instance, if he was turning in a tenth of his salary, the compensation would be based on that fractional amount. In most of the states there is a minimum limit, as of $5 per week, and in many there is a maximum payment. California, for example, sets the figure at $5,000. Under the New York law, where the compensation to a widow is for life, there is practically no limit to the sum that may be paid. In the case of widows the question of re-marriage enters and the practice is to pay a lump sum at the time of the second marriage, the benefits ceasing from that time. Total disability is taken care of in much the same way as the death benefits. It is recognized, of course, that total disability is likely to bring with it quite an additional expense in the care of the afflicted person. In New York these benefits run from a minimum of $5 up to a maximum of $15 per week, the payments continuing, of course, until death.

The problem of providing adequate or equitable compensation is not especially difficult in a case of total disability or of death. Partial injuries, however, furnish more of a problem. Provision has to be made for the loss of fingers, beginning with the thumb and running through each of the fingers, also for the toes and for the hands, arms, feet, legs and combinations of such losses, likewise for any accident affecting eyes or ears. Payments on these cases usually run for a stated number of weeks according to the nature of the injury; thus, in Connecticut the loss of a thumb furnishes compensation for thirty-eight weeks, but not to exceed $380. None of the other fingers rank as high, apparently, except the

index finger, which in many cases ranks the same as the thumb.

255. *The New York State Law.*—The New York State law[1] is probably the broadest and most inclusive of any now on the statute books. Practically every employment is included within its provisions, forty-two groups of occupations being mentioned specifically and to each the term "hazardous" applied. Farm labor and domestic service, however, are excluded from this list of employments, nor are states, municipalities or other political subdivisions included under the term "employer." The law sets forth the various classes of injuries and the compensation appropriate to each, explaining, too, the method of procedure to be followed by employés in securing compensation and by employers in meeting the provisions of the law. The administration of the law is through a Workmen's Compensation Commission.

256. *Some evil effects in France.*—The claim is made that in the mind of the employé, workmen's compensation tends to aggravate injuries. In point, the experience in France for a certain period is of interest. In minor accidents in France the judges have a tendency to rule rather harshly against the employer; moreover, the injured workman can select his own physician and apothecary. The claim is made that these two things combine to increase the cost. Statistics show that of the number of employés injured in 1904, there were 1,753 cases of injury remaining for a period of five days. In 1906 this number had increased 25 per cent; while the

[1] A copy of this law may be secured from the office of the Workmen's Compensation Commission, Albany, N. Y., and persons interested should not fail to read the law and keep in touch with the work of the commission. Those living in other states may secure information from their respective commissions.

number injured for seventy days or over in 1904, 1,533, had in two years risen to 2,019, an increase of 32 per cent. Taking all of the statistics, the increase of the number of days of injury was 47 per cent. Between 1904 and 1906 the number of accidents not over ten days had decreased 2 per cent, while those over ten days increased 96 per cent.

Such conditions are largely due to special conditions of the law which pays the return somewhat on the number of days of injury. There has been an increase in the clinics and dispensaries that have been established especially to deal with these matters and in all probability this has been because of the business element, that is, because there has been money in it for someone. The whole compensation plan, too, has been adversely affected and it is stated that physicians, too, have not hesitated to advance prices in other things where such laws have been established. The apothecaries, apparently, have promptly followed suit. In many cases the physician's charge has exceeded the sum which went to the workman for compensation.

257. *Experience in the United States.*—In the United States these laws have not been in force long enough to warrant conclusions as to their effect. A period of five or ten years must elapse before trustworthy data can be secured. The first state in this country to furnish any statistics was Washington. Here the insurance companies are not allowed to operate, the whole matter being handled by the State through the Industrial Insurance Commission of Washington. A summary of the first year of operations is as follows:

Firms listed and assessed	5,750
Employés listed and protected	130,000
Total accidents reported	11,896
Claims allowed	6,984
Disallowed, suspended and waived	2,256
In process of adjustment	953
Accident report incomplete	1,703
Paid into accident fund	$980,445.75
Paid out on claims	445,527.51
Invested in interest-bearing reserves to guarantee pensions	243,984.95
Net balance in accident fund	290,933.95
Gross expense of commission	107,868.08
Total funds handled by commission	1,088,313.83
Expense of doing business	9.9 per cent

The financial statement of the Washington Commission showing two years' operations, closing October 1st, 1913, is as follows:

"Contribution first year, ending Oct. 1, 1912	$980,445.75
Contribution second year, ending Oct. 1, 1913	1,604,093.05
Total contribution two years, ending Oct. 1	$2,584,538.80
Claims paid first year, ending Oct. 1, 1912	$419,160.68
Claims paid second year, ending Oct. 1, 1913	1,019,360.21
Total paid during two years ending Oct. 1	$1,438,520.89
Pensions paid first year, ending Oct. 1, 1912	$26,366.83
Pensions paid second year, ending Oct. 1, 1913	64,227.54
Total during two years	$90,594.37
Balance in reserve, Oct. 1, 1913	$734,206.24
Cash balance, Oct. 1, 1913	321,217.30
	$2,584,538.80"

Some interesting figures are also shown covering certain kinds of injuries and their number for the year 1912-1913:

Kinds of Injuries	Number of Injuries
Bruises	4,626
Cuts	1,860
Punctures	415
Sprains	899
Fractures	1,383
Dislocations	114
Amputations	580
Scalds and burns	299
Infections	650
Unclassified	527
Multiple injuries	1,027
Total—All injuries	12,380

258. *Experience in New York.*—In the State of New York the law became effective for accident reports July 1st, 1914. The first month indicated that about 1,000 claims a day were being received, while in the first twenty-three days there had been forty-eight deaths. It is impossible to estimate what proportion of these claims will prove to be entitled to compensation, but it is considered that, under the New York law, it will be about one-third. This is larger than the Massachusetts experience, where the proportion was about one in four, probably because the New York law is more liberal than the Massachusetts law. In the first twenty-three days in New York State there were 48 deaths, and, assuming that all these were subject to an award, it would indicate 624 fatal accidents for the first year.

259. *Accident prevention.*—It is not to be supposed that as the source of many accidents becomes known they

will be or will have been permitted to remain unguarded. Along with the work of fire prevention the work of accident prevention is developing with rapid strides. Here, again, the foreign nations have led the way, and museums of safety have been developed on the other side, some fifteen in number. In these museums are gathered for exhibition the different types of devices that may be used in preventing accidents from machinery. Plans for quick aid or "first aid," as it is more commonly called, are also illustrated fully by means of models, and in the case of prevention devices, by actual examples of the machinery in position with the devices attached.

In this country we have as yet established but one such museum, in New York City, but with the increasing demand to keep down the cost of workmen's compensation, we may look for the rapid multiplication of these museums in various parts of the country. All the insurance companies—and this of course is true of the commissions in charge of the matter in those states where companies are not permitted to operate—maintain extensive prevention bureaus which have developed out of their experience in insuring risks, and through the suggestions of their expert inspectors; but what has been done is probably very small as compared with what will be done.

260. *Co-operation.*—The mistake must not be made of supposing that mere machinery devices are of themselves sufficient to wipe out the cause of accidents. Some will occur even when machinery perfection has been attained. As a matter of fact, only a certain proportion of the accidents (about 25 per cent) can be prevented by protective devices. The others can be prevented only by good management, and quite as important,

by the effective co-operation of the employer and the employé. The method of securing this co-operation is to form in a shop or plant a committee of safety whose duty it is to care for this part of the work. Some form of reward or slightly extra compensation is granted the members for their services, but the emphasis is placed on the fact that the majority of accidents are needless and that they should accordingly be prevented.

261. *Safety suggestions.*—One of the regulations published prefaces its specific recommendations with these general suggestions:

Do not give this booklet a mere glance and then throw it away. Keep it, read it and study it until you understand it, know it by heart. The men that compiled it know from experience that if instructions and warnings contained therein are understood and followed in your daily work, you will be instrumental in lessening accidents in the shop where you are employed.

You would not wilfully inflict an injury upon yourself, nor upon your fellow workmen. Nearly all accidents are due to carelessness on somebody's part. You owe it to yourself, to those dependent upon you and to the nation of which you are a part, to use all reasonable care to prevent accidents happening either to yourself or to your fellow workmen. Remember, if you are injured your income is decreased or stopped. If your injury proves permanent, you are a cripple for the rest of your life, which will decrease your chance for success. You want to avoid this if possible and it is possible if you do your duty.

The owners of this establishment request your hearty co-operation in making it safe for all employés. To this end if you discover any dangerous places around the shops that could be and are not guarded, notify your foreman at once and they will receive attention. If you think that a certain class of work can be performed by a safer method than the one now used, draw your superior's attention to the fact and it will be

given immediate consideration. If you see one of your fellow workmen particularly reckless, thereby jeopardizing himself or others, tell him about it, caution him, and if this fails to make him more careful, report him to the foreman or superintendent.

Carefully read these rules, be sure to understand them and then carry them out in daily practice.

Another company prints on each policy the following recommendations as to things that could be done:

Elevator openings on each floor should be guarded by gates or floor doors. Persons using elevator should not, for any purpose, be permitted to wedge or prop up gates. Unused sides of shaft should be cased in to a height of at least seven feet, either with joined boards or substantial wire screening.

All belts passing through floors, or vertical shafting operating through floors, should be cased in to the height of four feet.

All circular and band saws should be guarded, when possible to do so, and employés compelled to use such guards at all times.

Protruding set screws in collars and couplings on line and countershafting should be covered or countersunk.

Set keys in hubs or fly or other wheels should be cut off flush with the end of shaft or covered with tin casing or other material fitting closely to shaft, forming a smooth surface.

Shafting beneath sewing machine tables, and all other shafting on or near floors should be covered.

Loose pulleys should be used wherever possible, so as to throw a saw, jointer, shaper or other piece of machinery out of action, when not necessarily in use, and employés instructed to throw out of motion such machine when leaving same even temporarily.

Shifters should be used at all times, for shifting belts, and no employé should be allowed to shift a belt with his hand or stick. Belts should be laced and adjusted when machinery is not in motion.

Shapers and jointers should be guarded and guards kept on at all times.

All cog gearings should be completely cased in, casing to be made of wood or metal and so constructed that it can be easily removed when necessary to repair or oil.

All roll feed machinery should be well guarded by placing strip of metal the entire length of roll, as close as possible to roll, to prevent operator from getting fingers between rolls while feeding.

All fly-wheels, engines and belt wheels should be enclosed by casing in or placing substantial railing around them, either of wood or gas pipe, the latter being preferable and more substantial.

Roller, suspended and sliding gates and doors should be carefully examined in order to ascertain that same are not liable to leave their track and fall or be blown down by the wind.

Stairways should be carefully examined for projecting nails or screws, and where rubber or other strips are placed on the treads, said strips should be secure and lie perfectly flat; ragged carpets and oilcloths on both hallways and stairs should be removed.

Fire escapes should be secure and in good condition and kept clear.

No loose material likely to be blown from the roof by the wind, should be permitted to remain on the roof.

Sidewalks around property should be kept in good condition and coal hole covers and dead lights properly fitted and kept in place.

The factory laws of your state provide that most of the above mentioned suggestions and recommendations should be carried out where and when necessary. Your compliance with these laws will relieve you of additional liability in case of accidents, and will enable you to secure liability insurance at the lowest possible cost.

262. *Methods of writing workmen's compensation.*—Insurance companies and other interests have been

divided in their opinions as to the way in which insurance should be written. In some states, notably Washington and Ohio, the entire matter is handled by a State Commission, though in these states a small part of the work may be done by stock companies. The State Commission, acting under the law, makes the collections and conducts what is in reality a regular insurance business, limited, of course, to this line—workmen's compensation. Other states, notably Massachusetts and New York, permit the companies to continue in the business, but plan other forms in order to insure competition. As a result there have developed four methods which are known in the State of New York as (1) The State Fund; (2) The Mutual Association; (3) Self Insurance; and (4) Stock Insurance.

263. *The state fund.*—The state fund is, in a certain sense, a Mutual Insurance Company, except that it has the backing and help of the state to the extent of receiving for a certain time the payment of its administration expense. This may prove to be, according to the volume of work, a not unsubstantial aid, since if the total payroll runs to half a million it will readily be seen what a large amount this is, although this expense aid will continue for only a couple of years. The same plan was followed in Massachusetts where the state fund was organized. In effect the state said, "We will set you on your feet and give you a start by paying these expenses for a couple of years. At the end of that time you should have worked out your own position and require no further state aid."

264. *Mutual associations.*—Mutual associations do not differ in the main from other mutual bodies. The general expectation is, of course, that they will be able to do business at a lower expense cost, and at a lower

compensation cost, perhaps owing to the fact that the members theoretically may be more carefully chosen than in the case of a company doing a general business. The requirements are that there must be 40 employers employing not less than 2,500 workmen, who shall have agreed to take insurance in the mutual company before it will be permitted to start business.

265. *Self insurance.*—As to self insurance, if an employer is so situated that his financial ability is absolutely unquestioned and if he can furnish satisfactory proof to the Commission, he will then be permitted to deposit with the insurance Commission certain securities to cover the expected liability. The somewhat high standard necessarily imposed in this case to insure the payment of the compensation makes it doubtful whether it will be availed of to any large extent; and not many employers, probably, will care to assume the risk of a very heavy payment due to some unusual disaster in the plant.

266. *Stock companies.*—The stock companies conduct their business, as they always do, by accepting a certain premium for the service, and relieving the insured of any further liability in regard to the matter. Some advantage is claimed for the stock companies in that they are able to issue a policy which covers not merely the compensation indemnity but also the liability that may be outside of that act. In other words, the employer might get a complete cover from a stock company when it would be doubtful, to say the least, if he could do so in any other of the three forms of insurance.

267. *The element of cost.*—Experience has not yet satisfactorily demonstrated which result is going to prove best for the community. It is the community that

must be considered; that is, it must be determined which method is the cheapest for the ultimate consumer. In states where the companies have been permitted to compete with the state funds they appear to have obtained a good share of the business. The average employer likes a freedom from contingent liability, backed by good assets, and probably this, as much as anything, explains the appeal which this form of insurance has for him. It is stated that in Michigan 89 per cent of the manufacturers continued their insurance or took it out in the stock companies. When the New York State act went into effect there were 32 stock companies included in the business, and 14 mutual companies.

268. *Rates in the United States.*—The rates in the United States are apt to be more or less theoretical owing to the fact that there is an insufficient amount of American experience on which to base them. The best judgment based on the experience of our own and other countries has been used. This will be superseded by actual experience as the acts develop in the different states and as experience is acquired. Only actual experience, of course, will show what the rates finally must be. In connection with the premium an important factor is being introduced, similar to the method of schedule rating in force in fire insurance, whereby the bad features will be charged for and the good features receive credit. Under the schedule now being worked out in New York State it is estimated that a maximum credit of 40 per cent may be allowed from the established rate when the plant is put in the best of condition. A most wholesome influence will be brought into the work as this method of making rates and determining premiums develops.

CHAPTER XXIV

OTHER BRANCHES OF CASUALTY INSURANCE

269. *Less important branches.*—The forms of casualty insurance thus far treated represent the leading branches from a premium production standpoint today, and probably will continue to do so in the future. There are other branches which, while important, do not from a premium standpoint compare or promise to compare with the classes which have been considered. These may be briefly noted.

270. *Plate glass insurance.*—Plate glass insurance came into existence almost simultaneously with the invention of plate glass. Its premium receipts now amount to about $4,000,000 per year, and it is estimated that something like 350,000 risks are insured under this form of cover. Plate glass insurance has developed an interesting and historical experience of its own, and those engaged in it find it an interesting specialty. The problems that have to be considered are due to the different uses to which this type of glass is being put, and the different forms which it takes. We are apt to think of plate glass as related mostly to store fronts. This, naturally, is its principal use. It may be said that the larger panes of window glass are not looked upon with any great amount of desire by the plate glass insurer. The method of setting, whether in wooden or glass frames, whether the glass be of the show-case or the ordinary dwelling type; whether it be bent or straight, whether it be cathedral glass, and whether or not there be lettering upon it,—all these points and

many other interesting considerations have to be taken into account when plate glass is to be insured.

271. *Steam boiler insurance.*—Steam boiler insurance differs from many other forms in this one interesting point, namely: that the basic idea is prevention of the thing insured against rather than payment of indemnity because the occurrence takes place. Losses are paid, of course, when the accidents happen, but a larger part of the premium is expended in inspection and prevention work than in any other type of insurance.

272. *Origin.*—Boiler insurance originated in England, in the year 1854, at Hudders-Field. This was not a genuine insurance company as it paid no losses for accidents, its purpose being merely to inspect boilers and by this inspection point out weaknesses so as to prevent accidents. The Steam Boiler Assurance Company, organized at Manchester, England, took over this early association, and may be considered as the first genuine insurance company of this type.

273. *Boiler insurance in the United States.*—In the United States the Hartford Steam Boiler Inspection and Insurance Company was organized in 1866 and was the first to engage in this type of insurance. Its career has been unique because of the fact that for many years it confined its business almost wholly to the insuring of this type of risk. It is probably the only instance of a company writing a single, somewhat restricted, line of business, maintaining its position through so many years. It now writes one or two other lines, but its main work is still the steam boiler risk.

The steam boiler business is carried as a branch or department by several of the casualty companies, and probably a score or more are now engaged in this type of insurance. Statistics for forty-four years show that

in the United States, Canada and Mexico there were in round numbers 11,000 steam boiler explosions, where 11,000 persons met their death, and where in addition over 16,000 were injured.

274. *Causes of boiler explosions.*—A boiler explodes whenever any part is unable to stand the strain that is placed upon it. Many, however, suppose that boilers explode only when the water becomes too low. This danger, therefore, is thought to be the only one which must be guarded against. The assumption is wrong. There may be plenty of water in a boiler which is not strong enough to stand the strain in certain parts, and which explodes when any of these parts give way. Boilers explode, as a matter of fact, from a variety of causes and not from any one single cause. The most noted disaster due to a boiler explosion occurred when the boiler of the steamer Sultana exploded on April 27, 1865, near Memphis, Tenn. The boat was loaded with soldiers just released from southern prisons. The boat was destroyed and 1,238 were killed.

The distance to which a boiler may be thrown horizontally by an explosion can, of course, be easily determined, but the vertical measurement is another matter. There is an instance where it was accurately determined and found to be over 1,600 feet.

275. *Inspection service.*—The inspection service begins before the insurance is accepted on the boiler, and continues throughout the life of the policy. In this type of risk, the insuring company has the privilege of inspecting the boiler at any time it may choose. The inspection service may be external or it may be internal. Naturally, the first service would take into consideration the general conditions when the plant is in operation; and the latter, of course, when the boiler was not

in commission. The preliminary inspection makes it possible to analyze the general management of the plant in regard to the boilers, something which could not be done when the plant was not in operation.

276. *Future of boiler insurance.*—A division of the expenses of one insurance company shows that approximately 40 per cent of the income from boiler insurance was paid for inspection expenses; the losses were about 10 per cent. This clearly indicates what is aimed at, namely, to prevent the thing happening rather than to indemnity for it after it does happen. Steam boiler insurance may eventually pass away with the further development of electric power, although there is no prospect of this happening for many years. Whatever future changes there may be, it may be said that boiler risks do not constitute a growing field of insurance and the premium income has probably attained its maximum.

277. *Credit insurance.*—Credit insurance is a very new branch. It is claimed that prior to 1908 it did not exist except in a tentative manner. It had been tried out, but had not attained a stated position in the insurance field. Credit insurance aims to protect the seller, the manufacturer, or the jobber, against losses sustained through the failure of creditors to pay their bills. It was based on the theory that although there must be a primary loss to be borne by the insured, losses above that sum might be covered by insurance. It will readily be seen that this type of insurance could be based on no other principle; the moral hazard would be altogether too great, and insufficient care in the selling of goods would create a loss record against which no company could safely insure.

278. *Two classes of policies.*—Credit insurance poli-

cies fall into two classes, "Regular" and "Combination." The former limits its cover to creditors who have ratings in the first and second class; the combination type of policy covers not merely these two types of creditors but in addition includes certain coverings on creditors who do not obtain so favorable a rating.

A credit insurance policy, of course, is based on the amount of annual sales; thus, if the yearly sales were $350,000, the policy would be for $8,000, while if they ran to $1,000,000 the policy would be about $25,000.

279. *Benefits summarized.*—The benefits of Credit Insurance are briefly enumerated by President E. M. Treat of the American Credit Indemnity Company as follows:

It adds to a merchant's capital, at small cost, a special reserve equal to the face of the bond, to meet unexpected losses in business.

It offers collateral security upon inferior accounts, and protects against the calamities which come upon preferred customers.

It affords a guaranty that losses on merchandise sold during the year covered shall not exceed a normal, stated percentage of the gross loss.

It protects profits against impairment through unexpected and unavoidable losses.

It protects against a risk which every merchant must otherwise take.

To carry credit insurance is to complete a chain of protection in business. All work is to the end that goods may be sold. Every part of a business relies on the profits from the sales of the product. Credit insurance protects against excessive losses on the output of the business which ultimately passes, with profits added, into the shape of accounts; that part which represents the finality of the combined efforts of the entire organization. It supplies certainty for hope and uncertainty.

280. *Automobile insurance.*—The first policy which approached the modern broad form of automobile insurance was probably issued by the Boston Insurance Company of Boston in 1902. This type of insurance covers the following:

1. Fire or explosion.
2. Transportation.
3. Against stealing.
4. The fire cover will include damage to any personal effects as well as damage to the car.
5. Collision insurance. This covers damage to other property which the automobile may strike.
6. The reverse of No. 5, covering the damage to the automobile itself.
7. Loss of life or any injury sustained by the occupants of the car, and any legal liability which may be incurred in connection therewith.
8. The same as No. 7 only to those who are in the car.

The immense growth of the automobile industry, coupled with the fact that, without such insurance, heavy damages might occasionally be collected from an automobile owner in case of accident, has made this branch of insurance a very important one in the casualty list. As there are no indications that the automobile will decrease in favor, it may reasonably be supposed that there will be a large increase in automobile insurance. It is a protection which one certainly cannot afford to be without if he owns a car or is in any way responsible for the running of one. Hence, every car turned out automatically increases the field for this modern form of insurance.

281. *Title insurance.*—Title insurance, the returns for which were noted in the statistical information given

in the early chapters, states in its very name what it aims to do. Its purpose is to insure against defective titles. Along with it there has developed what is known as the mortgage loan guaranty. As the companies naturally have a close connection with the lending parties, they have developed the practice of guaranteeing the mortgages which are issued through them. The business has been aided very largely by the fact that the lender of money generally asks for a title guarantee policy before he will authorize a loan on real estate. The business has also been aided by the somewhat archaic methods which are in force in connection with real estate transactions. It is not reasonable to suppose that the civilized world will continue to make the transfer of real estate such a cumbersome process in the future as it has been in the past centuries. The system of title registration under Torrens laws, or something similar, will probably be developed in time so as entirely to remove the clouds which now hang over certain titles so frequently as to make a title insurance policy desirable in all cases. In other words, the transfer of real estate will in time be reduced to as simple a business as a transaction in stocks and bonds. This, of course, will take years of growth and education and there will still be a need for companies to handle matters of title insurance and also, perhaps, to guarantee mortgages. This type of insurance, in any event, is one which, with the development of civilization, we may expect to grow less rather than more. However, it has served, and is serving, an extremely useful purpose.

282. *Burglary insurance.*—At first glance burglary insurance might seem like an impossibility. How can one possibly forecast what loss there will be or know what rate to charge for such a type of risk? As a mat-

ter of fact, what holds this type of insurance within the realm of possibility is the form of loss. The provision contained in the policies reads as follows: "Felonious abstraction of the insured article was accomplished by an entrance into the premises effected by the use of tools or explosives, and unless there are visible marks upon the premises made by the tools or explosives of the actual force and violence" the company is not responsible for the loss. It is evident, of course, that the necessity of showing some visible mark is a great deterrent to a false claim, and this has made the business possible, and probably it would not have been possible if this had not been a provision of the insurance.

One type of burglary insurance covers theft or larceny by servants or other persons in the house, by a guest, by sneak-thieves or outsiders. It covers a traveler, his personal effects at his hotel or while in the possession of a common carrier. It covers valuables which may be entrusted to a messenger for delivery. It covers the merchant against such losses by his employés; it covers the clerk who may be sent to the bank to secure the money for a pay-roll while it is in transit between the bank and the place of business, or where the disbursement will take place. Moral hazard enters, of course, but so it does in all forms of insurance, and perhaps after all it is not greater in this type than in many others. Banks, naturally, are covered by a special form of this type of insurance, bank burglary being rather a special type of crime. It is not of much moment in the city banks, but outside the metropolitan centres it is a form of insurance of primary importance. The cover in this case is against: (1) the ordinary breaking, and entering, and stealing; (2) the form of robbery known as the "hold-up"; and (3) damage to the property

caused by the attempt to break into the vaults by means of tools or explosives, and finally against robbery of the messenger of the bank when he is engaged outside of the bank.

Burglary insurance seems to have originated in the United States about 1885, but now it has developed so that many companies are writing it as one of their regular lines. In England, strangely enough, it has apparently attained a greater prominence than in this country, the number of companies engaged in the business or the companies writing this line being about four times as many as those in the United States. The premiums in the United States now amount to about $3,000,000 per year.

283. *Surety and fidelity insurance.*—There are few types of business in the world older than that of going sponsor for somebody in a transaction. As far back, apparently, as we can go in commercial relations, we find that some person undertaking a given piece of work was called upon to furnish security or surety through having himself guaranteed by another person. Such forms of insurance come into play in cases where the undertaking upon which one is entering is of so serious a nature that failure of the party to perform the work would mean an exceedingly substantial loss. In such cases the task whose performance is guaranteed is not something which can be done over again without any material loss; on the contrary, if the party fails it may mean a total loss of the sum invested and call for larger sums to restore the actual condition existing before the contract was entered upon.

284. *Field covered.*—For centuries this form of security was furnished by individuals. It has now developed into a very specific type of insurance, some companies

devoting themselves solely to this form. The policies issued by the companies cover contract bonds, court bonds, bonds of deposit, license bonds, excise bonds, customs and internal revenue, and, as in the case of forgery, some peculiar types of insurance.

285. *Contract policy.*—Probably the most important branch of the business is that of the contract policy. The immense number of contracts, let for construction purposes both public and private, are to-day usually protected by a form of policy, the contractor being called upon to furnish such a policy before he enters upon the contract. The protection means that, should he fail in his contract, the owner may look at once to the company to make good; frequently the company cannot settle and is obliged to take the contract over and carry the work to completion. It is generally stated that this form of the business has not proved very remunerative. The public contract is rather a hazardous piece of business. In connection with large tunneling operations, such as the building of a subway, this type of risk must be handled with extreme care. The statement has been made by one underwriter, experienced with this type of policy, that the less you have of this business on your books the better off you are. The job to be done, if based on stated lines of construction, has less risk than the new types of construction such, for instance, as concrete, which introduces hazards not yet well understood.

286. *Fiduciary bonds.*—The bonds furnish, in form, two classes: the fiduciary bond and the type of bond given by one party to a suit to enable him to follow or seek a legal remedy. In the first class one is dealing with administrators and executors of estates so that the insuring will be a joint contract. Little risk will attach

to such a bond because the company has a careful scrutiny of every transaction. Policies are issued covering bonds of receivers and trustees in bankruptcy, and they rank as very good risks in their class.

287. *Bonds of deposit.*—Bonds of deposit are furnished to secure the prompt re-payment of funds deposited with banks. They run into very large figures. Such security is usually demanded by a state, municipality, or other political units having public funds in their charge. Large losses may be sustained in this type of risks, and even though such losses are not sustained, it is a type of bond which must be written with extreme care, because the company must make good the loss immediately, and some years may elapse before it can be reimbursed.

288. *Excise bonds.*—The excise laws of the various states have developed an enormous business for the companies. This form of security must be given by the person before the license may be granted, so there has been created a steady demand for this type of insurance.

289. *Fidelity bonds.*—Fidelity insurance almost defines itself. Its business is not, as is usually stated, to guarantee the honesty of a person, but to make good the loss which may be sustained if he proves to be dishonest. The business originated in this country about 1879, and the volume of premiums amounts approximately to $8,000,000 at the present time. It is estimated that more than 3,000,000 persons are covered by this type of security, and that the coverage amounts to more than $3,000,000,000.

290. *Unemployment insurance.*—From time to time efforts have been made to develop this type of insurance, but it is doubtful whether, as a private enterprise, it will ever attain a very large volume. The form of

risk is one on which it would seem we might have fairly accurate statistics; as a matter of fact, however, these remain to be gathered; insurance cannot be offered upon them until we do have such figures. The work has been undertaken by some countries, notably Great Britain, and the following report is suggestive:

The report for the first year of the operation of the Unemployment Insurance Law under which provision is made during periods of unemployment and illness for the great body of employés in the United Kingdom shows that 2,508,939 unemployment books were issued; 559,021 claims for benefit were filed; 400,000 individual working men claimed benefits under the act; 774,494 payments were made; the total benefits paid aggregated $1,150,722; the lowest payment for any one week was $23,359 and the highest $93,436; the year's gross income amounted to $11,039,168; at the close of the year there was an invested balance of $7,835,065; the maximum of unemployment falling within the provisions of the act was 118,000; and the minimum 67,000.

Of the total annual income derived under the insurance act, the employers and workmen contributed about three-quarters and the State one-quarter. In a large proportion of cases the unemployment was very short, 30 per cent falling within the waiting week during which no claim could be made, 62 per cent received benefits, while 7 per cent was excluded for various reasons, and 1 per cent represented unemployment which continued after the period during which benefits are paid.

It is stated that the report is only preliminary in certain respects, as some of the figures have not been fully analyzed. It is to be noted also that while the insurance law has been in operation for a year, there has been only six months experience of the payment of unemployment benefits.

291. *Vacation insurance.*—In many respects insurance, or the principle, is probably in its infancy. In

1913, as illustration of this, the following, known as Vacation Insurance, was put forth at Lloyds, London:

Insurance of one's vacation against the hazards of rain may now be effected through London Lloyds, according to a cable dispatch to the New York Tribune. You may insure your vacation by the day or by the week, and in varying sums. The only stipulation is that a quarter of an inch of rain must fall before the loss is paid. It does not matter at what hour this rain falls. You may insure for one day, and the rain may fall within that part of the twenty-four hours that you spend in sleep, and the weather may be clear in the daylight hours. You get paid. In the same fashion, if you insure for a week and rain falls on three days, you get paid. You receive no payment if it rains only two days in the week. The premiums vary in size. For 60 cents the amount of the weekly insurance is $10; a premium of $1.25 pays for a policy of $60; $5 brings you $80 if it rains three days in the week. The daily insurance costs about twice as much as the weekly, being one-eighth of the amount of the policy.

292. *War insurance.*—The war in Europe in 1914 brought out the fact that the ocean-going trade merchants' service was apparently not equipped on the insurance side to carry the war risk. The governments promptly came to the rescue in the United States, Great Britain, France, Belgium, Italy and others, and assumed this risk. This left marine insurance on the following basis, namely: to take care of all the ordinary losses covered by the marine policy, the government picking up the losses occasioned by war. This was a development of the principle of insurance whereby private enterprises carried a certain part of the burden, the government stepping in and carrying the other part.

293. *Other applications of the insurance principle.*— The several examples given in this chapter merely show the possibilities that may exist in the use of the principle of insurance to avoid loss. The principle of insurance is used by the world in many ways which are not recognized as such. What, for instance, does insurance attempt to do? It attempts to distribute a loss or to make provision that the loss will be a small one to any given individual, to spread it, in other words, over so many that there will be no substantial suffering because of the disaster. We have already called attention to the practice in stores of having one person, the clerk, sell the goods and another, the cashier, collect the payment. This system makes use of the insurance principle by dividing the risk of loss between two parties. Thus, there would have to be collusion before the storekeeper could lose. There is less likelihood of there being collusion than of an individual clerk tampering with the receipts. Whenever, therefore, a risk is divided between two or more persons, whether it be by means of an insurance policy or in some other way, the principle of insurance comes into play. With the development of business relations, there should be many new uses for this principle of insurance.

PART II: REAL ESTATE

CHAPTER I

INTRODUCTORY

1. *Real estate a business, not a profession.*—Real estate is sometimes inaccurately spoken of as a profession, but it is essentially a business. A profession applies science, art or learning to the use of others, the profit to the professor or person applying it being incidental; whereas a business is engaged in primarily for profit, and the profit is to the one engaging in the business.

A profession implies professed attainment in special knowledge. A person may engage in business with or without special knowledge and no one else is concerned with the question whether he has any knowledge of the business, because no one else is affected by the result. If he is successful the rewards are his; if he fails he bears the loss. But let him attempt to practice a profession and, if he be unskillful, others are directly affected, and the fact that his reward is diminished thereby is merely incidental to the fact that others suffer.

2. *Ethics of the business.*—But whether real estate be a business or a profession has no connection at all with the body of ethics governing it.

Every business can be conducted upon a plane ethically as high as the ideals of any profession, and the men who have been conspicuously successful in the real estate business have attained success because they have

applied to their business the highest ideals of commercial fair dealing. This does not mean that there is any ethical requirement for the seller or the purchaser to give away anything which belongs to him, or for either one to disclose to the other his necessity for selling or his requirements for buying; but the bargain having been made, it is absolutely necessary that it be lived up to by both parties, according to its intent; and, if there be any doubt of the intent of the bargain as it is expressed in writing, that the spirit of the transaction be carried out rather than that the catch words of a written instrument should govern. Cases are frequent of men who to their own detriment perform the thing which they have promised to do although not legally obligated, and the bigger and more successful the man who makes the promise the more surely will it be carried out. Important obligations are often incurred upon the mere promise of a well-known man to sell an important piece of property at a definite price, although no legal and enforcible obligation exist; and the promise is always redeemed if it is made by a man who knows the business, and it is redeemed not merely from altruistic motives, but also for purely business reasons.

3. *Divisions of the business.*—The principal divisions of the real estate business are investment, operation and agency. These differ from one another according to the aims of the persons engaging in them and the methods by which those persons expect to make their gains. To conduct either of the first two divisions of the business, investment or operation, actual money capital is required. The most important capital in the agency business is the good will of its customers, and that can be husbanded, increased and made very valuable.

Investment is the employment of capital in the acquisition of real estate or interests therein for permanent ownership or actual use of the person acquiring it.

Operation is the employment of capital in the acquisition or improvement of real estate or interests therein for commercial operations.

Agency is dealing in or with real estate on behalf of others.

4. *Investment* in real estate is generally made for either of two purposes:

(a) to derive an income,

(b) to hold for re-sale in expectancy of an increase in value.

Investment for income may be for one of two purposes,

(1) the derivation of rental—that is, the direct return for the use of real property for definite periods, or

(2) the obtaining of income through others upon money lent on the security of real property.

5. *Operation.*—Real estate operation may be carried on

(a) for the purchase and sale of land,

(b) for the purpose of building,

(c) for the purpose of lending money upon mortgages.

The purchase and sale of land is that branch of operation which concerns itself with dealing in land as a thing to be bought and sold for profit and loss. It may be divided into two parts:

(1) Speculation, pure and simple, by which land is bought in the hope of a rise in value and resold when that hope is either realized or known to be unfounded.

(2) Development of land, the most conspicuous part

of which is the development of vacant tracts by buying them wholesale in their wild condition, making them marketable by bringing them to such a state of development as is implied by putting streets through them, preparing them for use and then selling them in small parcels. This is a most important and useful part of the commercial side of the real estate business, and has resulted in the development and settlement of many parts of the country.

That portion of real estate operation which concerns itself in building may be similarly divided into,

(a) Speculative building which consists in building structures primarily for sale, and not necessarily for the use of the constructor, and

(b) Building for investment which consists of the erection of structures for rental or primarily for the use of the person conducting the operation.

That form of operation which is concerned with the lending of money upon real estate security is divided into two parts,

(a) the making of permanent loans,

(b) the making of building or temporary loans.

Permanent loans are moneys lent upon mortgages at current rates of interest, the security being deemed by the lender sufficient to afford an ample margin between the amount of the loan and the actual value of the property, the sum being loaned usually for a definite time.

Building and temporary loans are moneys lent for investment in property, to aid either in putting structures upon it, repairing structures or in the development of wild tracts, the intention being that the money be repaid when the development or reconstruction is finished. Because of the greater risks in the operation and the greater necessity for supervision by the lender, there is

compensation in an increased rate of interest over and above the fair value of the loan of the money. For that reason it is to the interest of the borrower that the loan be made permanent and not temporary as soon as may be.

6. *Agency.*—Agency is that branch of the real estate business which engages the attention of the greatest number of persons who are concerned with the business, and in that respect it is of prime importance. It is divided into two parts, brokerage and management.

A broker is a person who for compensation, usually proportioned to the value of the subject-matter, brings about transactions between principals.

Brokerage has two divisions according to the kinds of business which usually engage the attention of the broker.

The sales broker is a broker who devotes his time and attention to the bringing about of the sale or exchange of real property.

A loan broker is one who gives his attention to the obtaining of loans upon the security of real property.

One man may practice both branches of the business, or a specialist may devote himself to either of these branches.

Management, the second branch of agency, is the operation of deriving income and caring physically for real estate structures. It concerns itself not only with the deriving of income, but with the keeping down of expenses and the care in making expenditures. It is popularly known as "Agency."

7. *Real estate, property and real property defined.*—Real estate is a form of property. Property is the right to possess and use. Real property, a technical legal word, is the right to possess and use land for a

time which may last for a life or lives or longer. All other property is, in the eyes of the law, personal property. A lease for 999 years, which is not measured by any life, but which must expire at a definite time, is less in term of time, in the eyes of the law, than a conveyance of a piece of land, the duration of which is measured by a life or by several lives.

When we speak of real property we use the words in their technical legal sense. When we speak of real estate as a commodity and as a business, it embraces the various parts of the business which engage the attention of those who follow it as a vocation, and includes interests which in the eye of the law are not real property, as for example, leases, mortgages, etc.

Every business has in view finally, commercial transactions resulting in the transfer of property of some kind; so in our study of the real estate business we have in mind the transfer of title to real property, and among the various subjects we shall consider, are the interests which there may be in land, limitations on ownership, the making of a contract, the conveyances used, the liens which may affect a piece of property—all of which have an important relation to a final commercial transaction, the transfer of title to real property.

The methods of dealing in real estate and the laws governing it are not arbitrary and were not made for the mystification of others or for the purpose of multiplying legal fees. All systems of law are expressions of two things, the historic customs of the people whom they affect, and the modification of those customs, as changes made those modifications advisable.

CHAPTER II

INTERESTS IN LAND

8. *Rights of ownership divided.*—Land has existed from the beginning of property, and is indestructible in its nature. Each piece of land has a history, and many persons, having various and conflicting rights, may have been interested, either successively or concurrently, in its ownership. These various rights to ownership are divided into estates and chattel interests.

Estates are rights in real estate which amount to real property. They may be perpetual or be measured by a life or lives.

All interests in land which, in the eyes of the law, are of less importance or less duration than estates, all rights which are not measured by a life or lives or longer, are chattel interests.

9. *Limitations upon ownership.*—The highest form of ownership of anything, personal property or land, would be unlimited in duration and unfettered by any limitations upon use; but there is no such thing in any civilized community. All property is liable, in every civilized community, to those limitations upon its use or ownership which the necessities of civilized life, as expressed in the law, impose; but our civilization is founded upon the very greatest respect for private rights and ownership, and any interference with these can be justified only upon the highest grounds of public policy.

The absolute dominion of the owner of real property

over that which he owns is affected by four important limitations arising out of the necessities of civilized life: (1) The police power, (2) The ultimate and original ownership of the state, (3) The right of eminent domain, (4) The right of taxation. The right to enforce these limitations lies with the state.

10. *Police power.*—Ownership of land is confined within the right of the community to keep property from being used in such manner that it will hurt the life, health or morals of others. The owner of land on which stands an unsanitary tenement house, which is a menace to health, may think his right to keep the building there cannot be questioned, but the police power of the state will either order that the building be taken down, or that such changes be made in it as the enlightened sense of the community finds necessary for the preservation of life and health. If the erection of a new tenement be begun, certain standards of light and ventilation must be observed, only a percentage of the land can be used, certain appurtenances for cleanliness and opportunities for escape in case of danger must be provided; and unless the requirements of the law are observed, the police power of the state will circumscribe the owner's dominion over his land and prevent the erection of a tenement house upon it.

The Tenement House Law of the State of New York is one of the most drastic, enlightened and necessary exercises of the police power of a civilized community, and it has had to fight its way just because it is an infraction of what persons have thought was their natural right to the absolute ownership of that for which they paid, or which they inherited from their ancestors.

11. *Ultimate and original ownership of the state.*—Another limitation upon ownership of land is the prin-

ciple that the state is assumed to be the original proprietor of all land and to have the ultimate title. Modern ownership is traceable to some form of grant from the sovereign, who may be the people or their sovereign predecessors, the colonies, or the king. In the western states title can frequently be traced to a grant from the United States in very recent times. Although land is assumed to belong to the person to whom the grant is made and to his heirs and assigns forever, yet, if he leave no heirs capable of inheriting, it escheats to the state. It cannot be permitted that land which no one is entitled to inherit become a subject for dispute or strife, so the principle that the state is the ultimate owner is necessary for the preservation of law and order.

12. *The right of eminent domain.*—If at any time the state finds a specific necessity for the use of land, it has a right to redeem it under the principle of eminent domain; but the state's right of eminent domain is limited by express constitutional requirement that it shall be exercised only upon condition that fair compensation be made for the property taken.

13. *The right of taxation.*—The necessities of civilized government require that those enjoying its benefits, contribute to its support. This is done, frequently by laying a tax upon property, and as real property is permanent and cannot be moved from the domain of the tax gatherer, it is often the basis of state and local taxation.

14. *Estate in fee simple.*—The largest estate in land known to our law is a fee simple or a fee simple absolute, the terms being synonymous. A fee simple is the right to own land, to one, his heirs and assigns, without limit as to time, but subject to the limitations above mentioned, which are understood as affecting all land.

Commercially this is the estate which is usually dealt in, and a contract to sell a piece of property, unless otherwise limited, implies a contract to sell the property in fee simple.

All interests in land less than a fee simple imply that somewhere else in some other person or persons there is or will be the residue, which when added to the particular estate, will make up the fee simple absolute.

15. *Estate in fee upon condition subsequent.*—This is an estate which may last forever, unless an event occur upon the happening of which the creator of the estate or the heirs of such creator become entitled to reclaim the property. If A give a piece of land to B, his heirs and assigns forever, but upon the condition that if at any time liquor be sold upon the property, then B's right shall end, and A shall have the right to recover the property, the estate of the person in possession is an estate in fee upon condition; and left in A is the residue of the fee simple, the possibility that the land will come back to him, which is known technically as a possibility of reverter. The possibility of reverter can be released to the person who has the conditional estate, but in itself it is inalienable, and is not a present property right.

16. *Estate in fee determinable.*—If instead of making a condition which might or might not happen, A gave the land to B to have forever, but provided, if B should die leaving no children, that the property go to someone else, B's interest would be a fee determinable because it would terminate in case a contingency happened for which A provided, and it would be determined within a definite time measured by a life or lives, whether the contingency did or did not occur.

The difference between a fee determinable and a fee upon condition is that in the fee upon condition there

may never come a time when it will be determined whether or not the condition has been broken; whereas, in the fee determinable, it can be found out within a time which may be determined, whether or not the condition upon which the estate shall end has happened.

17. *Life estates and remainders.*—Estates may be so granted that the present interest is not a fee, but is measured absolutely by the duration of a life or lives, and there belongs to another person or persons the right to take the property after the present interest ends. A right to own land during a life or lives is denominated a life estate; the future interest which will vest in possession after the end of a life estate is known as a remainder. Life estates may be measured by the life of the possessor, or of another person or persons. Remainders may be contingent or vested. A vested remainder is the indefeasible right to take real property after the termination of a particular estate, or the right to take the property if the particular estate were to terminate immediately. A contingent remainder is one which may vest in possession if events happen which defeat the vested remainder.

Examples of these two interests are as follows:

If A grant a piece of land to B to have during his life, but provides that after his death it go to C, C's right to possess the property after the life estate is known as a vested remainder, there being nothing contingent about it. B has the land during his life, and he may sell this life interest, but when he dies, the right of C, the remainderman, accrues, and it is always definitely known who will take the remainder.

If A grant a piece of land to B, his heirs and assigns, forever, but provide that if B die without children, then it go to C, that which is given to C is known as a re-

mainder; and as it cannot be known until the time comes whether C will ever get that remainder, it is called a contingent remainder.

18. *Dower.*—There are two other important interests in real property, which should be considered here. Upon the death of the husband, the wife becomes entitled to the use for her life of one-third of his real property or to one-third of the rents of his real property. In many states, including the State of New York, no act of the husband can defeat that right, and in those states in order that upon a sale or conveyance of property that interest be barred, it is necessary that the wife shall join her husband in conveying or that she release her interest to the owner. The act must be voluntary, and in some states it is necessary that the wife shall privately acknowledge that it is her free act, without compulsion on the part of her husband. In many other states the wife is endowed only of such property as the husband may own at the time of his death.

19. *Estates by curtesy.*—There is a similar right which husbands have in the real property owned by their wives, known as an estate by the curtesy. If there be real property owned by a wife at the time of her death not disposed of by will, or not having been alienated during her life, and there has been a child or children (whether the child survive or not) the husband is entitled to the use for life of the real property thus left, or to take the rents of the property during his life. That interest of the husband can be defeated at any time by the wife.

20. *Chattel interests.*—The principal chattel interest relating to real property is a leasehold or lease. A leasehold is a right to occupy the land of another in consideration of paying rent. A lease for 999 years is a

chattel just as much as a letting from month to month. Each is a leasehold; in each there are the same incidents; the difference is only in the length of the term.

Another chattel interest in real property is a lien. A lien is a claim upon the property of another which if not satisfied, entitles the holder of the lien to sell or require the sale of the property. Liens may exist in favor of a money creditor or in favor of the holder of an obligation which cannot be easily expressed in money.

21. *Method of proving ownership.*—Historically the earliest method of transfer of ownership of land was by some open act upon or connected with the land. It was customary for the buyer and seller to resort to the place and publicly acknowledge that the buyer had become the owner of the property. But transactions of that sort rested only in the memory of living persons, and might be forgotten; and there might be disputes of fact as to the persons between whom such transactions had taken place, so that in more modern times it became customary to evidence the transfer of land by a permanent written instrument, or by an open acknowledgment in court and a record of such acknowledgment upon the court records. For years the English method of conveyance by written instrument continued until it became necessary (by reason of the fact that written instruments may be lost and the evidence of them lost) that there be some place in which they could be recorded and their contents made matter of public notoriety. From this necessity was evolved the present method of public record, by which all instruments which bear testimony to claims for or against land are made matter of public record, and all who deal with land are presumed to have notice of the contents of the record.

CHAPTER III

BROKERAGE

22. *Brokerage defined.*—Brokerage is a branch of the agency division of the real estate business. The persons most interested, whose property and money are involved in the transactions are the principals: and the broker is the agent of one or both of them. Principals employ brokers to bring about particular transactions, and pay them compensation commensurate with the subject-matter, which is known as commission. A person who is continuously employed to sell real estate is not a broker but a salesman. There are sales brokers and loan brokers. The sales broker is a person who is employed to bring about the sale or exchange of real property. A loan broker is employed to procure loans upon the security of real property.

23. *A broker's requirements.*—To achieve success in the brokerage business, it is necessary to cultivate a wide acquaintance, to increase one's circle of customers from time to time among the people with whom one comes in contact. The real estate broker must learn something about values. He must know when and where and at what price a property similar to that which he is trying to sell has been sold. He must have the instinct of salesmanship. A man who is a good salesman can succeed in the brokerage business, and a man who is not a good salesman cannot.

24. *Methods of making sales.*—Brokers may find employment in making sales in one or two typical methods.

A broker may come to a person who has property for sale, or of whom he believes that he may be induced to sell property, and seek employment on the plea that he has or expects to find a purchaser for that property; or he may first establish his relations with a prospective purchaser of property of a specific kind, and then seek the property, and having found it, approach the owner in the hope of inducing him to enter into the desired bargain.

It sometimes happens that the broker is the person who conceives the transaction and presents it to both principals. This is the highest class of brokerage, and usually cannot be achieved without going through a long course of apprenticeship.

25. *Agreement as to commission necessary.*—In order that a broker be entitled to commission for his services, it is necessary that he have an agreement that those services will be paid for. There is no presumption that a volunteer will be paid for his services. It is not necessary that the agreement be in writing, as a contract of employment may be implied from the relations of the parties. If a man who is known as a professional broker, enters into a business relation with one who has property for sale, and accomplishes the bringing about of a sale, a contract may very well be implied.

26. *Obligation of brokers to principals.*—The contract having been made, a commercial and legal relation has arisen between the two persons which brings with it obligations on the part of both. The obligation of a broker to his employer is that which every agent or employé owes to his employer—fair, honest service. If a principal has confided to a broker his necessity for selling, or the lowest price he will take, the broker owes it to his employer not to betray that confidence. He also

owes to his principal the disclosure of anything he knows or may learn during the course of his employment that has a bearing upon the subject-matter of the transaction.

27. *Statements a broker may make.*—A broker may make such statements as he believes to be true, and express such opinions as he can defend with relation to the subject-matter of negotiation—in the interests always of his principal. A broker is not required to test the truth of any representations his principal makes, which he has no reason to believe to be untrue. A broker may make comparisons between the transaction in hand and other transactions, but good business ethics require that he shall not violate previous confidences.

28. *Necessity for thorough knowledge of the property.*—A broker should never start upon a transaction until he knows as much as can be learned about the property. He should examine it, see what it looks like, the surroundings, what kind of tenants are in the property. He should know its income-bearing possibilities, its speculative aspects, the possibility of increase or decrease in value, the lettings, in what manner the tenants pay rent and what rent they pay.

A broker must know the terms upon which the seller can deliver. He should find out whether or not the thing he is trying to sell is such that it can be used for the purpose for which it is desired. It is not necessary for a broker to search the title before he attempts to sell a property, but it is utterly wasteful to bring about a transaction which will break up just before it is consummated. Much trouble and controversy would be saved by procuring from the seller a memorandum showing just what he has for sale.

29. *Who pays the commission.*—It is usual that the

contract for compensation be made with the seller; although, as the seller figures that out of the price which he receives, he must pay brokerage, economically, in its last analysis, it is the purchaser who pays the commission. In exceptional instances where a broker is employed to purchase a specific property or property of a special character, he may be paid by the purchaser upon an express understanding, and in that case he should approach the seller with the statement that he is employed by the purchaser and intends to look to him for commission. A broker cannot serve two masters. He cannot without the knowledge of his employer take compensation from the other party to the transaction, and if it be known that a broker does this, he loses his commission.

30. *When commission is earned.*—Unless otherwise stipulated as a term of the employment, a broker has earned his commission when he brings to his employer a person willing to enter into the transaction upon the terms prescribed by or acceptable to the principal, provided that such person be able to carry out the transaction or is accepted by the principal as a person capable of carrying it out. "Near" does not count in the brokerage business. There is no pay until the bargain has been made, and there is no pay for "making impressions," as it is called. A broker may have made an impression on the mind of a prospective purchaser and almost brought about a deal; but later, another broker who is a better salesman or who meets a better financial condition may complete the transaction and earn the commission.

It often happens that a seller is willing to sell a property upon large terms of credit, and for a very small cash payment, especially in transactions where the prop-

erty is vacant and intended to be improved. In such cases it is appropriate and often insisted upon, that the purchaser shall be personally acceptable to the seller. If there be no such condition, the broker is entitled to commission when he has brought to the seller a person willing and able to contract to purchase the property upon such terms as the seller will accept. A broker does not have to guarantee the solvency of his purchaser; all that is required is that he be a person of whom it is not notorious that he is insolvent or unable to complete, and one who is able and willing to make the contract. As a matter of commercial practice, it frequently happens that the broker waits for his commission until the title closes, but commission is earned and is due and payable at the moment he brings about a meeting of the minds of the parties; and, unless expressly stipulated it is not a condition of the earning of brokerage that a valid and binding contract be made between the principals.

31. *When broker is procuring cause.*—In order to save paying commission persons who have been brought into relations by a broker will sometimes get together behind his back and complete the transaction. If the broker can show that this was done in bad faith, he is entitled to commission.

32. *False representations.*—If a broker so far forgets his obligations as to make false representations in order to procure a purchaser, and the seller accept the result of a broker's work and sign the contract knowing of the false representations, then, if the purchaser be relieved of his contract by reason of the false representations, the broker is still entitled to commission. If, on the contrary, the purchaser be relieved of his contract by reason of false representations of which the

seller did not know, then no commission is due from the seller.

33. *Good business to see that contract is made.*—The broker should try to see to it that the parties not only come to an agreement, but enter into a contract which is binding and enforceable. It is not satisfactory nor conducive to future business to base a claim for commission upon the fact that the broker has brought about a meeting of the minds of the parties, without good evidence to support the contention; and the contract is the highest evidence that can be offered.

34. *Waiting for commission until title closes.*—Very often, after the broker has earned his commission and a contract has been made, it will be required of him that he wait for the commission until title closes, and that he stipulate that if the transaction be not completed, he will get no commission. If that agreement be required of the broker, without consideration, it cannot be enforced against him. If a person wants to have it arranged that the broker's commission be not paid until the title closes, he must make that a term of the employment before the broker enters on the work. There may however, be consideration for such an agreement. If a person is willing to sell his property provided he get $1,000 down, and the purchaser has only $500, the broker, in order to bring about the transaction, may agree to wait for his commission until title closes, in consideration of the seller accepting the $500. In that case there is consideration; the seller has changed his position upon the broker's promise, and such an agreement may be enforceable.

35. *Broker not responsible for failure to complete.*—If the seller should be unable to complete his contract, having a bad title, or being unable to dispose of

his encumbrances; or if, without fault of the broker, the purchaser be unable or unwilling to pay the balance of the purchase price, the broker does not lose any part of his commission. To require it of him is without consideration, and the broker can disaffirm such an agreement and sue for his commission whether the title closes or not.

36. *Splitting commissions.*—If, after a broker has earned his commission, the seller should require him to remit any part of it, that also is a condition imposed after commission has been earned and it is without consideration. To divide commissions with principals is reprehensible on the part of the principals to ask, and on the part of the broker to grant. One of the most important things which has brought the real estate business out of disrepute has been the attitude of brokers with regard to giving away part of the commission to principals. There is no objection to brokers dividing commissions among themselves. There may be three or four brokers in a transaction, and it is good business and perfectly proper that they should divide the commission upon any basis upon which they can agree. Usually the two at the ends of the chain get the larger part of the commission, and the other brokers all get a little compensation for bringing the parties together. The payer of commission is liable only to the man with whom he makes the agreement to pay commission, but frequently the other brokers will get orders on the owner from the broker to whom the owner is liable, and thus protect themselves.

37. *Points of difference between sales and exchange business and loan brokerage.*—One difference between the business of making sales and exchanges and the loan brokerage business is that in the latter the employ-

ment is not to obtain an agreement to make a loan, but to actually get the loan. There is seldom an enforceable contract to make a loan. A lender usually makes no agreement in writing, except that he will accept the application provided that all the things in relation to the loan are acceptable to him or his legal adviser. That does not necessarily mean that the broker never gets commission until the money be actually loaned. If a broker be employed to obtain a loan, and get an acceptance from a responsible lender, but, for some fault or default on the part of the borrower, the loan be not made, the broker is still entitled to his commission.

A man who intends to buy a house regards that as quite an individual transaction. It makes very little difference to a lender which one of any number of parcels of property of the kind upon which he is willing to loan, he finally accepts. A man who has $15,000 to lend on a $25,000 flat house, does not care in what block it is, whether the tenants are of one nationality or the other. All he wants to know is that there is a sufficient margin of equity between the loan and the actual value of the property.

The lender who agrees to make a loan seldom receives any money for the agreement. The only way to make an enforceable consideration for his promise is if by reason of that promise the other party has been led into expenditures or has incurred other obligations which it was known to the lender would be incurred upon the faith of the promise. Unless that state of affairs exists, one difficulty with enforcing a promise to make a loan is that it is a promise without consideration. One of the first and most essential elements of any enforceable contract is that there shall be consideration.

38. *When broker is procuring cause in obtaining loan.*—Cases may arise where a broker will get an agreement from a person to make a loan, and the attorney of the lender when he examines the title will make some objection to it. The intending borrower will then go to the person or company who examined his title and is responsible for it, and it may be that they will make or procure the loan for him. There, although the person whom the broker first obtained to make the loan, did not make it, someone else did, and the broker has been the procuring cause and is entitled to commission.

Another peculiarity of the loan brokerage business is that never by any chain of circumstances does it happen that the lender pays commission. The lender quotes a rate of interest, which means a net rate free of all expense to him; and he expects that all expenses of procuring the loan, examining the title and the preparation of all necessary legal instruments and putting them of record will be borne by the borrower.

39. *Agreement subject to prior closing of transaction.*—The agreement with regard to brokerage in the loan market, as in the sales market, is usually subject to prior closing of the transaction with somebody else in good faith. Very often a good loan will be in the hands of half a dozen brokers. Lenders as a matter of fairness consider that if they entertain an application for a loan, they entertain it from the man who offers it first, but there is no obligation of any sort on the part of the lender. There is no way that brokers can call lenders to account for any act of favoritism.

40. *Get agreement as to commission.*—In the loan business as in the sales business it is important that the broker get a proper agreement as to his compensation,

and that it be expressly understood that he will be paid for his efforts. In the sales business it is sometimes difficult for the broker to ask a man who employs him to sell a piece of property for written authorization, but with a loan application there are so many details a broker must tell the intending lender, that it is easy for him to ask the person who is about to employ him to get a loan, to put these details on a blank form.

41. *Rate of commission.*—Rates of commission are governed by custom and agreement. There is no legal fixed rate of commissions, but the customary rate in the community will be understood to be the rate, unless there be express agreement for a different one. It is poor business for brokers to accept less than the customary rate.

CHAPTER IV

CONTRACTS

42. *Contracts a legal and commercial necessity.*—The law has provided that in order that such frauds as the failure to perform a deliberate engagement shall not be perpetrated, certain transactions shall be reduced to writing. This statute is scattered through the law books of various states in appropriate places. In relation to real property the provision usually is substantially to the effect that a contract for the leasing for a longer period than one year or for the sale of any real property or interest therein is void unless the contract or some note or memorandum thereof expressing the consideration is in writing subscribed by the lessor or grantor or by his authorized agent.

43. *Contracts wise and safe.*—There are men who in spite of the statute will carry out their oral agreements, but the requirements of the law are so well known and so easily accepted that no man having made a bargain to purchase or sell real property, should hesitate to have that bargain expressed in a writing which will comply with the law and make an enforceable contract. The requirement that a contract shall be reduced to writing means that the entire understanding shall be reduced to writing. It is a principle of law that all the negotiations are presumed to have been embodied in the writing, and that whatever preceded the written agreement and is not expressed there, was not a part of the final bargain.

44. *Contracts a commercial necessity.*—There is also a commercial necessity that a bargain to buy and sell real estate shall be reduced first to a contract relating to future acts. Bargains for the purchase and sale of real estate are always important transactions to the persons concerned in them, and no matter how professional the parties may be, are not carried out without deliberation. The purchaser is not prepared to pay his money without waiting to ascertain whether the seller can convey that which is the subject of the bargain. It is necessary too before closing a purchase to make financial arrangements to gather the money from the places where it is deposited or the investments into which it has been put; and it is often necessary that the seller remove from his title such encumbrances or rights of others as will enable him to deliver the property. For these reasons it is the almost invariable rule that the matter be reduced to an executory contract.

The broker should endeavor to bring his parties to the place where the contract is to be drawn in such accord and with the elements of the bargain so well understood that he can hand to the person who is to draw the contract complete instructions for putting the bargain in writing; but it is not always possible to bring the bargain to that state of perfection, and frequently when the parties get together there will be some detail to be discussed or some term to be finally settled.

45. *Definition of a contract.*—A contract is a deliberate engagement between competent parties, upon legal consideration, to do or abstain from doing some act. In the real estate business when we speak of a contract, we arrogate that word, which is a generic legal word, to our business: we mean a contract for the sale of real property. When we speak of an exchange contract,

we mean a contract for the exchange of real property.

46. *Essential elements of a contract.*—(a) It is essential to a contract that there be competent parties. A man cannot make a contract with himself. A contract implies reciprocal relations between two or more parties. In order that there be competent parties to a contract it is essential that they be parties who are free to contract. A person who is incapable on account of lunacy of caring for his own affairs is not a competent person to make a contract. A person who is under the legal age is not a competent party to a contract. An executor or other fiduciary who by the terms of his trust or by reason of the limited nature of his powers will not be able to perform the obligation into which he enters is not a competent party to a contract.

When entering into a contract with a person other than an individual acting in his own behalf, it is the part of prudence to inquire whether that other party is a competent party, able to contract and perform his obligations. When dealing with an executor, a trustee or a person who purports to act as attorney for another, it is necessary to inquire as to the limits of his authority. It may be that persons who are incompetent at the time they propose to enter into an agreement can be authorized by legal proceedings to carry through the transaction. An infant may be incompetent to contract to sell property, but, by proper proceedings of a court, his guardian may be authorized to make the contract and convey the property. Similarly a trustee who has no right to sell a property, may be authorized by a court to enter into an agreement and to sell.

(b) It is essential to a contract that there be deliberate engagement, that is, that there be a promise and an acceptance of that promise—and that implies

futurity. If A give something to B, that is an accomplished fact. It is not a contract, but a transfer. A contract implies the element of doing or abstaining from doing something in the future.

(c) Another essential element in a contract is consideration, which means that there shall be some change in the condition or position between the parties. If A promise B a house, and B give no promise in return, that is a mere promise without consideration. Consideration is found in a promise when the party who tries to enforce the promise has changed his position in some manner or given something of value or some enforceable promise in order to induce the other to enter into the obligation.

The simplest form of consideration is money payment for a promise. Consideration may also consist of an enforceable promise. If A agrees to sell B a house, and B agrees to buy it and pay for it, B's enforceable promise to buy and pay the price for the house is consideration. There may be a third kind of consideration where A makes B a promise, and relying on that promise B changes his position or incurs secondary obligation; but this kind of consideration is not often found in real estate contracts.

(d) A ccntract can be on any kind of fabric, and does not require to be written in ink, so long as it is reasonably permanent. It is necessary that the writing be subscribed, that is, the person to be charged with the performance of a contract or obligation which is required to be in writing must subscribe his name or put at the end of the record or instrument some character intended to authenticate it. It may be in any characters that can be understood between the parties and in any language. Contracts are enforceable in the

courts of the United States so long as they can be translated and made understandable to the courts. The person who subscribes may write his name or he may make a mere X or other authenticating mark. The subscription is complete when the mark has been made. The words, ".....his mark" which will sometimes be seen written about the mark are not part of the subscription, but are a mere memorandum written by somebody else for the purpose of identifying the instrument afterwards.

(e) In order that contracts be enforceable, it is not necessary that they be witnessed or acknowledged. If they contain a complete agreement between competent parties, upon proper consideration, and are subscribed by the person to be charged, they are complete.

47. *Forms of contracts.*—There are many forms of contracts in use. The one selected for consideration and reproduced below is that in use by the leading title insurance companies of New York. It is a form which seeks to embody in the printed matter all of those stipulations which are usually found in real estate contracts and leaves blanks to be filled in with the matter which varies in each contract.

AGREEMENT, made and dated
between
hereinafter described as the seller, and
hereinafter described as the purchaser,

WITNESSETH, that the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot or parcel of land, with the buildings and improvements thereon, in the
described as follows: BEGINNING at
The price is
Dollars, payable as follows:
Dollars on the signing of this contract, the receipt of which is hereby acknowledged.
Dollars in cash on the delivery of the deed as hereinafter provided.

[Here follows a blank space for other terms.]

The deed shall be delivered upon the receipt of said payments at the office of
at o'clock, on 190 .
Rents and interest on mortgages, , if any, are to be apportioned.

If there be a water meter on the premises, the seller shall furnish a

reading to a date not more than thirty days prior to the time herein set for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last reading.

The deed shall be in proper statutory short form for record, shall contain the usual full covenants and warranty, and shall be duly executed and acknowledged by the seller, at the seller's expense, so as to convey to the purchaser, the fee simple of the said premises, free of all incumbrances except as herein stated.

All personal property appurtenant to or used in the operation of said premises is represented to be owned by the seller and is included in this sale.

All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House or Building Departments, against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

All sums paid on account of this contract, and the reasonable expense of the examination of the title to said premises are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller.

The stipulations aforesaid are to apply to and bind the heirs, executors administrators, successors and assigns of the respective parties.

The seller agrees that
brought about this sale and agrees to pay the broker's commission therefor.

WITNESS the signatures and seals of the above parties.

IN PRESENCE OF

[L. S.]
[L. S.]
[L. S.]

48. *Divisions of a contract.*—This contract has four main divisions:

1. A statement of the parties;

2. A statement and description of the property which is the subject of the bargain;

3. The terms of the financial settlement;

4. Certain miscellaneous stipulations, including the fixing of the time and place for the conclusion of the bargain.

49. *Date.*—A date is not necessary to any legal instrument, and therefore it is not necessary to a contract. It is a mere memorandum for the convenience of the parties, and the date and time make no difference to the effect of an instrument.

There is no common law Sunday in the United States.

Those things are prohibited to be done on Sundays and legal holidays which statutes prohibit, and if there be no statutory prohibition against the transaction of the business of making contracts or the sale of real property on Sunday or on a holiday, a contract made on such a day is good and enforceable.

50. *Statement of the parties.*—In this instrument the parties to a contract are designated as the seller and the purchaser. In some forms of contract they are referred to as the party of the first part and the party of the second part, and in others, as the vendor and the vendee. These are all mere designations to avoid repeating the names of the purchaser and seller.

These two parties are looking at the bargain from different points of view. One has agreed to buy a definite thing and is about to put down money to bind his bargain and to show his good faith. The other, having that definite thing for sale, is about to bind himself at some future day to deliver that property and in the meantime not to sell it to anyone else, thus depriving himself during the time between the signing of the contract and the delivery of the deed of the opportunity of making a better bargain for his property. Each party must necessarily look somewhat to the character, relation, good faith and ability of the other.

51. *Examination of title the first care of purchaser.*—The first thing the purchaser wants to know is what security he is going to have for the earnest money which is almost invariably paid when the contract is entered into, and his first precaution should be to ascertain whether the seller appears to be the owner of the property. That cannot be done absolutely, but it can be done to a sufficient extent to make it a fair commercial risk to pay the money. The purchaser can ask the seller

to produce his deed, if he has one. If not, he can ask when and where the property was bought, and can then consult some reliable real estate index, or the records of title insurance company to ascertain whether the seller appears to be the latest person in whose name the property has been put.

52. *When the seller is a trustee or corporation.*—If a seller purports to be dealing as a trustee, the purchaser should ascertain the instrument under which he claims to be acting, get a copy of it, and see whether the trustee is or is not able to sell the property. It may be that an executor, trustee or guardian has not authority to sell at the time the contract is made, but may by appropriate action of a court be so authorized. In that case the contract should be so conditioned that if the proper authority do not approve and authorize, the parties are not bound to each other.

When a corporation purports to act as seller, the purchaser should ascertain whether the officer who intends to sign the name of the corporation and to receive the money is authorized by the corporation. He may be authorized by a general by-law or specifically authorized by resolution, and if he is dealing in good faith, he will not object to disclosing the source of his authority.

53. *Earnest money may be placed with bank or trust company.*—If the purchaser does not know the man who takes his money and cannot ascertain that he is the owner or has a right to contract and deliver the property, he can try to arrange that the earnest money be placed in a trust company or bank or title insurance company until it be ascertained that the seller has a right to contract and deliver.

54. *Concern of sellers less than that of purchasers.*—Sellers usually do not criticize their purchasers with

the same particularity that purchasers criticize sellers. Very often the seller knows nothing about his purchaser except his ability to pay down the stipulated amount, and frequently that is sufficient and sellers are content with it. If a man stipulates that he shall have $1,000 down, and agrees to deliver his property within thirty days, knowing that if the purchaser does not comply with the rest of the terms of the contract, he will forfeit the $1,000, the seller often feels repaid for his trouble and expense and for the fact that his property has been off the market for that time.

Very often the person who signs the contract is not the real principal, and may be a person without financial responsibility and without ability to respond to the contract except so far as to forfeit the earnest money. If this fact be known to the broker who is employed by the seller, he should let his employer know of it. He may not be able to disclose the name of the real principal, having learned that in a confidential manner, but it is his duty to let the seller know that he is dealing with a dummy, and thus give him an opportunity to take care of himself in the rest of the terms of the contract. If the seller has sufficiently protected himself by getting such a deposit as earnest money as will compensate him in case the purchaser is not able to complete the bargain, he does not very much care whether the signer of the contract be a dummy or not.

55. *When seller must know the responsibility of purchaser.*—If, however, the property be of peculiar value, or sold on a rising market, or with a small down payment, it may very well happen that the seller desires to know more of his purchaser than that he is able to pay the earnest money, and will try to ascertain his responsibility.

56. *"Witnesseth, that the seller agrees to sell and convey."*—"Witnesseth" means very little. If it were not there the contract would proceed just as well. It is almost the last vestige of legal verbosity to be found in the instrument.

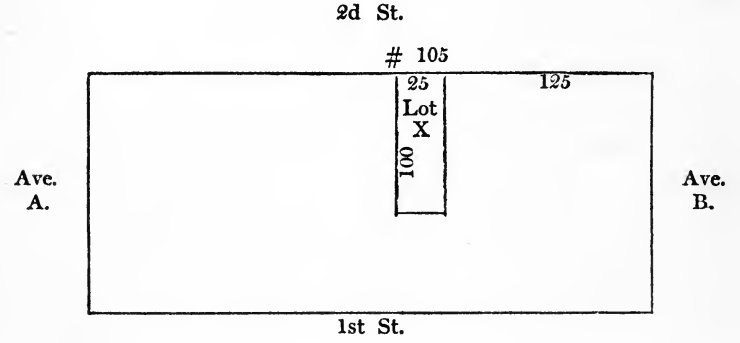
"Sell and convey:" The agreement is not only to sell, but to make the necessary conveyance. What kind of conveyance that may be and how it may be expressed will be reverted to again. Practically, as soon as the contract is signed, the purchaser becomes the owner of the property. That relation is not important unless something unforeseen happens; as, for instance, if the seller become insolvent or incompetent.

57. *"And the purchaser agrees to purchase."*—This is the reciprocal consideration. The earnest money is not a payment for the contract, but a payment of part of the purchase price. The consideration for the promise to sell and convey is the promise to purchase, which implies that the purchaser will pay for the property.

58. *"With the buildings and improvements thereon."*—These are not necessary words to a contract, as real property includes the land as far down as you can go, including all mines in it, and as high as structures can be built connected to the land. It is well, however, to leave these or equivalent words in the contract that there may be no doubt between the parties.

59. *Description.*—The description is the most difficult and the most important part of a real estate contract. The seller has been talking about something as seller, and the buyer has been talking about something as buyer, and as many minds as there are to the contract, so many different points of view can there be as to the description of a piece of property. The most important thing in drawing contracts is to express the descrip-

tion of the subject-matter in such manner that the contract can be performed by the seller, and that the description shall be the true expression of the intention of the buyer.



(a) The simplest case to be found is that illustrated in the diagram, which shows a vacant lot (X) with no encroachments by or on it. Here there can hardly be any difference in the point of view. This lot may be described at length, as in a deed, but sufficient description would be: "Lot on the southerly side of 2nd Street, distant 125 feet westerly from the westerly side of B Avenue, being twenty-five feet wide in front and rear by one hundred feet in depth, the side lines being parallel with B Avenue."

(b) If, however, the lot is one which the seller has purchased from a map, and his deed calls for a lot known as "Lot Number ten on the map of the D estate," in that case the seller and purchaser will look at the transaction from different points of view. The purchaser has made his offer upon the understanding that he is buying a lot twenty-five by one hundred, and his position is perfectly plain. The seller looks at the proposition from the point of view that while he thinks

he is selling the thing that the purchaser is offering to buy, he has always in mental reservation the fact that he is offering to sell that thing as he owns it. If he has any doubt, or if he learns that there is a limitation upon his ownership, or uncertainty as to the quantity, it is his interest to see that the contract expresses the facts. It requires considerable experience in order to know what is material and what is immaterial. In this case, if the map be inaccurate the quantity of land contained in "Lot ten" may vary so as to be more or less, and the parties may look at such a situation from two sides. Very often a stipulation will be made that the buyer will take less than the absolute amount he intended to buy, but not less than a certain quantity.

The most frequent stipulation made is the words "more or less." These words are very elastic, and mean just what they say, that the thing which the seller is able to give and which the purchaser will receive must not be substantially different from the dimensions as they were represented. A variance of an inch or so in width may be substantial, whereas a variance in depth may make no difference in the commercial value of a lot. It is all a question of reasonableness, and no general rule can be given. If the variance be of such a character that the usefulness of the lot is impaired so that it cannot be as conveniently used as if it were of full size, that variance would excuse the purchaser from taking, even if the contract read "more or less." Whereas, if the variance be of such character or the lot of such size that it is as useful for the purpose for which it is fitted with or without the variance, then the subject of the bargain has not been disturbed, and the purchaser would be compelled to take the property.

The question of reasonable variance is more difficult

with vacant land than with improved property. Vacant land is intended for improvement and is bought by measurement. Its usefulness is in the clouds, and in order that it may become income-bearing a structure must be put upon it. To the purchaser of improved property it makes very little difference whether the lot be twenty-five feet or 24′11″; it is all there, and brings the same rent. While the words "more or less" afford some leeway, they afford very little more than if they were not in the description, especially where the land is vacant and unimproved.

(c) When a person makes an offer for a piece of improved property, there are three things he offers to buy: First, the land; second, the structure as a rent producer or as a thing capable of occupancy; third, the right of permanently maintaining that structure upon the property. The case of a rectangular lot with a house in the middle of it is as simple as that cited in (a). Such cases are found in suburban places and outlying parts of cities, but when we come to the crowded parts of cities, where houses are built contiguous to one another, descriptions are more difficult.

(d) If there be a house on the lot[1] known as number 105, which exactly fits the lot, the seller does not care whether he puts into his contract the description of the lot or the house: they are equal to each other. That is the seller's point of view. The buyer, on the other hand, wants to be assured of two things—that the property is of the size represented to him, and that it is the structure which he thought he was buying. The seller might then appropriately add to the description of the lot: "Said premises being known as 105 Second Street,"

[1] See diagram on page 238.

which has added nothing to the description but identification.

(e) If the lot on which stands house number 105 Second Street be diminished by a structure which is on a neighbor's land, but encroaches on the lot, it would be dangerous to attempt to sell that lot in the form already given. In cases of that sort there are two forms of description. The contract may be drawn: "All that lot of land with the building and improvements thereon, known as 105 Second Street." That would be complete from the seller's point of view, but the purchaser might ask for identification or for limitation of dimensions. The seller can accede to a statement that the lot is 25′ wide, more or less; and he can accede to a statement that it is 125′ west of B Avenue, more or less; or, if he wants to be safe both against the possibility of a rejection for misrepresentation as to size, or the possibility of being charged with trying to sell more than he has, he can describe the lot as 24′ 10″ in width and known as 105 Second Street.

(f) The owner may be in possession of all of the lot, but his house may encroach upon his neighbor's lot, he having an easement or right to keep his wall there. In that case if he were to describe the property as "105 Second Street" he would be describing something which was 25′2″ in width, and the purchaser might very well say that he agreed to buy all of the house and all of the lot, and the seller would be held to deliver 25′2″ when he only had title to 25′ and an easement over the 2″. A proper form of description would be: "All that lot of land with the building thereon erected, beginning 125′ west of B Avenue," and then describe it as if it were a vacant lot, letting it follow as a matter of

inference and of law that all that is appurtenant to the lot will go with it—in this case, the easement or right to maintain a wall upon a neighbor's land. Then, although the house and lot are not equivalent, the seller having described the lesser of the two, is able to comply with his contract. If, for any reason, the purchaser require identification of the lot with the building, then it is necessary for the seller's protection that while acceding to that requirement he provide or state in his contract something to the effect that he does not convey all of the land upon which the building stands. He may say that the building encroaches 2″ on his neighbor's land, but he conveys a good right to maintain it there.

60. *Selection of form of description.*—No general rule can be given for writing descriptions. The selection of the form of description and the use of words can be acquired only by practice, and must be governed by knowledge of human nature and the subject and course of the negotiations. In some cases in order to satisfy the parties, it is necessary to quote a full description from a deed.

In modern practice there are no superfluous words in instruments which are drawn by skilled draughtsmen. Every word means something, and every word if omitted or changed would change the sense.

61. *Property sold subject to tenancy.*—A contract containing a description of house No. 105 Second Street would entitle the purchaser to receive the title to that house in fee simple absolute, but the seller does not always own his property as free and clear as that. The most common limitation is the occupancy of tenants. If property is improved and income-bearing and under lettings to tenants, in describing the property, it is nec-

essary to give its limitations, and add after the description a statement as to the hiring or letting upon which the property is held by those from whom the income is derived.

Seller and purchaser look at this matter also from different standpoints. The seller looks at it from the point of view of protecting himself against being required to deliver the property subject to any tenancy greater than the lettings subject to which he owns it. The purchaser desires to know two things with relation to the occupancy of tenants, the length of term and the rent they are paying; and upon these subjects he requires the most specific information. He would require the contract to add after the description; e. g., "Subject to a tenancy expiring November 1st, 1908, at a rental of $100 a month." That is specific. It may be that the property is occupied upon monthly tenancy only, and the purchaser requires a statement to that effect. It may be that the terms of hiring cannot be expressed succinctly. They may be contained in an elaborate instrument of lease, and then it may be sufficient to say: "Subject to a lease to—(here naming the party or parties to the lease) dated—(here insert the date of the lease);" and then add something by way of identification which would be particular and would operate to protect both parties to the bargain.

62. *Restricted property.*—Another important and frequent limitation upon ownership which it is necessary to provide for in a contract is restrictions upon use. It happens frequently that when property is in the course of development from suburban to urban property or from country or acreage property into suburban, in order to further that development the future use of the property is restricted by appropriate instrument. Fre-

quently a covenant is inserted that it may not be appropriated to certain uses, which are generally known as nuisances. Sometimes property will be restricted more stringently—that no tenement house be put upon it, that it be used for residences only, that nothing but private houses for the use of one family only or for the use of not more than two families be constructed upon the property. These are all frequent restrictions, and all have influence upon the values of property.

Restrictions enhance or detract from the values of property, according as they are appropriate or inappropriate to the present situation of the property or according as they do or do not seem to deprive the property of the opportunity for future development.

Property which is restricted in its use need not be taken by the purchaser unless the contract contains a stipulation that it shall be taken subject to such restriction, so it is to the seller's interest to see that the restriction be inserted in the contract. It is to the interest of the purchaser to see that the contract be specific. A form of contract which contains the stipulation, "Subject to any restriction there may be on it" is manifestly unfair, because in most cases the purchaser does not take in the fact than an important stipulation of that sort is run in with the ordinary printed matter. The purchaser should consider every word of a restriction, and should never buy property subject to a restriction under the representation that it does not amount to anything. Every restriction amounts to something: some of them amount to a great deal. The seller who tries to get a purchaser to take property subject to a restriction of which he claims that it is not now binding by reason of "change of neighborhood" is taking a very

dangerous position, both for himself, if he contracts to deliver free of restriction, and for his purchaser if he leads him to purchase believing that the neighborhood has changed.

In order that restrictions be useful to the purchaser and act as an enhancement of value, there must be an element of mutuality. If a man buy a piece of property restricted to the use of dwelling houses only, he ought to have assurance in his contract or in the character of the neighboring improvements that the restriction is appropriate to the property, and that the surrounding property is similarly restricted. In framing restrictions connected with the development of a tract, it is wise not to make them perpetual, but to make them run out at a definite time. Neighborhoods are frequently retarded in their proper development because of the fact that there are restrictions which were put on to run without limit of time, as to which it cannot be said the neighborhood has so far changed that the restriction need not be enforced, but still the property does not sell at its full value.

A restriction that property may be used for the purpose of dwelling houses means any kind of a dwelling, including private dwellings, flats, apartments, apartment hotels, anything that is used for human habitation. A restriction that property may be used for private dwellings means a dwelling for the use of one family only. A restriction against the use of property for tenement houses is very difficult to construe.

63. *Easements.*—An easement is a right over or to the use of part of property in favor of another adjacent property. If A own a lot and B have a right to walk over it to reach the street, B's right is known as a

"right of way," and if A were selling his lot, he should provide in the contract that it is sold subject to that easement.

A party wall right arises either by agreement or where one man owns sufficient land for two or more structures, constructing them with a common wall, so that the wall is upon the dividing line between the two lots, and partly on each, the buildings on both sides being supported by the wall. The owner of each building has an easement in the other's lot to the extent that he has a right to have the wall remain as long as it will stand, and to have support for any structure which he may put upon the property, provided he does not burden the wall so as to impair its usefulness. The owner of each lot may build on the wall to its full width as high as he pleases, but he cannot extend the wall further back or forward on the lot. Where property is sold subject to a party wall right, the contract should so stipulate.

It may be that the wall is entirely upon the lot which is being sold but must support a neighbor's building. In such a case, the neighbor's right is known as a beam right. Cases frequently arise where one building has a right to drain over another. When a property is subject to either of these rights, the contract should so provide.

Appurtenances go with the property whether specifically mentioned in the contract or not; but all things to which a property is subject which may detrimentally affect its price or impede its use should be put into the contract by the seller, so that they may not be objections to the title.

CHAPTER V

CONTRACTS (*Continued*)

64. *Financial statement.*—A real estate contract is a commercial transaction, which resolves itself finally into the transfer of money against property. The most important thing in the bargain is the gross price at which the property is sold, so in the form of contract under consideration the first stipulation in the financial adjustment is a statement of the price, a blank being left for the amount. The payment of the gross price may be divided into four parts:

1. The earnest money paid on the execution of the contract.
2. The cash to be paid upon the delivery of the deed.
3. The amount of incumbrances subject to which the property is bought.
4. The amount of purchase money mortgage.

The first and second items are usually present in all contracts; the third and fourth or either of them may be present or not, according to the nature of the transaction.

65. *Earnest money.*—The relation which the amount of earnest money bears to the entire consideration varies. Here again the bargain is looked at from different sides by buyer and seller. The buyer desires to risk as little money as possible before he gets his title because he wishes to have the use of his money pending the bargain, and he may not feel certain of the security which he is getting. In some jurisdictions it

may not be certain that the purchaser has a lien on the property for the earnest money. For that reason a clause has been inserted in this form of contract specifically creating such a lien, so that, whether by operation of law or express stipulation, the purchaser looks to the property or such interest in the property as the seller has or can bind, as security for the money paid on contract. This is another reason why it is advisable to ascertain whether the seller appears to be the owner of the property.

The requirement of the seller is that the earnest money shall be sufficient to indemnify him for at least two things: one, the obligation for brokerage which he has incurred as soon as the bargain is agreed on; and the other, the fact that from the time of the execution of the contract until the delivery of the deed, the property practically belongs to the purchaser. The seller has limited the amount which he can get for it and the chance of speculation for a larger price is not with him any longer, but with the purchaser. If the contract does not go through, he gets the property back with a blemish upon it by reason of the fact that for some cause or other it has been the subject of an unsuccessful bargain; and it is harder to sell property to which that has happened. The seller requires in addition assurance that the purchaser will have sufficient to lose when he has paid the earnest money to make him desire to get the property for the balance of the consideration which still remains to be paid.

Theoretically, the seller requires sufficient in the way of earnest money on the execution of the contract to leave the balance to be paid for the property an amount less than its true value, so that the purchaser will have the necessary incentive for taking the property; but it

is not always possible for sellers to so arrange their contracts.

The amount of earnest money is seldom higher than 10 per cent of the purchase price and may be any sum less than that on which the parties can agree. It may be as little as a nominal sum. It may be that nothing is actually paid on signing the contract, but the seller is satisfied with the personal liability of an amply solvent purchaser.

The amount paid on the execution of the contract is generally paid by check. Delivery of actual money or certification of the check is not usually required, for if the check be not good, the contract could be set aside for failure of one of the considerations for entering into it; i. e., the payment down of earnest money.

66. *Amount paid on delivery of the deed.*—This amount may be the difference between the gross price and the earnest money, or it may be the difference between the gross price and the earnest money added to the third and fourth or the third or fourth division of the purchase price. The form of contract under consideration provides that the amount be paid in cash, which means if required, in legal tender money. It is customary and good business to accept a check certified by a solvent banking institution, but nothing less than a certified check is accepted on delivery of the deed, between persons unacquainted with one another. There are forms of contract in which it is stipulated that this amount shall be paid in cash or certified check. The seller who signs such a contract is ill advised, for a check certified by an unknown bank in a little country town would be a good tender under that contract. The contract should always call for cash on delivery of the deed; then a certified check may be accepted,

but in such a case there is no obligation to deliver the deed until the actual money is paid.

67. *Taking property subject to mortgage.*—It is quite usual that property which is the subject of bargain and sale shall be encumbered by mortgage, and it is customary that property thus pledged be purchased subject to such mortgage. The difference between the amount for which the property has been mortgaged and its value is known as the equity, value of equity, or equity of redemption of the property. The mortgage or amount of mortgages is a part of the price.

If a person were to buy a piece of property for $50,000, agreeing to pay $1,000 on signing the contract, $24,000 when the deed was delivered, $20,000 in a mortgage for that amount, and $5,000 in purchase money bond and mortgage, the first three divisions of the purchase price might be expressed in the contract as follows:

$1,000 on the signing of the contract, the receipt of which is hereby acknowledged;

$24,000 in cash on the delivery of the deed as hereinafter provided;

$20,000 by taking the property subject to a mortgage for that amount, now a lien thereon.

From the seller's point of view this statement with regard to the mortgage would be satisfactory. He has the purchaser bound to accept the property subject to an existing mortgage; but the purchaser would require to know when the mortgage was due and what rate of interest he must pay for the use of the money. He ought to inquire to whom the mortgage was made or who holds it, because this will enable him to tell whether it is likely that payment will be required the moment

the mortgage is due, or whether there is a probability that it will be extended. As a matter of law, if a mortgage be referred to in a contract as an existing mortgage, no matter how onerous the terms of that mortgage or how extraordinary, the purchaser who has signed the contract is held to have knowledge of those terms and will be bound to accept the title. For these reasons a complete clause for taking property subject to a mortgage should read: "By taking the premises subject to a mortgage for that amount, falling due (here insert due date of the mortgage), and bearing interest at the rate of — per cent per annum."

If there is a stipulation in the mortgage that it may be paid off before it is due, the purchaser should require that the contract so stipulate. If he thinks $20,000 a small mortgage on a $50,000 piece of property, he should be careful to stipulate that he have the privilege of paying it off, or see that he buys the property subject to a mortgage which is due or will fall due within a short time.

In the case cited there is no liability on the part of the purchaser personally to pay the $20,000. There is nothing he risks beyond the loss of his equity. But it may be that the seller desires not only that the purchaser shall leave the property as security for the existing mortgage, but also, because he happens to be liable personally to pay the $20,000, he may desire that the purchaser shall also become liable, and that the seller shall step back into the position of surety for the amount, with the purchaser as first debtor. If the purchaser does thus assume a mortgage, he becomes liable not only to lose his equity in case the property is not sufficient to pay the mortgage debt, but also to pay any deficiency there may be between the amount re-

alized on enforcing the mortgage and the amount of the mortgage debt. He becomes as liable as if he himself had borrowed the money and given his bond or note for it. In such a case the statement with relation to the mortgage would be expressed:

$20,000 by taking the premises subject to a mortgage for that amount, now a lien thereon, bearing interest at the rate of ..... per annum and due .....; payment of which the purchaser shall assume when the deed is delivered.

It may be that the purchaser voluntarily desires to be made personally liable for the payment of a small mortgage. There may be very little chance that there will be a deficiency between the amount that the property will realize and the mortgage debt; and in some states there is an extraordinary form of taxation on personal property under which a man is able to set off his liabilities against his personal property. For these reasons buyers—especially rich buyers—when purchasing property subject to comparatively small mortgages frequently request that the transaction be shaped in such manner that the contract and deed shall contain an agreement by which the purchaser assumes the mortgage. The original obligor still remains liable for the bond as between himself and the lender. He can only be released from that liability in case there be some act or change in the terms entered into between the holder of the mortgage and some subsequent owner, for instance, if the lender extend the time of payment with a new owner.

68. *Purchase money bond and mortgage.*—In the bargain under consideration the purchaser requires credit for the balance of $5,000, and the amount is to be secured by a purchase money bond or notes and mort-

gage. The balance of the purchase money which remains unpaid upon the delivery of the deed, as between the parties remains a lien on the property, but it is necessary on the public records to warn anyone who deals with the purchaser that he has not paid for the property, so the seller exacts from the purchaser an agreement that he shall give a bond or notes for the payment of that balance, and shall secure the bond or notes by a purchase money mortgage to be given on the delivery of the deed.

It is necessary for the protection of the seller where a purchase money mortgage is given that the form of that mortgage be stipulated between the parties. He will require that a mortgage which is thus subordinate to another shall contain a clause which permits the holder of the subordinate mortgage to demand payment of his debt if default be made in any of the stipulations of the previous mortgage. On the other hand, the purchaser in contracting to give a purchase money mortgage upon terms which make it due after the time when the prior mortgage comes due, requires for his benefit that there be a stipulation in the purchase money mortgage that in case he pay off the first or prior mortgage that then the second subordinate mortgage shall still remain subject to a new first to be placed on the property—usually the stipulation being that it shall not exceed the existing mortgage. If the purchase money mortgage is to be paid off in installments, as frequently happens, the seller requires and is entitled to a stipulation that if any of the installments be not paid that then the whole amount shall be due and owing at the option of the holder of the mortgage. A clause relating to a purchase money mortgage of this sort may be expressed as follows:

$5,000 by the execution and delivery of the purchase money notes or bond of the purchaser, secured by purchase money mortgage on said premises for said sum, payable ..... with interest at the rate of ..... per annum, payable semi-annually. Said bond and mortgage to be in the form usually employed by (here insert some stipulation which will identify the form of mortgage to be used) and to contain a clause that if the first mortgage be discharged that this mortgage shall remain subordinate to any new mortgage placed on said premises in place thereof.

There is some expense in connection with the giving of a purchase money mortgage and as already stated when speaking of loans, the borrower pays all expense of securing the loan. In such a transaction the purchaser must ask for credit, so it is stipulated that he pay the expense of drawing and recording the mortgage. The instrument is for the security of the seller so it is usually stipulated that the attorney for the seller shall draw the mortgage. Where there is a mortgage recording tax this is another expense in connection with the recording of a mortgage. Doubt has arisen as to whether the purchaser should pay this tax if there be no stipulation in the contract requiring him to do so. Therefore the seller who desires to protect himself properly requires three things in the contract: (1) That the mortgage and bond shall be drawn by his counsel. (2) That the buyer shall pay the cost of preparing and recording the mortgage. (3) That the buyer shall pay the mortgage tax, if any.

69. *Delivery of deed.*—It is necessary, by way of convenience, that a place be fixed for the delivery of the deed and the payment of the money. It may be at the office of either party or counsel for either party, at the office of a title insurance company, prospective

lender or any place convenient. There is no custom with regard to it. For the same reason a day is fixed for the delivery and tender of money.

70. *Apportionment of rent, interest, etc.*—The next stipulation is that rents and interest on mortgages are to be apportioned. Rent is payable at stipulated times, and the delivery of the deed may not coincide with a rent day. Rents may have accrued from some prior date and be unpaid, or rent may have been paid in advance. The contract stipulates that these sums are to be apportioned, that is, justly divided between the parties. As a matter of law, in some states, rents are apportionable, but if there be no statute to that effect, it is not certain that rents will be apportioned, so it is appropriate to create this stipulation in the contract.

For the same reason the contract provides that interest on mortgages shall be apportioned. There is a blank in which it is often stipulated that insurance premiums shall be apportioned, and this is distinctly to the interest of the seller. If it be not so stipulated, the purchaser is not bound to take and pay for the unexpired balance of the fire insurance policies. He may leave them in the hands of the seller who will have to take the rebate at short rates instead of getting a fair apportionment for the unexpired term. In the interest of the seller this clause should read: "Rents, interest on mortgages and fire insurance premiums, if any, are to be apportioned."

71. *Reading of water meter.*—Wherever water is furnished by a municipality, the charge for the water is a public charge and may be a lien on the property. For that reason it is proper that when the title is delivered, it be free of lien of any water rate which has become due.

It is sometimes impossible to get a water meter reading when desired, so this form of contract provides that if there be a water meter on the property, the seller shall furnish a reading to a date not more than 30 days prior to the time set for closing, and that the parties shall adjust the unfixed meter charge for the intervening time upon the basis of such last reading.

72. *Form of deed.*—The next clause in the contract relates to the form of deed to be delivered and the contract requires that, "The deed shall be in proper statutory short form for record." At one time deeds were very verbose and it got to be burdensome to read and record such long instruments, so in some states statutes have been enacted by which the covenants in a deed were reduced to a simple form of words; and that this simple form of words should be considered equivalent to the long covenants. The stipulation that the deed shall be in statutory short form is therefore appropriate, where such statutes exist.

The contract also provides that the deed shall contain the usual full covenants and warranty. Unless this stipulation were in the contract a seller could deliver any form of deed which was sufficient to convey the property, without assuming any further obligation with regard to it. The practice is that the purchaser exact five covenants from the seller, when the seller is an individual owning property in his own right:

1. A covenant against incumbrances,
2. A covenant of seizin—that the seller is the owner of the property and has a good right to convey it,
3. A covenant of quiet possession—that the purchaser shall obtain and quietly retain the possession of the property,
4. A covenant of further assurance—that the seller will at any time in the future execute any other instruments which

he can execute and which may be required to perfect the title,

5. A covenant of warranty—that the seller will forever warrant and defend the title.

If the seller be not contracting to sell in his own right, he will not obligate himself to make these covenants. A trustee selling property may obligate himself to give a covenant that he has not incumbered the property or done anything to defeat the title: beyond that no fiduciary or representative will go.

The stipulation further is that the deed shall be duly executed and acknowledged by the seller. It must be properly executed and acknowledged that it may be recorded. It must be executed and acknowledged "by the seller," because very often purchasers will contract to buy property and take the covenant of a person whom they know to be solvent and amply able to respond to any liability to which he may be held by the operation of that covenant; but a purchaser might buy from a man who is known to be amply solvent and, if these words were not in the contract, the seller might convey to a dummy or intermediary without covenant and give the purchaser a full covenant and warranty deed of a person without responsibility. If the deed is not to contain full covenants or any covenant, it does not make any difference whose deed it is. The contract also stipulates that the deed shall be prepared and executed at the seller's expense. Another important stipulation is that the deed shall be such as to convey the premises in fee simple, free of all encumbrances except as stated in the contract.

73. *Personal property included in the sale.*—The next stipulation relates to personal property which may pass as appurtenant to the land. If a purchaser

were buying an apartment house, he would want the lighting fixtures, janitor's tools, shades, gas stoves, etc. All those things which go with a piece of improved property as it stands as a going concern are commercially intended to be included in the bargain, but if the contract be one which relates purely and simply to real property the seller might hide behind the terms of the contract and refuse to deliver anything but the real property, so the stipulation is that, "All personal property appurtenant to or used in the operation of said premises is represented to be owned by the seller and is included in this sale."

74. *Violations of law and municipal ordinances.*— The next stipulation relates to an important subject— violations of law which do not amount to direct encumbrances upon the title. Attached to the provisions of building codes and other laws regulating use and construction are specific penalties. The provisions of these codes may be enforced by injunctions against the use of the property or by the exaction of penalties which become liens on the property; and to purchase property without making stipulation concerning this matter may subject a purchaser to unexpected burdens. Where such regulations exist it is proper for a purchaser to stipulate that the premises shall be delivered free of violations of law or municipal ordinances noted on the books up to the date of contract, unless he is consciously buying the property "as is"; the seller, however, will refuse to be liable for any such notices of violation issued after the date of the contract, for if he did not thus limit his obligation, there would be danger that unscrupulous purchasers might have inspections made and departmental requirements noted between the time of making contract and delivery of the deed.

75. *Earnest money a lien.*—For reasons already given a clause has been inserted in this form of contract specifically creating such a lien, so that, whether by operation of law or express stipulation, the purchaser looks to the property or such interest in the property as the seller has and can bind, to act as security for the money paid on contract.

The form of contract under consideration goes further than the law and says that the reasonable expense of examination of title shall also be a lien on the property but, for the protection of the seller, it is stipulated that the lien shall not continue after the purchaser has made default under the contract.

76. *Damage by fire.*—The next clause which appears in the form of contract under consideration relates to the visible condition of the property. When a purchaser buys a piece of improved property, he buys with reference to the state of facts which is apparent with regard to its physical condition; and is entitled to have it delivered to him in practically the same condition as when the contract was made. If there be any appreciable change between the time of making the contract and the delivery of title which is not the result of ordinary wear and tear, overwhelming physical calamity, or destruction by the elements, it would seem clear that the seller is not delivering that which was the real subject of the bargain, to wit, the property in the physical condition it was in when the bargain was concluded. It is held by some, however, that the doctrine that in equity the property belongs to the purchaser after the making of the contract, has such influence upon the rights of the parties that the purchaser would be bound to take the property even though there were injury by fire, because from that time he had an in-

terest in the property which he might have covered by fire insurance. That there may be no misunderstanding between the parties, it is advisable, if the risk or damage by fire until the delivery of the deed is to be assumed by the seller, that the contract so stipulate.

It may be that the transaction is of such nature that the purchaser ought to take the property whether or not there be destruction by fire or other calamity between the time of closing the contract and the delivery of the deed. Such cases are found where valuable property is sold, when almost the entire value lies in the land, and little or no value is placed upon the structures. It is then customary to provide expressly that the purchaser shall take the property notwithstanding there be loss by reason of fire damage; and in such case it is usual to state that the purchaser shall receive from the seller whatever may be collected on the policy if there should be a loss in the meantime.

Sometimes the transaction is of such importance to the parties that it is stipulated that it shall go through no matter what kind of damage there may be to the building in the interim. When the land value rises so high that the structures are incapable of earning interest upon it, then the structures disappear from the valuation; and in such cases it is appropriate to stipulate that no matter what change there may be in the physical condition of the property between the time of making the contract and the delivery of the deed, that the purchaser shall take the property and pay the stipulated price.

77. *Contract binding on heirs, executors, etc.*—"The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties." If a seller should die before title

passes and the property go to his heirs, they must carry out the contract; if the title should fall to his executors, they ought to be called upon to perform the contract. The seller having made his agreement and being thus bound, the purchaser should also provide in case he die pending the contract that his executors or administrators shall pay the purchase money. If the seller should sell his property pending the contract to one who knows of it, his assignee—the person who buys—is bound. If a purchaser should sell his contract to an assignee another principle comes in, i. e., a person can sell his assets, but not his obligations. If a purchaser sell his contract to a person whose obligation is worth having and desires to be relieved of the burden of performance of the contract, he should get from the man on whom he relies to take the property an agreement that he will perform the contract in the stead of the assignor.

78. *Agreement as to commission.*—The next stipulation in the form of contract under consideration is one which is really not part of the contract at all but merely a stipulation between the seller and broker who has brought about the sale and is inserted entirely for the benefit of the broker. The parties formally ratify the meeting of the minds which the broker has brought about, stating that the seller agrees that the person who has acted as broker brought about the sale, and agrees to pay his commission. That clause was first inserted in contracts at the time when the act of the State of New York as to written authority was still in force, and a broker having brought the transaction between the parties to a successful conclusion and not having written authority might have failed in an action for commission.

79. *The seal.*—The contract then calls to witness the fact that the signatures and seals of the parties are attached. It is subscribed in order that it may be enforceable. It must be subscribed by the person to be charged, i. e., both parties need not sign each contract; each of them must sign one counterpart. The contract is also sealed. A seal originally was some sort of impression attached to a writing to witness its formal execution: men stamped their sign or their family arms to witness instruments, because they could not write. The seal has remained formal testimony to the execution of documents from that time until the present.

The use of a seal in modern times is twofold: First, and most important, a seal imports consideration. It raises the presumption that the person who has affixed his seal to an instrument has received consideration. The second use of the seal is in relation to attempts to charge an undisclosed principal. In dealing with a dummy, if the instrument be unsealed, a person may go behind the instrument and charge the principal or any one else who is responsible for the transaction, but upon a sealed instrument, as matter of law, only the person who has executed it can be charged. When men are dealing with or through dummies, if they fear they will have to charge some one else under the instrument or desire that they shall be protected against being charged under the instrument, they should always be careful, under professional advice, to determine whether or not the instrument should be sealed. However, real estate transactions usually are founded upon the property under consideration and it is appropriate to look only to the property and to the signers of the instrument, and not through the instrument and

behind the instrument to others; so that it is usual that contracts for the sale of real property shall be sealed.

Another influence that a seal has upon instruments is in connection with the statute of limitations, which provides that within a certain time a debt is outlawed by limitation. In all states there is a difference in the time of limitation between a sealed and an unsealed instrument, a sealed instrument having a greater length of life than an unsealed. In the State of New York upon a sealed instrument the time of limitation is twenty years; if the instrument be unsealed the time is six years.

80. *Witness and acknowledgment.*—When a contract has been subscribed by the parties it is complete, and for purposes of enforcement need not have any other formality: it need not be witnessed or acknowledged. If it be witnessed it is merely as a convenient memorandum of the fact that the person witnessing it was present and saw the parties sign the instrument.

Contracts are not usually recorded upon the public records unless default is feared. For that reason they are very often not acknowledged or the signature proved. Acknowledgment of an instrument is had if the person signing the instrument appear before a public officer authorized by law to receive acknowledgments, and acknowledge to him that he executed the instrument. The person must be known to the officer and known to him to be the one who executed the instrument and the officer must sign a certificate to that effect. If an instrument have such a certificate of acknowledgment, it may be put on the public records. If the instrument be witnessed and if parties have not acknowledged it, the subscribing witness may go before a public officer and swear to the fact that he was present and saw the

parties execute the instrument, that he knew them, and knew them to be the persons described in the instrument and saw them execute it. Thereupon the public officer will indorse a certificate to that effect upon the instrument, which is equivalent to a direct acknowledgment, and then the instrument may be put upon the public records.

81. *Non-performance of contracts.*—The failure to perform a contract may be by either party. The seller may not perform for one of two reasons, because he will not, or because he cannot. If he is able to perform and will not, the purchaser has three remedies: First, he may disaffirm the transaction, ask to have his money back and his expenses. If he gets what he asks for, that ends it; and whether voluntarily or as a result of a suit at law the contract has been disaffirmed and the parties are back where they were before. Second, the purchaser may want the property. Real property has inherent qualities. A man may have bought a specific piece of property for specific purposes and he is entitled to have that piece of property. He may bring what is technically known as an action for specific performance, the result of which is—if the purchaser be successful—that a decree is made that the seller shall specifically perform by conveying to the purchaser the property in the manner in which it was contracted to be conveyed. That decree is enforceable, if not complied with, by punishment for contempt of court, not by the sale of the property or execution by the sheriff. The purchaser has a third remedy. If the seller can sell and will not, a purchaser may sue for damage. His damages are usually limited to the amount of earnest money and interest and the reasonable expense of examining the title, unless special damage can be

shown; and then it is usually limited to the difference between the actual market value of the property and the sales price. If a purchaser buy for $7,000 and can show the court that the property is fairly worth $10,000, he has lost a profit of $3,000 and his damage may be estimated at $3,000, earnest money and interest, and expenses for examination of title.

If the seller cannot perform—if, for instance, it is found that his title is defective, that persons whom he does not control have interests in the property which prevent him from conveying, then it would be futile to sue for specific performance. In such a case the purchaser's remedy, if the seller has acted in good faith, is limited merely to the recovery of his earnest money with interest, and the reasonable expense of examining the title. If he can show that the seller acted in bad faith, that knowing he could not perform the contract, he led the purchaser to make the bargain to his detriment, the purchaser may obtain such secondary damage as he can show, but he will not get speculative damage. He must show by expert testimony the value of the property and the value of the bargain of which he has been deprived.

82. *Seller's remedies.*—A seller may not know the infirmities of his title. He may not have had it examined; things entirely beyond his control may have happened or things of which he knew nothing; but a man ought not to contract to buy a piece of property without knowing whether or not he can pay for it. When a purchaser fails to perform, a seller has three remedies: First, he may retain the earnest money and go no further; second, he may begin an action for specific performance, which must be founded upon an allegation that the purchaser can perform but will not.

If the seller succeed in such an action, it can be enforced by punishment for contempt of court. Third, the seller may sue the purchaser for damage; and here again the measure of damage will be the difference between the contract price and the value of the property. If a man contract to buy a piece of property for $10,000 because he wants it very much, and when the time for closing title comes the market has changed, or the property is only worth $7,000 in the open market, the difference between the sales price and the contract price—$3,000—is the measure of the seller's damage. But at all times the purchaser having failed to perform his contract, no matter what remedy is resorted to, or if the seller resort to no remedy, he is entitled to retain the earnest money. Very often sellers are satisfied with this, especially as the feeling is that purchasers who default in their contracts are usually of small personal responsibility outside of the money which they have paid on contract, so that it is seldom worth while to pursue them further. A purchaser who has defaulted in his contract naturally could take no advantage of the contract which he had broken, therefore could not sue to recover the money which he had paid down.

83. *Exchange contracts.*—Sometimes the contract is not one by which property is sold for money, but partakes rather of the nature of a barter or exchange. A man who owns a piece of property of a certain value and desires to buy a piece of much greater value may not be prepared to pay the necessary money. A small piece and some money will buy the larger piece. That larger piece and some money will buy a still larger piece, until finally the man finds himself with a very large real estate investment. Or the process may be reversed, and a man who has a very large investment,

or a builder who has constructed an expensive improvement, desiring to work out of it and finding customers who have some real estate investments and some money, will make a trade. He will take some money and a smaller investment and thus gradually work out of the large investment down to a cash basis.

There are men who give most of their time as brokers or operators to the exchange of real property. Sometimes they work it as people trade on the stock exchange, to keep things moving, but oftener it is in the course of the accumulation from small properties up to larger ones, or in working from large properties down to a cash basis. The contract which is brought about when exchanges have been agreed on is of the same nature as a contract in a cash sale. A standard form of such a contract is given below.

AGREEMENT, made and dated between
hereinafter described as party of the first part, and
hereinafter described as party of the second part, for the exchange of real property.

WITNESSETH, as follows:

The party of the first part, in consideration of one dollar, the receipt of which is hereby acknowledged, and of the conveyance by the party of the second part hereinafter agreed to be made, hereby agrees to sell, grant and convey to the party of the second part, at a valuation, for the purpose of this contract, of

Dollars,

ALL that land with the buildings and improvements thereon, in the

The party of the second part, in consideration of one dollar, the receipt of which is hereby acknowledged, and of the conveyance by the party of the first part hereinbefore agreed to be made, hereby agrees to sell, grant and convey to the party of the first part, at a valuation for the purpose of this contract, of

Dollars.

ALL that land with the buildings and improvements thereon in the

The premises which are to be conveyed by the party of the first part shall be conveyed subject to the following encumbrances:

The premises which are to be conveyed by the party of the second part shall be conveyed subject to the following encumbrances:

The difference between the values of the respective premises, over and above encumbrances, for the purpose of this contract, shall be deemed to be
Dollars, and that sum shall be due and payable as follows, by the party of the

The deeds shall be delivered and exchanged at the office of at o'clock on 190

It is agreed by the respective parties hereto that brought about this exchange and that the brokerage shall be paid as follows:

Rents and interest on mortgages, if any, are to be apportioned, and the risk of loss or damage to said premises by fire, until the delivery of said deeds, is to be borne by the respective sellers.

If there be water meters on the premises, the respective sellers shall furnish readings to dates not more than thirty days prior to the time herein set for closing title and the unfixed meter charges for the intervening time shall be apportioned on the basis of such last readings.

All personal property appurtenant to or used in the operation of said premises is represented to be owned by the respective sellers and is included in this exchange.

All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House or Building Departments, against or affecting the premises at the date hereof, shall be complied with by the respective sellers and the premises shall be conveyed free of the same. The respective sellers shall furnish the respective purchasers with authorizations to make the necessary searches therefor.

Each of the parties agrees to convey the property hereinbefore described as sold by such party respectively, free from all encumbrances, except as above specified, and to execute, acknowledge and deliver to the other party, or to the assigns of the other party, a deed in proper statutory short form for record containing the usual full covenants and warranty, so as to convey to the grantee the fee simple of said premises free from all encumbrances except as herein stated. The deed, in each case, shall be drawn at the cost of the party of the first part thereto.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

WITNESS, the signatures and seals of the above parties.

IN PRESENCE OF

[L. S.]

[L. S.]

[L. S.]

[L. S.]

84. *Parties and consideration.*—In exchanges of real property there are really two sellers and two buyers. The contract is really two contracts to sell. The agreement is between the party of the first part and the party of the second part. The consideration in this contract is the mutual agreement by each party to sell his own property and to accept the property of the other party.

85. *Description.*—The description should be written with the same care as in a contract of sale and the limitations on ownership with regard to each parcel as carefully set out.

86. *Financial statement.*—In place of the absolute price the properties are said to be at a "valuation for the purpose of this contract." These valuations need not be actual: they may be nominal. Each property may be put in at one dollar, or any reference to the valuation may be struck out, but it is usual to fix arbitrary values. Sometimes they are inflated, and if both sides of the contract are inflated equally, this is legitimate. Brokers do not get commission, however, on inflated values, but only upon actual values. Those actual values are the subject of negotiation between the parties and the broker before the contract is executed, and necessarily ought to be agreed to so as to avoid confusion or dispute afterwards.

The contract then provides that the premises shall be conveyed subject to stated encumbrances. Appropriately the next step is to balance the figures—the difference between the values of the respective properties over and above encumbrances—and the next clause states that this difference "shall be deemed to be." . . . The entire contract is subjective. The valuations are fixed arbitrarily, and the difference is fixed as something that is "deemed." The contract provides as to the manner in which the difference between the values shall be paid.

The remaining steps of the contract are practically the same as in a contract of sale, but it is bilateral, not unilateral. Each of the parties obligates himself to do the same things with respect to the property which he is selling or buying, as these things may be appropriate.

Rents and interest are to be apportioned, water meters read on both properties. The personal property appurtenant to the premises is included in the sale. Notices of violations are to be taken care of by the seller in each instance. Each party agrees to convey his property free from encumbrance except as specified, and the stipulation binds both parties.

Remedies for failure to perform the contract in exchanges are similar to the remedies for failure to perform a contract of sale. They may be by action for damage, specific performance or forfeiture of the earnest money, if the party paying the difference has put up part of it as earnest money. The property which is to be exchanged stands pledged for the performance of the contract. If one party sues the other for breach of contract, each may have incurred brokerage. The person who is trying to enforce the contract may have incurred and paid brokerage, but it is not a part of the damage which can be claimed from the defaulter. Brokerage is not an element of damage for breach of contract, but payment for bringing about a contract.

CHAPTER VI

AUCTION SALES

87. *Necessity for auction sales.*—Another method of bringing about a sale of real property is that of selling it at auction. It may not always be possible to find a purchaser at private sale for property at the time it is desirable or necessary that it be sold, and it may then be offered at public sale.

In most cities there are auctioneers' associations which maintain public sales rooms at which property is offered for sale at public auction. Public sales may be held not only in public auction rooms, but in any place of public resort. In the country they are very often held at the railway station, the village hotel, or on the property. Auction sales are of two classes, involuntary and voluntary.

88. *The involuntary auction sale.*—The involuntary sale is not the free act of the owner of the property. It may be the consequence of a voluntary act—and usually is—or the consequence of the voluntary act of the owner or a predecessor in the title; but the auction of the property is not by the direct desire of the person whose interest is being sold, but often is caused by a default in carrying out an obligation or by the direction of a court having jurisdiction over the property and power to force it to be sold. If property be pledged for the loan of money, and the money be not paid when due, the lender can force the property to be sold at auction. The act of borrowing the money and giving the mort-

gage is voluntary on the part of the borrower, but it is involuntary on his part that the property be sold.

Involuntary auction sales are required to be advertised, the advertisements usually appearing in one or more newspapers. In the cities these sales are most frequently conducted in the public sales rooms. In the country they are often conducted upon the property, at the door of the courthouse of the county in which the property is situated, or at some other appropriate place.

There are usually two persons who conduct an involuntary auction sale: First, the person who has control of the property with power to sell it over the head and against the will of the owner. He may be a referee, an assignee, a creditor, receiver in bankruptcy, a sheriff or other officer. Second, there is usually, though not necessarily, a professional auctioneer.

89. *Terms of sale.*—At such a sale terms of sale are read, on which bids are asked. After the property is knocked down the purchaser is required to sign a memorandum of the sale. The terms of sale given below are really the contract:

against } *Terms of Sale*

The premises described in the annexed advertisement of sale will be sold under the direction of Referee, upon the following terms:

Dated New York, 190

1st. Ten per cent of the purchase money of said premises will be required to be paid to the said Referee at the time and place of sale, and for which the Referee's receipt will be given.

2d. The residue of said purchase money will be required to be paid to the said Referee at his office, No. in the Borough of City of New York, on the day of 190 at o'clock M. when and where the said Referee's deeds will be ready for delivery.

3d. The Referee is not required to send any notice to the purchaser; and if he neglects to call at the time and place above specified to receive his deed, he will be charged with interest thereafter on the whole amount of his purchase, unless the Referee shall deem it proper to extend the time for the completion of said purchase.

4th. All taxes, assessments and water rates, which, at the time of sale, are liens or encumbrances upon said premises, will be allowed by the Referee out of the purchase money, provided the purchaser shall, previous to the delivery of the deed, produce to the Referee proofs of such liens, and duplicate receipts for the payment thereof.

5th. The purchaser of said premises, or any portion thereof, will at the time and place of sale, sign a memorandum of his purchase, and pay, in addition to the purchase money, the auctioneer's fee of Fifteen Dollars for each parcel sold, and Two Dollars salesroom fee for each knock down.

6th. The biddings will be kept open after the property is struck down; and in case any purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to him will be again put up for sale under the direction of said Referee under these same terms of sale, without application to the court, unless the plaintiff's attorney shall elect to make such application; and such purchaser will be held liable for any deficiency there may be between the sum for which said premises shall be struck down upon the sale, and that for which they may be purchased on the re-sale, and also for any costs or expenses occurring on such re-sale.

MEMORANDUM OF SALE.

have this day of 190 purchased the premises described in the annexed printed advertisement of sale, for the sum of
and hereby promise and agree to comply with the terms and conditions of the sale of said premises, as above mentioned and set forth.

Dated 190

190 Received from

the sum of being ten per cent of the amount bid by for property sold to under the order in this cause.

The first clause provides for the payment of 10 per cent earnest money. There is seldom an auction sale at which the deposit is less than 10 per cent, and sometimes it is more.

The fourth clause is different from the usual stipulation in contracts of sale. In an involuntary public sale, it is usual to stipulate that the referee or officer will allow only such taxes, assessments and other public charges as have accrued up to the date of the sale, not up to the date of the delivery of the deed. The fifth clause stipulates that the purchaser shall sign a memorandum of his purchase. The sixth clause provides for a re-sale, in case the purchaser does not comply with the conditions of the sale; and obligates him to pay any differ-

ence there may be between his bid and the amount realized on re-sale. This obligation to pay money may be enforceable, whereas the main contract to purchase the property, made by word of mouth, is not enforceable.

It is necessary that in the advertisement and in the terms of sale the limitations on ownership be set forth with the same particularity and care as in a contract. If the purchaser is to take the property subject to mortgage, it should be so stated.

90. *Protected involuntary sales.*—In an involuntary sale it is understood that persons who have interests in the property to protect will be present to bid so far as their ability goes and their interest requires. Such bidding is not fraud nor ground for being relieved of a purchase. The only thing required as to the character of the bidding is that it shall be free to everyone who desires to resort to the place where the sale is held. There should be no favoritism. Everyone must have an opportunity to bid as high as he will go, and until the last bidder who desires to bid has had an opportunity to do so, there ought not to be a knock-down. The parties who are on the auction stand (the referee and the auctioneer) are not the owners; except in a partition suit, they do not even represent the owners. They represent only a person who has a claim against the property. Over and above his claim are the rights of the unfortunate owner who is being sold out, and he is entitled not only that the debt be realized out of his property, but that it shall bring as much more as possible.

If a sale be unsuccessful by reason of fraudulent or circumscribed bidding, it may be set aside by the court. If, however, a bidder has been successful, no matter how cheaply he gets the property, if he be guilty of no fraudulent act and comply with the conditions of the

sale, he is entitled to performance. The memorandum of sale at the bottom of the form is to be signed by the purchaser, and he receives a counterpart signed by the referee or assignee or seller, who is the agent of the parties interested. This memorandum of sale is the contract, and both parties may be charged with its performance in the same manner as if it were a contract of sale.

91. *Voluntary auction sale.*—The voluntary auction sale is a sale by a person who for his own purposes and by reason of his own desire voluntarily puts his property up at auction. It partakes more of the elements of private contract than does the involuntary sale. A voluntary sale may be by a seller acting in his own interest and offering his property apparently unrestricted and unprotected; or it may be by a fiduciary acting voluntarily within the terms of his discretion, but still by some compulsion of the power under which he is acting.

92. *Protected voluntary sales.*—An executor may have a direction in the will under which he is acting to sell the property of the decedent at public or private sale, and may choose the medium of a public sale. He may be under compulsion to raise money either to pay the debts of the decedent or to make a division of the funds. In cases of that sort, while the method, the time and manner of sale are in the discretion of the person offering the property, still there are interests underlying those which he represents which in the nature of things have a right to protect themselves, and which deprive the sale of the character of a free and unprotected auction sale. In a sale of that sort it is understood and known that the persons whose interests are represented —creditors, heirs whose property is being sold, devisees who are to get the division of the fund—will be present

to bid, either directly or through persons representing them, in order to protect their interests. Such protected sales are not fraudulent, and cannot, because thus protected, be set aside.

But if the sale be a purely voluntary sale by a person acting under no compulsion, representing no other interests than his own and taking all the increase which comes by reason of raising the bids, then, unless it be expressly advertised and understood that the sale be protected, a protected sale of that sort is not a fair, unrestricted sale at public auction. If a purchaser finds that he has been led to raise his bid by reason of a seller protecting the sale up to the point at which he was willing to let the property go, he will be relieved from his contract. Unfortunately, there seems to be a habit of protecting sales which ought to be unrestricted. The owner who puts his property on the block ought to have sufficient confidence in it to let it go for what it will bring, or withdraw it, if he finds the bids are not coming up to the amount for which he is willing to sell the property. By-bidders, "boosters"—whatever they may be called—are frauds, and ought not to be permitted to bid. It is not always the auctioneer's fault if there be by-bidding, as he may not know of it, but when it can be controlled, auctioneers who are careful of their reputation do not permit it.

93. *Secret of successful sale.*—The principal thing in a voluntary auction sale is to attract bidders. At an involuntary sale there is often no desire to get the general public to bid. The persons interested protect up to the amount of their interests, and the rights in the property are cleared under the sale. While the form is that of a public sale, as a matter of fact the public has not been attracted and has not bid. But a voluntary

sale is an offer to the public to bid, and the public is induced to buy by advertising. The secret of success in auction sales is advertising, and the most successful auctioneers of the present time are the most persistent advertisers.

The booklets gotten up to advertise auction sales are sometimes very elaborate, showing reproductions from actual surveys, detailed description of the character of the building and rentals, pictures of the property—everything necessary for a buyer to know, so that a man who has one of these booklets knows as much with regard to the property as if he had been going to a broker for six months.

Having the crowd before him, the auctioneer must draw the bids from them. This is a secret of personality. The successful auctioneer can draw a crowd up and let it down again, until he has gotten the very last bid there is in it; then he will knock down the property.

94. *Terms of sale.*—The principal difference between the terms of sale in a voluntary and an involuntary sale is that in the referee's sale the 10 per cent is paid to the official making the sale: at an involuntary sale the money is paid to the auctioneer, who holds it for the interest of the parties interested. He ought not to part with it until the title has been closed. The practice is that a receipt for this 10 per cent shall be surrendered by the purchaser to the seller when the deed passes; and that receipt given to the auctioneer when he passes the 10 per cent on to the seller. The auctioneer protects himself by providing that he shall not be responsible for any interest on that money.

Another difference between the terms of sale of an involuntary and a voluntary sale is that in the latter there is an express arrangement that rents, premiums

on insurance policies and interest on mortgages will be apportioned. In an involuntary sale these matters are allowed to take their due course, as the law requires.

In a sheriff's sale bids are asked only for the right, title and interest of the party being sold out, but in any sale where the entire title is purported to be sold, all taxes, assessments and other liens are allowed out of the total purchase price, unless bids are expressly taken for the equity over and above stated encumbrances.

The terms of sale are usually signed by the seller, his attorney or by the auctioneer. If signed by the auctioneer he is constituted the attorney of the seller, and that makes the contract enforceable. Offering the property through a public auctioneer and permitting him to sign the terms of sale raises the presumption of due authority to bind the seller. On the other hand the purchaser signs the terms of sale at the bottom of the sheet, whereby he certifies that he has purchased the property, and binds himself to pay the balance of the consideration, and comply with the conditions of sale. The terms of sale should be written as carefully and with as much particularity as in a contract of sale.

CHAPTER VII

LIENS

95. *Definition of a lien.*—A sale of real property may be brought about as the consequence of an act which in its inception was intended rather as assurance for a debt or security for a claim than an intention to sell. Such an act is the creation of a lien on real property.

A lien is the right of a creditor to have a debt or charge satisfied out of property belonging to another. The definition involves the elements of debtor and creditor: in order that there may be a lien, there must be a debt to be secured. Liens are of two kinds, general and specific.

96. *General and specific liens.*—A lien is general when it affects all property of the debtor or all property of a class. A lien is special when it affects only specific property. If a judgment were recovered against a person, that judgment is a claim against all the property he owns, or acquires, and is a general lien. If A employ B to build a house for him and does not pay for it, B has a claim on the house he has built, not on all A's property; and his claim is a specific lien.

In order that there may be a lien, the debt must be one which is enforceable at law against the will of the debtor. If A make B a voluntary promise that some time in the future he will give him $10,000, and to the fulfillment of that promise pledge a house or all of his

property, there can be no lien upon that voluntary, unenforceable promise.

Some of the liens which will be considered are: judgments, mechanics' liens, conditional bills of sale, the lien of decedent's debts, transfer tax, taxes and assessments and—most important—mortgages. There may be liens upon personal property as well as upon real property, but this consideration of liens is concerned only with relations to real property.

97. *Lien of judgment.*—A judgment is the determination of the rights of parties by action at law. All judgments are not liens upon real property. In order to be a lien upon real property a judgment must determine the rights of a creditor to receive payment of a debt. For example, a judgment which enjoins a person from constructing a tenement house upon property which has been restricted against the erection of tenements is not a lien. There is no direction that anything shall be sold in order to raise money. That judgment may award a sum of money for damage and another sum of money for costs, and direct that property shall be sold by execution in order to satisfy those money demands, which demands may then be a lien. A lien of judgment involves necessarily the relation of debtor and creditor for money only.

98. *How enforced, and property affected.*—A judgment which finally determines that the creditor shall receive a sum of money from the debtor is enforceable by sale of the property by the sheriff. The sheriff is an executive officer whose duty it is, among other things, to perform the mandates of the courts.

In order that there may be public notice of the fact that a judgment has been awarded for a specific sum of money it is required that a note of the judgment be

made upon a book of public record kept according to alphabetical index (indexed against the name of the debtor), which is known as a "Judgment Docket." The judgment becomes a lien from the time of docket. It is enforced by a writ of execution, under which the sheriff sells the right, title and interest of the debtor in any property which the sheriff can find belonging to the debtor at the time of docketing, or which comes into the ownership of the debtor at any time thereafter, before the date of sale.

The lien of judgment continues to bind all property of a debtor and all property which comes into his possession for a definite time governed by statute, from the time of recovery of the judgment. So long as a judgment has validity and remains a lien it continues to attach to the property even though that property pass out of the possession or ownership of the debtor. If this were not so, liens would be of little value. A judgment may be enforced by execution as often as the creditor thinks there is property in the hands of the debtor.

Selling the right, title and interest of a debtor means that the sale does not purport to be a sale of the entire property, but only of such interest in it as may have been in the hands of the debtor while the lien continues. The fact that the lien attaches only to such interest as a debtor may have, causes the result that unless it be provided otherwise by statute, if the debtor have parted with the property before a lien attached, even though no instrument be of record, the lien is cut out, i. e., a lien is not a good lien as against a delivered but unrecorded deed, or a delivered but unrecorded mortgage. It may be a question of fact when the instrument was delivered which is said to cut out the lien, but if a deed

has been delivered in good faith before a judgment is recorded against a debtor and title has passed out of the hands of a debtor and there be no statute to the contrary, the lien does not attach. In making searches for judgment liens, the search is made against the name of the debtor or the person through whom the property has come, and not specifically for liens against the property.

99. *How lien of judgment may be discharged.*—If the person against whom a judgment is recovered feels aggrieved by the decision and intends to appeal, it is competent instead of paying the judgment and looking for restitution, to give a bond by which the debt is sufficiently secured. The lien of judgment will then be discharged under proper supervision of the court in which the judgment was recovered: the judgment lien will be lifted from the property to which it applied, and the judgment will be, "Suspended on appeal." For every lien there is an appropriate instrument of discharge or satisfaction. When a judgment is paid a Satisfaction of Judgment is filed with the clerk where the judgment was filed.

100. *Mechanics' lien.*—A mechanics' lien is a lien upon real property given by statute to mechanics and material men for the price or value of the labor or material furnished in the improvement of real property. A mechanics' lien must be founded upon a contract relation. That contract relation may be directly with the owner or may be with a person with whom the owner has contracted to improve property. The lien is in favor of all persons who contributed to the improvement of the property either directly contracting with the owner, or by contracting to furnish material or

labor to others who are in direct contractual relation with the owner.

101. *How asserted.*—A mechanics' lien must usually be asserted by the filing of a notice in a public office, claiming the lien. This must be done within a specified time fixed by statute after the material is supplied or the work done for which the claim is made. The notice must set forth with particularity the property against which the claim is made, the ground of complaint and it must be sworn to. The right of a mechanics' lien usually attaches to property as against all unrecorded instruments. In that respect it differs from a lien of judgment.

102. *Enforcement of mechanics' liens.*—Having filed his claim the lienor must begin an action to foreclose, and in that suit he must prove his claim. All other lienors who are brought in have the same rights, and all rights are adjusted. If the lienors succeed in establishing their claims and there is a balance due from the owner, he must pay that balance. It is then divided under the direction of the court, or if payment be not made, the property is sold in order to raise the fund. The sale is by an officer of the court.

The lien lasts only a specified time fixed by statute in each state. It must be asserted by suit, or renewed before the expiration of that time. If the lien is paid the owner is entitled to a discharge of record.

As matter of commercial practice, installments on construction contracts are paid at certain times in the construction, and a fund of 10 per cent or 15 per cent held back until the final completion of the building. If a contract be entered into to make payments at certain times, and any sum be paid before it is due, then,

if the general contractor fail to pay his material men or sub-contractors, they can hold the owner as if he had not made an anticipated payment.

103. *How property may be discharged from mechanics' lien.*—The mere fact that a man claims he has furnished work, labor or material for a building, does not necessarily preclude the owner from contesting that claim in a court of law. If, while such litigation was pending, it were necessary that the property lie under notice that a lien was claimed against it, this would affect the owner's ability to sell his property, or use it as security for a loan, so it is possible in cases of this sort to lift the lien from the property without actually paying the debt.

The owner may deposit in the office of the clerk with whom the notice of lien is filed a sufficient sum of money to answer to the amount claimed. If such a deposit be paid, the lien will be lifted from the property and marked, "Discharged by deposit," and any further litigation with regard to that claim will proceed against the fund which has been brought into court. Or the owner may file a bond, under the direction of the court, by which it is agreed that if the claim should succeed, the amount claimed, and all costs and expenses will be paid—not out of the property—but by the sureties who gave the collateral security. The lien will then be marked, "Discharged by bond," and any litigation that may go on with regard to that mechanics' lien will proceed with respect to the security on the bond and the recovery be only against the sureties. With regard to the money which is deposited or the bond which is given, if at the end of the time when the lien would expire the claimant has not begun action to foreclose, the lien is

canceled, and any security given or deposit made with respect to that lien will be released.

When the debt for which a lien stands as security is paid in every case the person thus paying his debt is entitled not only to have his property discharged, but to have an instrument upon the same public record which showed the lien showing a discharge of that record.

104. *Conditional bill of sale.*—The conditional bill of sale is not strictly a lien upon real property, but upon personal property which may be in or be used in connection with real property. Appurtenances may have been purchased upon condition that title should not pass until they were paid for. In many states it is required that such conditions be expressed in a written instrument, which instrument is valid between the buyer and seller of the property; and if it be filed in the proper office of public record its conditions are enforceable not only against the parties directly concerned, but against any other person thereafter coming into possession of the property.

If a builder buys an elevator for an apartment house upon condition that title to the elevator shall not pass to him until it is paid for, and a conditional bill of sale be properly filed in the office of public record, then, if a purchaser buy that house subject to that claim, and the elevator be not paid for, the holder of the conditional bill of sale may take it out. All things which may be taken from the property without destroying the structure may become the subject of conditional bills of sale, which, if properly filed, may be valid as against subsequent purchasers of the real property.

One of the difficulties of dealing with conditional bills of sale lies in searching for them. If the person who has sold to the builder has bought the property from

some one else, and the middleman has bought from some one prior to that, upon a conditional bill of sale, it is practically impossible to know when, where or how to make search. Sometimes in important transactions an inspection will be made of the important articles which might be the subject of conditional bills of sale, their makers or manufacturers ascertained and numbers taken, and the title of the property traced back absolutely to the manufacturer by direct inquiry of each person through whose hands each specific piece of property has passed. Fortunately, a conditional bill of sale must be filed and renewed within a fixed time in many states. It follows that if the property has been attached to or in the building for more than the stated period the owner is probably safe against the possibility of having it taken from him under a conditional bill of sale; but with new buildings it is very uncertain, especially if they have come through a foreclosure against a builder who has failed in business.

105. *Lien of decedent's debts.*—When the owner of property dies, from the moment of death the creditors have a claim upon his property, both real and personal: it must be administered by his representatives so that before his heirs or next-of-kin receive anything justice shall be done and his debts shall be paid.

The ordinary procedure is that personal property which has not been specifically bequeathed shall be applied first to the payment of debts. If that property be insufficient, the personal property which has been specifically bequeathed shall then be applied to the payment of debts. If all the personal property be insufficient, the creditors have a right to resort to the real property of the decedent for the payment of debts.

During a specified statutory period from the time let-

ters of administration or letters testamentary are issued, or, if no letters are issued, during another period from the death of the decedent, a general lien applies to all property which has come from the decedent to any person claiming through or under him upon all property of the class thus designated. A creditor may at any time within the statutory period require that the executors or the administrators shall sell the property, or sufficient of it to pay all debts of the decedent. The proceeding is regulated by law, and the property sold under the supervision of the surrogate's court.

106. *Transfer tax.*—Another lien which arises by reason of death is the state's lien for a special transfer tax. The State of New York and a very large number of other states in the Union, tax the act of transferring property from a decedent to those who claim to succeed. The tax is really not upon the property but upon the privilege of succeeding to the property: to that extent it is more in the nature of an excise than a tax. In its effect, however, it is a true tax, because it is taken out of the thing as it is transferred, and before it reaches the recipient.

The state can require that all property of the decedent, or sufficient to pay the tax, shall be sold. The property, no matter in whose hands it may be, is affected by the general lien of the tax. It is a general lien because it may affect any piece of property for the whole amount of the tax.

The rate of taxation differs in various states. Usually property going to descendants, husband, wife, father, mother, brothers and sisters is wholly or partly exempt, or taxable at a lower rate than property going to remoter collaterals or to strangers.

CHAPTER VIII

TAXES AND ASSESSMENTS

107. *Definition of taxes.*—Taxes are an enforced and regular proportional contribution to the support of government. The first characteristic of this lien is that it is an enforced lien. It does not depend upon the will of the owner of the property affected by it, but is enforced against him by public authority.

One of the incidents of the ownership of all property is that it or its owner must contribute to the expenses of conducting civilized government, and in all civilized governments the money to meet these expenses is collected by tax upon property, in one form or another. The head tax is not a civilized method of collecting money.

The tax on real property differs from an assessment in that it is a regular contribution. It comes at fixed times, whenever the treasury of the government requires replenishing for the purpose of carrying on the continuous function of government.

108. *Taxes a general lien.*—The lien of taxes is a general lien. It is a contribution to the support of government for no special purpose, but, while it may be levied to meet a budget which may contain many items, it is for the general budget. Persons are not taxed so much for a city's paving and so much for salaries, but, after the budget has been ascertained, the tax is spread out over and apportioned in accordance with the value of the property upon which it is laid, the proportion

being according to the needs of the government in general.

Taxes are laid both upon real and personal property The taxation upon real property is direct taxation because it is laid not upon transactions nor upon transfers, nor upon acts of persons, but it is excised directly out of and taken from the subject of taxation. Taxes may be of various sorts while still remaining regular contributions to the support of government.

109. *Various state and county levies.*—Taxation may consist of a single annual levy for all purposes, such as the levy in New York City, which covers the budget for all governmental purposes of the state and city. Or taxation may be such as it is known in the districts which are outside of incorporated cities where there may be levies in the order of their importance:

(a) STATE TAX. This is a contribution for the support of the state government and is apportioned among the counties each year.

(b) COUNTY TAX. In addition to the state tax, the counties raise a sum which is necessary for the conduct of those functions which are committed to counties, i. e., the maintenance of roads, the support of the poor, the repair of bridges, the keeping of hospitals and local corrective institutions and all functions of local government. This is known as the county tax.

(c) TOWN AND COUNTY TAX. The subdivisions of counties have smaller functions given to them under the direction of the county supervisor, for which taxes are levied.

(d) SCHOOL TAX. In localities outside of incorporated cities a separate annual tax may be voted each year by the voters of the school district for the support of common schools. This tax is known as the school tax,

and is voted by the tax-paying residents of the school district, often without regard to sex. Women frequently attend the school meetings and participate in the deliberations.

(e) HIGHWAY TAX. A tax is laid by the local highway commissioner, known as the highway tax, specifically for the general support of the highways—not for their improvement, but for their up-keep and repair.

(f) CITY OR VILLAGE TAX. This is another recurrent tax. In some localities there may be a city or village within a county and then there will be an annual city or village tax for the conduct of the functions of government which are committed to the city or village government.

There may be all of the above subdivisions of general taxation, or, the tax for all or some of these objects may be put together in one levy; but in either case they will be found to be regularly enforced, and recurrent at specific periods, usually the same time of each year.

110. *Budget.*—The budget is the general way to group the objects for which taxation is laid; it is ascertained either by appropriations and estimates which are made in advance of the time when the money is to be spent, and cover the total amount of the allowance for expenses for the following year, or the amount to be raised may be ascertained after it has been incurred, and the tax levy be made to cover specific obligations.

It is almost the invariable rule in American cities, especially with respect to local taxation, that although the money is appropriated in advance, the locality lives upon credit for the greater part of a year and then, having spent the money, raises it by taxation, thus wastefully paying interest which should be saved to the taxpayers.

111. *Assessed value.*—Having ascertained the object of taxation, the next procedure is assessment and apportionment. The process of assessment consists in ascertaining the taxable value of the property within the jurisdiction subject to taxation. The value fixed as the basis of assessment is not the actual market value of the property, but is supposed to be the value which it will bring at a forced sale. The market value of property is the price it will bring upon a free negotiation between two persons who are willing to do business, but neither of whom is compelled by necessity to buy or sell. The price at forced sale is necessarily less than that because it is the price which property will bring when the owner must sell.

The fact that property is supposed to be assessed at the price which it will bring at forced sale has resulted in an entirely false standard of assessment in most localities, and the property is not assessed even fairly at that price, but at what is known as its "taxable value," an arbitrary portion of its market price. As the tax is to be apportioned equally in accordance with assessment, it does not make a very great difference, if the proportion between the assessed value and the actual value be maintained equally and honestly throughout the tax district; but the evil which has crept into our tax system by reason of the false assessed valuation is that it gives room for favoritism between the assessed value and the actual value, or value at forced sale.

People are coming round to the belief now that it is futile to establish any false basis of assessment, and the most conservative American cities are trying to get the assessed values upon the basis of actual values.

112. *Determining of tax rate.*—The books of the assessors are open for inspection for a stated period,

and if there be objections to the amount of assessment, notice of such objections must be filed before the books close. When the books close the tax commissioners consider such objections as may have been made, and finally determine the assessed value of all property subject to taxation. Having ascertained this value, and deducted from the budget the income of the locality from sources other than taxation, the tax rate is obtained by dividing the amount of money to be raised by the total assessed value of the property to be taxed.

The levying of a tax is a legislative act. It is not done arbitrarily by executive officers, but is ascertained under the supervision of the legislative elective officers of the locality and levied by and with their authority, except in the case of the school tax, which is levied by direct vote of the tax payers of the locality.

113. *Reduction of assessment on land.*—If the owner of property considers that it has been over-assessed, he should analyze the assessment and determine whether the land or the building value is too high.

If the land value be too high, he must then consider if there has been an error in assigning to that particular spot too large an assessment; the unit may be a fair unit, but a mistake may have been made. In that case the owner can fairly ask to have the assessment reduced. But generally he will have to face the proposition that in his judgment, the unit adopted for the whole street is too high, and must be changed. In order to support a contention of that sort, the owner must have sales of land, mortgages, rentals and other evidences of value to support his contention. Commissioners will not often change an assessment in the middle of a block without changing the entire street unit.

114. *Reduction of assessment on buildings.*—If the

owner of property claim that the assessment on the building is too high, he has a much better chance of getting a reduction than if he claim the land assessment is too high, because, the deputies must take the unit for the entire block and stand by that unit in assessing land; but reducing the assessment on a building does not affect the assessed value of all the other property in the block.

If an owner can give illustrations of buildings of the same general style as his own and make comparisons with other buildings, proving that his assessment is higher than others, he may win his case.

If the result of an application for reduction of assessment is not satisfactory certiorari proceedings may be commenced, but this must be done before a stated time.

115. *Certiorari.*—A certiorari proceeding is merely a proceeding by which a public official can be called upon by a court to certify to it the record upon which he has proceeded in doing an administrative act, so that the court may determine whether the official proceeded in accordance with the principles of law by which he is bound. The court has no right in a certiorari proceeding to arrogate to itself the discretion of an administrative official. It can criticise and give directions that the thing be done in accordance with law, but the court cannot do more than that. Every person under a free government has a right to have an inquiry made, if he feels aggrieved by the doings of any administrative official, to ascertain whether that official has proceeded in accordance with the formalities and principles which have been adopted as safeguards and guides to govern his acts.

116. *When taxes become a lien.*—The general rule of law is that as between buyer and seller, the tax is a

charge and must be borne by the seller as soon as it is definitely fixed, even if it be not collectible until a future time. By special law in the City of New York, taxes are a lien and charge from the time when they become collectible, and not previously.

117. *Payment of taxes.*—In order to induce prompt payment of taxes, it is usual to allow a discount off the face of the tax, and to charge interest or penalties for failure to pay promptly. The method of enforcing the payment of taxes finally is by selling the property upon which the tax is laid, or an interest therein. The procedure is regulated by statute. If it be followed, the purchaser gets the right of possession. Generally the sale is not of the entire fee, but of a leasehold interest. Announcement is made of the amount which is necessary to be paid in order to raise the tax, with all penalties and expenses of advertising, and bidders are asked the least number of years for which they will take the property in consideration of advancing the amount required. The bidder who offers the least number of years is the successful one, and to him the property is knocked down.

The term is supposed to begin on the day of sale, but the bidder does not get immediate possession. Having advanced the amount of the tax with penalties and expenses, he receives not a tax lease, but a certificate which states that if the property be not redeemed within the time prescribed by law, that then he will be entitled to a tax lease.

Having received that certificate, it is the duty of the bidder to give notice to the occupants of the property and to the true owner (ascertaining that owner at his peril) of the fact that the property has been sold at auction, that he is the successful bidder, and that it must

be redeemed within a time fixed by law. At the end of that time, if there has been no redemption—and redemption must be by paying the amount advanced together with an exorbitant rate of interest—then, if all the proceedings have been regular, the purchaser will become entitled to possession of the property for the balance of the term which he has bid.

All procedure from the first step toward assessment up to and including the giving of notice of redemption must be carefully followed before a tax sale can be held valid. There are very few tax sales which will stand critical examination.

118. *Interests affected by tax lien.*—The tax lien when laid upon property affects the interest of everybody. If a tax be levied upon property, it affects every interest which there may be in the property. The tax lien is a lien against the thing—against the interest of the entire world in that thing. In some states where tax sales are not highly technical, they are a favorite method of clearing titles.

119. *Definition of assessments.*—Assessments are special taxes levied upon specific property benefited by local improvement for the purpose of paying or contributing to the expense of such improvement. They are levied by public authority, and are laid in proportion to the assessed value of the property. The assessed value is fixed upon the same principles as the assessed value for general taxation, but the apportionment is different. The apportionment of assessment is not equal over the entire area of assessment, but is in proportion to the benefit to be derived from the improvement. If there were a local assessment for opening a street, the lots immediately fronting on the street would be assessed at a higher rate than those further

away. The rate dwindles as the distance of the property from the benefit of improvement increases. The area of assessment is arbitrarily fixed by public authority, and very often it is hard to see wherein the benefit to remote parcels consists.

120. *Assessment laid by authority of courts.*—Assessments are laid either in a proceeding in court or by a board of assessors. Assessments are laid by courts in proceedings in which property is being acquired for public purposes by condemnation. The money to be raised for the improvement is raised by an assessment which is laid by the commissioners in the condemnation proceedings, who are for that purpose not only commissioners of estimate to fix the cost of the property to be taken, but also commissioners of apportionment. They have to determine the area upon which their assessment will be laid, fix according to just principles the cost of the improvement upon the assessed area, and then give notice of the fact that their report is ready to be filed, and may be examined.

The principle of notice must attach to all special assessments. Taxation is periodical. It is an obligation that always attaches and is to be expected at recurrent periods. The laying of a special assessment is unexpected unless notice is given. It amounts to the taking of private property, and private property cannot be taken except by due process of law, which means efficient notice and regular and orderly procedure after notice. One test of the validity of every assessment where laid by a court or by an administrative act must always be, "Was there efficient notice of the intention to lay the assessment?"

121. *Assessments levied by board of assessors.*—The principles applicable to assessments levied by authority

of a board of assessors are similar to those applicable to assessments levied by authority of a court. The board of assessors is often limited by a mechanical rule, however, that it cannot lay an assessment upon any specific piece of property for more than a definite proportion of its assessed value. While in one respect that is a protection to the taxpayer, in another respect it operates to retard needed public improvements, especially in suburban districts where land values are low, and in districts not fully developed. In such cases public authorities will often refuse to put through improvements which really add to the land value; and will wait until the assessed value rises by reason of other improvements and settlement in the neighborhood before they will do the work which is necessary to develop such lots.

Within the limit allowed them, the assessors are supposed to proceed according to sound economic principles in laying assessments for public improvements. The assessments which they most frequently lay are for sewering, regulating and grading, paving and laying of cross walks. The making of physical improvements to complete a street are the first thing for which assessments are laid. After an assessment is made, it adds to the land value: the assessed value for taxation the following year should rise not only by the amount of the assessment, but by so much as the usefulness of the lot has been increased, which is very often more than the amount paid for the mere physical work.

Notice of assessment by a board of assessors is given in the same manner as with respect to other assessments. If their decision is unsatisfactory, after a hearing, there may be an appeal. After they have decided there is no way to appeal except by a separate judicial proceeding.

122. *When assessments become a lien.*—Usually, except in the city of New York, assessments are a fixed lien and chargeable between buyer and seller as soon as the assessment is definitely determined; but in the city of New York an assessment is not a lien or chargeable between buyer and seller or deemed to be fully confirmed until it is entered and ten days thereafter have passed.

If assessments be not paid the payment is enforced by assessment sale, which is regulated in exactly the same manner as the tax sale, and the consequences of which are exactly the same as the consequences of a tax sale.

123. *Water rates.*—Water rates are not a tax at all in their proper analysis. Where water is furnished by a municipality, the rates are enforced like taxes, but they are payment for a commodity. In most large cities there is municipal ownership of water, and monopoly of its service, and this is necessary as a health measure. The city charges for the water in accordance with its consumption. It lays the charge in one of two methods, either by fixing an annual charge for each tap which uses water, or by measuring the consumption through a meter. A city has a right to fix the charge by municipal ordinance, but it is not a tax measure. The owner of property does not have to use the water in his building if he does not want to. If he does have a water main enter his building, he must pay a certain fixed frontage charge, whether he consume the water or not, because water may be used for his fire protection.

Taxes, assessments, water rates and charges for installing water meters are all liens, and, if not paid, the lien may be enforced by a sale of the property, which is the final step in the collection of all items of taxation.

CHAPTER IX

THE TRANSFER OF TITLE AND TITLE INSURANCE

124. *Two ways of transferring title.*—Title to land may be transferred in one of two ways, either by conveyance, voluntary or involuntary, or by operation of law. The strictly legal classification is that land is transferred by operation of law only in case of descent without a will, and every other transfer of title is considered a transfer by purchase; but from the commercial side, all transfers by death, including those by descent and those by devise under a will, will be considered to be transfers by operation of law, and all other transfers of title to be transfers by conveyance.

125. *Growth of modern right of transferring title.*—Probably the natural genesis of the transfer of title between living persons was merely the taking of possession from the weaker by the stronger. As society developed and finally crystallized into the feudal system of the Middle Ages, land was held mainly by tenure, a personal relation between the subject and his over-lord, founded upon the necessity for mutual defense, and carrying with it the obligation on the part of the lord to his tenant of protection, and on the part of the tenant to his lord of fealty and aid. The relation being thus personal, it was inappropriate that the tenant should be enabled to sever it and put in his place a person other than one selected by and acceptable to his over-lord, so the holder of land had no say when he relinquished his holding as to who should be put in his place, and there-

fore no commercial transaction was possible with respect to his quitting his holding and giving it to another.

This method of land tenure finally led to a system of sub-infeudation, i. e., the tenant who desired to part with his holding or some of it, unable to sever his own relation to his lord, would put another as tenant under him, and thus there would be a double relation, which might be sub-infeudated indefinitely. The king, as over-lord of all, who was the original proprietor, had below him his tenants-in-chief, who, in their turn, had below them other tenants, and those tenants had tenants under them; and theoretically a system of sub-infeudation might be continued indefinitely. The evils of the system and the necessity for free land finally resulted in a statutory provision by which it was possible for a tenant to sell a holding and substitute another as tenant in his place. Upon this is founded the modern business of dealing in real estate.

126. *Transfer by delivery of possession.*—The first method of transferring land under the English system to which we must resort to understand our methods of transfer, was by the delivery of possession, the doing of some symbolic act and words of delivery such as, "I put you in possession of this land." This was a crude method of transferring title, and one, the evidences of which could very easily be lost and pass out of memory. If a man was in possession of property, and there was no one who remembered that he or his ancestors had not always been in possession, it became necessary to believe that he was rightfully in possession, and no one could contradict his title. This is the foundation of our present title by limitation or adverse possession.

127. *Genesis of transfer by deed.*—Disputes necessarily arose in a system founded on delivery by posses-

sion; frauds were perpetrated; men got into possession wrongfully, and held possession forcibly; the courts and over-lords were continually settling disputes upon questions of fact. Finally an expedient was resorted to, as conveyances became more frequent and more important, of making a written record of the fact of transfer; and a statute was enacted requiring that there should be such a record. This was known as the Statute of Frauds, which is intended to guard against the frauds and uncertainties incident to the former method of transfer, and is the genesis of the modern instrument of conveyance, known as a deed.

128. *Definition of a deed.*—In law every formal instrument under seal is a deed, whether it be a conveyance of land or a conveyance of personalty or an instrument declaring trusts, therefore the use in the real estate business of the word "deed" as meaning the instrument of conveyance of land is too inclusive. On the other hand, in New York State and many other states in the Union, a conveyance of land need not be under seal, so the word "conveyance" is exactly inclusive of a conveyance of land, because the conveyance may be under seal, in which case it is a deed; or it may not be under seal, and still be effectual. However, in this discussion of the subject the word "deed" will be used, as in common parlance, to mean a conveyance of real property effectual to transfer title, whether that instrument be under seal or not.

129. *Conveyances absolute and upon security.*—Conveyances are of two kinds, absolute and upon security. Absolute conveyances are those which by operation of the instrument immediately transfer the title from the grantor to the grantee. Conveyances upon security, known in some states as mortgages and in other states

as deeds of trust, are conveyances in form as if the title were conveyed immediately, but having added to them the condition that the grantor shall remain in possession and retain the ownership of property until he default in payment or performance of the obligation which the instrument secures; and usually the loss of title is not immediately upon the default, but must be followed by procedure at law or sale for the purpose of collecting the amount of the obligation which the instrument secures.

130. *Necessary elements of a deed.*—The statutory provisions which relate to a conveyance or deed of land require only that the instrument shall be in writing, and that it shall be subscribed and in some states, sealed or witnessed. All the rest with relation to the deed or conveyance is formality, or adds incidents, but if a deed be understandable and the subject matter capable of identification, and it be executed in proper form, it will transfer title. It need not express consideration, as a contract must. The necessity that the instrument be in writing is patent. The rights under a deed are permanent: they will last as long as the property which is transferred remains capable of identification. In this country titles are now traced through deeds of conveyance which have been upon the records 100 and 150 years. In England they take their titles through conveyances very much older. The persons concerned in a conveyance of land are not only the immediate parties, but all persons who may thereafter be interested in the land, which is another reason why there should be a written testimony to the transfer.

The subscription to a deed must contain the same elements as the subscription to a contract. It is usual, and where the grantor can write, practically requisite

that he shall write his name; but if the grantor cannot write or is physically incapable, he may make any mark at the end of the instrument which will testify to the fact that he executed it. The instrument thus subscribed is efficient between the parties, but the law has thrown around it another safeguard in order that it shall be efficient as against third persons: the instrument must be either witnessed and properly acknowledged, or proved. The witnessing of an instrument is the writing of the name of a person who was present at the execution of the instrument opposite or near the signature of the subscriber. The instrument which bears a subscription and is attested by a witness is efficient not only between the parties, but also as against third persons claiming rights in the land affected. If a person get a deed which is not witnessed or acknowledged, and go to court and sue for possession, the instrument being good as between him and the seller, the court will award him the possession; but he might find difficulty in sustaining that instrument against a third person claiming lien against the property or a subsequent grant from the seller, without notice.

131. *When title passes.*—Title passes only by delivery of the instrument. So long as the instrument has not been voluntarily surrendered by the transferrer to the person to whom it is to be transferred, title does not pass. If the transferee gets into possession of the deed by any unconscionable means, if he steals it or gets it by fraud, the transfer may be set aside. From the instant of delivery of the instrument, there is transfer, and an end of all rights of the transferrer which the instrument is efficient to carry; and all rights of the transferee which the instrument is efficient to carry, begin.

132. *Recording of conveyances.*—There is not neces-

sarily from the fact of the passing of the instrument, any notice to the public of the transfer of title. If property be improved and occupied, the fact that the occupant changes may operate, and in law does operate, to give notice of the fact of transfer, the principle of law being that all the world is required to take notice of the rights of the occupant. But where property is not actually occupied by the owner or where it is vacant, there is not in the mere delivery between private persons any element of notice to the world of the fact of transfer, and a seller having delivered a valid deed of conveyance to a purchaser, might turn round and take money from another person, delivering to him another instrument, and leave the two to fight out their rights. In order to avoid that possibility there has been devised the system of public record of conveyance under which by public authority a safe place is provided where the testimony of conveyances may be recorded, so that all persons may resort to the public record to ascertain that a transfer has taken place. The provisions of law now result in the presumption that each person dealing with property has notice, which the law designates as "constructive notice," of all matters which are spread upon the records concerning that property. Constructive notice is no better than actual notice, but it is an efficient substitute. If A transfer property to B for a valuable consideration, B thereupon becomes entitled to the ownership of the property. If thereafter A transfer the same property to C, but C actually knows of the conveyance to B, it is manifestly improper that C should be able to take the property from B. But if B fails to record his instrument, and C becomes a purchaser for value of the property, without notice, either actual or constructive of B's prior purchase, then, if C record his

instrument before B offers his instrument for record, C, being an innocent purchaser for value, becomes entitled to the property, as against B who has not recorded his instrument or offered it for record. But if B buys property and records his instrument, and then C purchase the same property, C is charged with constructively knowing of B's recorded instrument, whether he actually goes to look at the record or not. That is the principle which makes the constructive notice of record effectual.

133. *Instruments for record must be acknowledged or proved.*—In order that an instrument may be accepted for record, it is not only necessary that it shall be subscribed and witnessed, but that the public official who spreads it upon the record may know of its authenticity, it must be acknowledged or proved. It is manifestly impossible that public officials shall know the signatures of all grantors, but it is theoretically possible that they shall be familiar with the handwriting and authority of a limited number of public officials who are authorized to testify to the fact that the grantor has acknowledged that he executed the instrument, or to whom the instrument has been proved by a subscribing witness.

The acknowledgment of an instrument is the admission by the person who executed it to a public official charged with authority to take such acknowledgments, that the grantor executed it.

Prefixed to the certificate of acknowledgment for purpose of convenience, not as a necessary element of it, is usually a statement of the place in which the acknowledgment was made. That is convenient, because the officers authorized to take acknowledgments are officers whose jurisdiction is limited territorially. With relation

to some of these officials, consuls, mayors of cities, commissioners of states residing in other states, it is often necessary by statute that they shall certify that the acknowledgment was taken within the territorial limits of their jurisdiction. If there be no statutory requirement in that regard with respect to the official taking the acknowledgment, there is no necessity for a statement of the place in which it is taken, although it is convenient. The presumption of law is that a public official acts within the limits of his authority, unless it be shown that he has acted beyond those limits.

Officials who are authorized to take acknowledgments are: notaries public, commissioners of deeds, justices of the peace, judges of courts of record, mayors of cities, ambassadors and ministers residing abroad, consuls, vice-consuls, consular agents and commissioners of deeds appointed by the governors of states to take acknowledgments in other states. In order that an instrument may be recorded in any state, when it was acknowledged before an official of another state, it is usually necessary that there shall be added to the acknowledgment a certificate by the clerk of a court of the county or city in which the acknowledging officer resides or acts to the effect that the acknowledging official is authorized to take acknowledgments of instruments intended to be recorded in the state in which he resides, and that the certifying officer knows his signature, and that the signature is genuine.

It may not be convenient or possible for the person who has subscribed to the instrument to go before an official authorized to take acknowledgments. If, however, the subscribing witness go before such an official and swear that he is acquainted with the grantor and knows him to be the person described in and who exe-

cuted the instrument, that he was present and saw him execute it, and that he thereupon subscribed his name as subscribing witness, that is proof of a deed or instrument, and is the exact equivalent of a personal acknowledgment by the grantor.

A deed may be acknowledged or proved, and is as valid in one case as the other, and then may be recorded. The official who takes a proof must be one who would be entitled to take an acknowledgment, and his signature must be authenticated or certified in the same manner or to the same extent as if it were the signature to a direct acknowledgment.

It is a penal offense in many states for a notary to take an acknowledgment unless he knows the person who appears before him to be the person who is described in and who executed the instrument. There would be no safeguard to conveyances, if a man on the street could walk into an office and say, "I am John Smith. I acknowledge that I executed this instrument." Many acknowledgments are taken that way and lead to serious frauds. If a person be credibly introduced to the notary by some one he knows, and in whom he has confidence, he may certify that he knows the person thus introduced. It is careless work, but it may excuse the notary. Careful notaries keep a register showing the acknowledgments which they take and the persons who bring in the subscribers; and there have been litigations in which these memoranda have proved very useful.

134. *Delivery must be by competent person.*—Delivery of an instrument must be by a person competent to make delivery. It is not only necessary that the grantor shall be competent at the time he signs the instrument, but it is necessary that he shall remain competent until the instrument is delivered. An incompe-

tent person cannot make delivery of a deed. A dead man cannot deliver a deed. If a man execute an instrument now and retain possession of it and sometime in the future become a lunatic, and while thus incompetent make delivery of the instrument, it may be set aside. If an instrument be found recorded after the death of the grantor, the question will always be asked and usually be carefully investigated, whether the instrument was actually delivered in the lifetime of the grantor.

135. *Transfer of property by will.*—If it be intended to make a voluntary transfer by operation of law in such manner that the owner shall retain all dominion over the property until his death, but that then it shall pass to persons who are designated, it is competent that it be transferred by will. There is required not only the voluntary act of the conveyor in the execution of the will, but also the operation of law upon it. By reason of the death of the testator the title is carried forward by a legal operation to the beneficiary designated in the will. Persons who take under the operation of wills are designated as "devisees." They are not, in contemplation of law, purchasers for value any more than are the heirs of the testator, so that the rights of an heir or devisee would be barred by a deed to a purchaser for value which had been made by the testator or decedent in his lifetime, even though the instrument were not recorded. The principle of constructive notice can be invoked only among purchasers who have parted with value.

In some states, as in the State of New York, it is sufficient if a will be subscribed by the testator in the presence of two witnesses who in his presence and at his request sign as subscribing witnesses. In other

states three witnesses are required. The transfer of title must be executed with the formalities required by the law of the state in which the land is situated, not with the formalities of the law of the state of the domicile of the testator.

136. *Inquiry into public records—how directed.*—An instrument having been properly acknowledged or proved, it may be placed upon the public records and it then operates as constructive notice to all persons dealing with the real property. The presumption of law is that a person who is about to enter in any dealing with respect to real estate knows all that is spread upon the public records with relation to past dealings with or the title to the property with which he is concerned. In order that one may get full information upon the subject of ownership of property, the inquiry into the public record should be directed, first, towards ascertaining the history of the property under consideration; and, second, towards ascertaining whether there be any defects in or encumbrances upon the chain of title disclosed by the history or abstract of title.

137. *Reasons for employing counsel.*—The law of real property is a technical and complicated set of rules, an important part of general jurisprudence, and to examine a title one must have some familiarity with the principles of law applicable to the subject, considerable experience with the effect of the record and ability to handle and read the indexes to the record. The ordinary layman who is dealing with property as a commercial proposition, has not the time nor the technical knowledge to determine for himself the subject of the inquiry. For that reason the practice has become universal of employing counsel or conveyancers to make inquiries

into the title of the property about to be dealt with, attorneys or abstractors who make a specialty of this line of work being known as conveyancers.

138. *Responsibility of examiner of title.*—The first thing that must be noted in relation to this employment is the degree of responsibility placed upon the professional examiner of titles. Every professional employment implies on the part of the person thus employed, first, a representation that he is competent to deal with or examine into the subject; and, second, that he will use his knowledge in accordance with the rules of the art or science in which he is employed and with due diligence; but no professional employé guarantees the result of the employment. A physician will agree to give competent skill and to employ it according to the rules of his science. He will not and cannot undertake to guarantee the result of his treatment. The professional conveyancer undertakes to examine a title, giving to it expert professional knowledge according to the rules of the art and science applicable, and to give his opinion upon the result. The man who examines a title upon the record does not know whether the instrument which he is reading is a copy of an authentic instrument. He is entitled to presume, from the fact that he finds the instrument on record, that it is a copy of an authentic instrument and not a forgery. He presumes that the person who made it was competent, i. e., mentally fit to understand the meaning and result of his act. He is entitled, when he examines a will and finds that citations have been served upon certain persons as the heirs-at-law of the decedent who are disclosed by a verified petition, to assume that those were the only persons. He is entitled to believe in the authenticity and correctness of the record and of the

facts shown of record, and if, believing those facts, he draws an erroneous conclusion of fact, he is excused and is not liable to his employer, who must carry the burden and risk of such error. If a conveyancer has given to his employer an opinion that a title is good and marketable, but it should turn out that a deed in the chain is a forgery, that there is an undisclosed heir—who according to ordinary rules would not have been discovered—or any other casualty, the attorney is not liable and the loss falls upon the employer.

There is not only a conclusion of fact to be drawn upon each link in the chain of title, but there is also a conclusion of law. The attorney undertakes in this regard also to apply ordinary professional skill; and if, applying ordinary professional skill, he is mistaken in drawing a conclusion of law, he is again excused: he is not liable to his client, and the loss again falls upon his employer.

139. *Origin of system of title insurance.*—The greater number of defects in title develop a long time, sometimes generations, after the erroneous conclusion has been drawn. Very often a person who believes he owns a piece of property occupies it peaceably for years, and when he sells it, finds that the title is defective. The attorney then examining it may examine with greater skill or have more reliable sources of information than the one who examined the title before. That long interval of time adds another risk, and by the time an error or mistake in title has been discovered the attorney who made the search may not be living. If he was responsible when employed, he may have become irresponsible. He may have died and left no estate. There are a hundred things that may happen to prevent an owner being paid for his loss. Realizing these

risks, American business men invented the system of title insurance, by which a corporation formed for the purpose of, and authorized to guarantee the result of the examination of title, assumes not only the professional risk but all the rest of the risk of the validity of title which lies over and beyond the professional risk, and carries it for a consideration or premium. It is a purely American system and is possible only in those places where public records are as complete as in the United States. It is a development of the American system of the division of the risk over the entire community, which we know as our general insurance system. A title insurance company makes the examination with the best professional skill it can command and then deals with the public by making, first, a preliminary report of the condition of the title, which is really a statement of the terms upon which the risk will be assumed; and, second, if those terms are accepted, it issues its policy in a definite form.

140. *Report of title.*—When dealing with a title insurance company, one should always insist before closing the transaction upon having a written report of the title. A policy of title insurance is not issued until after the transaction, the result of which is to be insured has been consummated, therefore something preliminary is required both as a guide in title closing and to serve as a binder. Every part of the report should be clearly understood before going into a title closing. The report may not necessarily show that the seller has such a clear and unencumbered title as he has contracted to sell. It will show the state of the title as it is at the time of the examination, with the matters remaining to be disposed of in order that the title may be merchant-

able according to the contract or transaction which is in contemplation, all set out so that they may be disposed of.

Having made the title adjustments and having recorded the instruments which would transfer the title in the manner intended, and disposed of the encumbrances and defects in the manner which was pointed out, the company issues its guarantee according to its promise in a clear and understandable form. A policy of title insurance should always be carefully examined to see whether it insures the title in the manner in which it was promised or understood that it would be insured, and that it contains no exceptions from the insurance which were not assented to before the transaction closed.

141. *Title insurance policy.*—The policy issued by a title insurance company usually consists of four parts: First, the agreement of insurance; second, a schedule setting forth full details of the subject-matter of the insurance; third, a schedule of the exceptions or limitations of the subject-matters of insurance; and, fourth, the conditions governing the relations between the insurer and the policy holder.

142. *Agreement of insurance.*—The charges of title insurance companies are fixed, like every other insurance premium, upon a rate per cent commensurate with the subject of insurance, or with the limitations upon the loss. A title insurance company will require that a policy be taken for at least the fair value of the property, or for the amount paid for the property in purchasing. There is no objection to the insured taking as much extra insurance beyond the present value or the cost of the property as he is willing to pay for; and sometimes it is quite appropriate that this be done. A

person may contemplate improving property and making it more valuable, and may desire, in case of loss, that he should be fully compensated.

In consideration of the premium the company guarantees to the insured and to his heirs and devisees—but not to the assigns of the insured—that it will insure them against all loss or damage, not exceeding some specified amount, which the insured shall sustain by reason of any defect in the title affecting the premises described in the schedule annexed. The policy is dated, and goes as of its date. The date, in order to protect the insured, should be on or after the time of closing of the transaction, the result of which is to be insured.

If there be a loss upon a title insurance policy, the amount to be paid upon the policy is not more than will indemnify or make whole the loss, not necessarily the whole amount of the policy, but not more than the whole amount, unless the company should call for a conveyance to it of such title as the insured may have, in which case it pays for the property its full value, as if the title were as good as insured.

The premium is a level, single premium, paid once, and once only. It does not differ with relation to the kind of risk assumed. It varies only with the amount of the risk. Titles which present troublesome and hazardous questions of law or troublesome questions of fact, if insured, should be insured at the same rate as easy and clear titles.

A policy of title insurance is issued under seal and time does not begin to run against it until a loss has been incurred, therefore a policy of title insurance continues enforceable against the insurer not only for the full period of limitation after it is issued, but for a similar period after the time loss was incurred.

143. *Subject-matter of insurance.*—A title insurance policy sets forth the subject-matter of insurance in a schedule in which is stated, first, the character of the ownership or lien which is insured. That interest may be a fee simple or a mortgagee's interest. Then follows, for purposes of identification, a statement of the deed or instrument by which the interest of the insured was acquired, and then a description of the real property affected. That real property should be described with common certainty so that the insured can understand the description. It is a mistake to accept a policy from a title insurance company which does not describe the property so that it can be identified upon a map or upon the ground in some clear and unmistakable manner. The policy of title insurance covers all that is real property upon the land, but to those things that are essentially personalty it does not apply.

144. *Exceptions and limitations upon subject-matter of insurance.*—The encumbrances subject to which the property has been accepted should be set forth in a title policy in a clear and understandable manner. Very often the title insurance company will require, before it closes title, that the intended exceptions to be put in the policy should be assented to in writing, before it will assume the responsibility of closing the transaction. All the matters that affect the property, as shown by survey, should be set forth; or if no survey has been furnished upon which the company is willing to rely, it will set forth that it does not insure against such facts as an accurate survey would show.

145. *Conditions of policy.*—The first and most important condition of a policy of title insurance is that the company will defend at its own expense all actions or proceedings founded on a claim of title or encum-

brance prior in date to the issue of policy and insured against. A policy of title insurance is not only an insurance of indemnity against actual loss, but it is also an insurance against being harassed by litigation respecting the title.

A policy of title insurance insures also that the title is not only good and can be defended against attack, but that it is marketable, that is, that a purchaser can be compelled to take it. All such proceedings are conducted and defended by a title insurance company under its direction and at its expense, both as to counsel fee and risk of costs.

A policy of title insurance usually provides, unless it be a policy issued to a mortgagee, that it is not transferable. In the nature of things it is not consistent that a policy issued to the owner of a fee title should be transferred. The agreement of a title insurance company is to indemnify against loss, and that the title is marketable. If the insured parts with his property and receives compensation for thus parting with it which is satisfactory to him, then the title insurance company has performed that part of the contract under which the policy holder was assured that he had a marketable title; and to permit a policy upon that branch of insurance to remain open and a continuous obligation would be to multiply the risk, so that each subsequent policy holder would have a new and fresh claim for insurance indemnity.

But when the insured has parted with his property, all the risk of the insurer has not ended. When a piece of property is sold, it is customary to give a deed containing covenants, and the seller may be held liable upon these covenants. A policy of title insurance pro-

vides, in addition to indemnification with regard to the marketability of title, that even if a person has parted with property, in case he should be held upon any covenant in the deed, that he will be indemnified if there be any loss for that reason. Because that indemnity remains and continues to the original policy holder, it is again inappropriate that a policy of title insurance should be transferable.

A mortgage policy is usually expressly transferable with assent of the company, so long as the mortgage interest which is insured remains, because when a mortgage is transferred all the collateral ought to go with it, and a policy of title insurance is appropriately collateral that goes with a mortgage. There are usually no covenants except as to present state of facts in an assignment of mortgage.

The policy of title insurance necessarily stipulates that any untrue statement made by the applicant or policy holder leading the insurer into the issuing of a policy will vitiate the policy.

Although a limit is placed upon the amount of insurance, a title insurance company may have to pay out a great deal more than the cost of the policy in order to properly adjust its loss. That is because of a provision of the policy that the insurer shall have the option, if there be a loss, of either paying the loss or taking over the property; and if the company calls upon the insured to turn over the property, it must pay its full value, not the amount limited by the policy. Very often when a loss happens on a policy of insurance, it is not a total loss. There may be considerable loss, but if the title be taken, and proper proceedings conducted, it may be possible to minimize the loss. In such cases the

title insurance company will call upon the policy holder to deliver to it the salvage, and will pay for the property as much as it is fairly worth.

If there should be a total loss, the amount of payment would be limited by the face of the policy. In the case of a policy upon a piece of property which came through a deed which proved to be an absolute forgery, the policy holder would have nothing to give, and the company would have to pay the face of the policy, provided the property was worth that much; and its loss would be limited by the amount of the policy. But if it should turn out that only a part of the title was defective, a title insurance company might very well call on the policy holder to turn over the property at the sales price or at its fair value, which might be a considerable sum above the face of the policy. Usually defects in title can be cleared up by the use of time and skill.

Whenever a company settles a claim, it is entitled to be considered as having acquired every right which the policy holder has against persons who are liable to him by reason of the loss. If a company is held because a mortgage or tax has not been paid, and the insured has a full covenant and warranty deed, it is entitled after paying the policy holder his loss, to sue the man who made the full covenant and warranty deed so that it may recoup the loss. This is known as subrogation.

The policy of title insurance expressly provides that it does not cover "defects and encumbrances arising after the date of the policy." Everything that happens after that date is in the control of the policy holder.

146. *Use of title policy.*—A title policy should be used whenever the property insured is being sold or any agreement is being made with respect to it. Care should

be taken to make the contract or agreement with respect to the title as it is insured, so that if there be any defect in title or marketability, the insured can fall back on the insurer. In order to be certain of that, it is customary to have the title insurance company prepare the contract or agreement with relation to the property; and then there cannot be any question as to who is responsible.

CHAPTER X

DEEDS

147. *New York form of deed.*—There are various forms of deeds used in the different states. In the State of New York there is in use, by legislative enactment, a short form of deed which contains all the elements, clearly expressed, that are in the long and verbose form. This short form, which is reproduced below, is the exact equivalent of the instruments in use in the other states.

THIS INDENTURE, made the ..... day of ..... in the year nineteen hundred and .....
BETWEEN .....
....., part.. of the second part:
WITNESSETH, that the said part.. of the first part, in consideration of the sum of .....
dollar.., lawful money of the United States, paid by the said part.. of the second part, do.. hereby grant and release unto the said part.. of the second part, ...
.....heirs and assigns forever, ALL
.....

TOGETHER with the appurtenances and all the estate and rights of the part.. of the first part in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said part.. of the second part, ...,
heirs and assigns forever.

IN WITNESS WHEREOF, the said part..of the first part ha.. hereunto set ..... hand.. and seal.. the day and year first above written.

In the Presence of

[L. S.]

STATE OF NEW YORK, COUNTY OF ....., *ss.:*

On this ..... day of ....., in the year nineteen hundred and ....., before me came .....
.....
to me known to be the individual.. described in, and who executed the foregoing instrument, and acknowledged that ..he.. executed the same.

An analysis of this instrument will be useful and interesting.

148. *"This indenture."*—In ancient times it was customary to prepare instruments in duplicate upon the same sheet, to tear them apart so that the edge would be indented; and the authenticity of the instrument was proved by bringing the torn sheets together and showing that the two counterparts had been torn from the same sheet. Thus has arisen the custom of calling formal and permanent instruments "indentures," even though they are no longer prepared in duplicate.

149. *The date.*—The date is not a necessary element but, as in contracts, it is a convenient memorandum. It is useful because when instruments are found of record, if the time of record be later than the date of the instrument, the presumption is that the instrument was delivered on the day of its date, if nothing else can be found out about it.

150. *The parties.*—The person from whom the title goes is usually designated "the grantor." He may be known as "the party of the first part"; any designation is appropriate so long as he be identified as the person from whom the title is to flow. The other party is usually known as "the grantee," sometimes as "the party of the second part."

151. *Consideration.*—Consideration may be within the intent of the law, either good consideration or valuable consideration. Without the passing of anything of value or the change in financial condition of either of the parties, one party may be moved by a desire, by reason of blood relationship or his natural love and affection, to transfer to the other valuable property. If there be such relation, it is said to be "good consideration." A good consideration will support a transfer as against everyone except creditors of the transferrer whose claims are in existence and valid at the time of

the transfer. Creditors who acquire their claims after a transfer supported by a good consideration cannot attack the transfer. A consideration such as blood relationship or natural love and affection has been called by the courts not only "good," but sometimes as "meritorious"; a man may be considered to be under obligation in times of prosperity to place his family in a safe position where their livelihood will not depend upon the uncertainties of his business.

But if there be another kind of consideration, which is known in the law as "valuable consideration," then the transfer is safe in the hands of the transferee as against any attack. Valuable consideration may be the transfer of money or any other thing of value. Anything which causes one person to change his financial condition either presently or potentially in favor of or toward another is valuable consideration; money, barter or exchange, an enforceable promise, the acceptance of security—all are valuable considerations.

It is not necessary that the instrument shall set forth the consideration. It is well that it shall say that there is consideration, as instruments, although delivered and recorded, if they be actually without consideration, can be attacked by the creditors of the grantor as a fraud upon their rights; and if it be shown that the grantee gave no consideration and was aware of the intended fraud upon the creditors, the conveyance will be set aside.

Consideration may be void by reason of public policy. A conveyance against public policy would be a wagering contract, a transfer as part of a lottery scheme, the obtaining of property by fraudulent devise or fraudulent representation, by duress or force, or anything of that sort which the law frowns upon.

If a deed express consideration, then it is upon him who attacks the instrument to rebut the presumption of the truth of the statement of the deed. For that reason an expression of consideration is not only useful, but important. If in the examination of title one finds a deed which does not express consideration, it may lead to the inquiry whether it was or was not a voluntary conveyance without consideration; and if one were to learn that such a conveyance was voluntary, and executed without consideration, it might lead to complications and possible rejection of the title. Especially is this true in deeds from fiduciaries or persons acting in a representative capacity. Fiduciaries necessarily seldom have authority to give away the property over which they have power. Their power usually is to dispose of the property for valuable consideration and most frequently for money consideration only. A trustee or executor or attorney seldom has power to exchange property or to barter it; and a conveyance made by a fiduciary or representative who has not power to do anything but convey for valuable consideration, which does not state a valuable consideration, will be questioned at all times in the future whenever it is seen of record, and the question will be raised whether or not there was adequate consideration.

152. *Nominal consideration.*—The consideration expressed in a deed need not be the true or full expression of the consideration. A deed may be made upon a valuable consideration, but the parties may not desire to disclose to everyone resorting to the records the extent of that valuable consideration, and the expedient is resorted to, in cases of that sort, of expressing a nominal consideration, i. e., a sum less than the amount actually paid. It may be expressed as "one dollar," "one dollar

and other valuable consideration," "one hundred dollars," "one hundred dollars and other valuable consideration;" or any other nominal expression may be used. Where property is of very considerable value even "ten thousand dollars" may be known to be a nominal sum and will then hide the true consideration. Conveyances of that sort would not import that no consideration passed, but that an actual valuable consideration did pass.

When dealing with a fiduciary or representative another principle applies. A man may deal in his own behalf and with his own property for any consideration which pleases him. So long as there is consideration, he is accountable to no one. But a fiduciary or representative is called upon not only to obtain consideration but to see that it is adequate consideration, and a deed by a fiduciary should express the full consideration or, if a nominal consideration be expressed, there should accompany the deed such a declaration of the true consideration that if in future the question is raised whether the consideration of the conveyance was or was not adequate, the evidence may be not only in written form but in recordable form setting forth what was the actual money which passed.

153. *Consideration imported by seal.*—While it is important that a deed should express consideration, there is another way in which the presumption of consideration may be raised, and that is by executing the instrument under the formality of a seal. At common law, before modified by modern statutes, a seal conclusively presumed that the instrument was with consideration. That was a mere artificial rule, and as in modern times we are breaking away from mere technicalities and getting down to actualities, the modern statutory rule is

that a seal imports consideration, so that the one who claims as against a sealed instrument must rebut the presumption of the instrument; but if he can rebut it, the seal does not help the claim under the instrument. It merely shifts the burden of proof from him who asserts title under the instrument to the one who attacks it.

154. *Granting clause.*—"Doth hereby grant and release unto the said party of the second part, his heirs and assigns forever." The important part of the instrument is that part by which the title is transferred from grantor to grantee. The title which is conveyed is mentioned in the granting clause, and unless expressly limited in some other part of the instrument, the granting clause will control every other part of the instrument as to the quality of title conveyed. If it is intended to convey anything less than a fee simple absolute, care should be taken to modify the granting clause or the clause which comes after the description, known as the habendum, the principle being that unless the contrary appears, every instrument will be considered to transfer all the title which the grantor has or has power to convey. That principle is modified only where a grantor has a personal or individual interest, and also has power to convey in a representative or fiduciary capacity. In such case his conveyance may be considered to convey only his individual interest, unless he expressly states in the instrument that he conveys in his representative capacity.

155. *Description.*—A description by which the property may be identified with common certainty is sufficient, but it is usual to be more particular than that in a deed. Unlike a contract, a deed remains testimony of the transfer forever. It must be construed not only

by the parties to the instrument itself, but by those who come after; and we owe it to posterity to leave behind us clearly defined and dependable descriptions of the subject-matter of conveyances.

Descriptions in deeds may be divided into two classes, descriptions by metes and bounds, and descriptions by reference to maps or monuments. A description by metes and bounds is one which can be ascertained and the property identified with exactness by resorting only to the recorded description and definite monuments. A description which reads: "Beginning at a point on the southerly side of One Hundredth street, distant 25 feet westerly from the westerly side of Eighth Avenue" begins at a definite point which anyone with instruments of precision and knowledge of the location of the monument at the corner of Eighth Avenue and One Hundredth street can definitely locate. Assuming that point of beginning has been found, if the description then proceeds: "running thence southerly, parallel with the westerly side of Eighth avenue 100 feet 11 inches to the center line of the block," it has gone from the point of beginning in a definite direction, i. e., parallel with a known Avenue, a definite distance i. e., 100 feet and 11 inches to another definite monument i. e., the center line of the block. And if the description then reads: "thence westerly, parallel with One Hundredth street, 25 feet; and thence northerly parallel with the westerly side of Eighth avenue 100 feet and 11 inches to the southerly side of One Hundredth street; and thence easterly along the southerly side of One Hundredth street to the point of beginning," that is a definite description, which, the point of beginning having been ascertained proceeds by its metes—i. e., its measures—and its bounds,—i. e., the controlling direction of its lines absolutely and

definitely ascertainable on the ground. That is a simple description by metes and bounds. A description by metes and bounds may be as long and complicated as is necessary to describe a large farm of many hundred acres but, so long as it begins at a definite place and runs by some surveyor's measures, if the place of beginning can be definitely laid down without resorting to anything else, so long it remains a purely metes and bounds description.

A description by natural monuments is one which depends not only on metes and bounds but is controlled by natural monuments and cannot be ascertained except by a knowledge of matters of geography or topography outside the recorded description. A description which reads: "Beginning on the side of the road running from Westchester to Yonkers, at the northwest corner of the farm of John Smith, and thence southerly along John Smith's farm to a rock at the corner of Jones's farm, and thence westerly along Jones's farm to a blazed tree at Robinson's barn—etc., is a description which depends entirely for its identity upon matters outside of the record title to the property which is under investigation, and is controlled not by the distances stated, but by the natural monuments. Descriptions of that sort are frequent, and if the property is capable of identification by resorting to the ground and finding the natural monuments, it is sufficient. One hundred years from now it may be very troublesome to construe and in order to identify the property it may be necessary to examine the title to all the surrounding property, and make surveys and topographical maps of all the surroundings; but if, in accordance with all known methods which an engineer may suggest, it can be ascertained in any dependable way what was the

subject of that conveyance, it is a valid conveyance, and will convey the property therein described.

A description which is absolute in its metes and bounds is the one extreme; a description which depends entirely upon monuments, natural or artificial, is the other extreme; and between these there are many descriptions which partake of the character of both.

It helps to identify the property to be conveyed if reference be made to other conveyances or to the maps; after a description by metes and bounds, the deed may recite that this is the same property which was conveyed to the seller by a certain deed, citing it by its parties, its date and place of record. If then a mistake has been made in copying the description from the other deed, the mistake will correct itself by reference to the deed mentioned.

156. *Uncertainty in descriptions.*—If a description be so indefinite and uncertain that the property, at the time the conveyance is made, be incapable of identification, then the entire instrument is void for uncertainty. If a deed convey, "One of many houses" owned by the seller, it is incapable of identification, and would be void for uncertainty in describing the subject-matter.

157. *Ambiguity in descriptions.*—There is a very wide space between mere ambiguity and absolute uncertainty. If a description be ambiguous, it does not necessarily follow that it is void for uncertainty. A deed may be exceedingly ambiguous on its face, and still capable of identification, for instance, it may convey "the most easterly of the three houses," owned by the seller on One Hundredth street, and on its face that would be an ambiguous instrument, but if it can be ascertained that the seller owns numbers 2, 4 and 6, West One Hundredth street, the subject-matter is capa-

ble of identification and the deed is not void for uncertainty. That leads to the principle that if there be patent ambiguity in an instrument, it is only fair in the attempt to support the transaction to resort to any means outside of the instrument to seek identification of the subject-matter.

158. *Inconsistent descriptions.*—If a description consists of several elements which are inconsistent in themselves, resort may be had to evidence outside the instrument to ascertain the intention of the parties. Such a description would be, "The most easterly house on the southerly side of One Hundredth street of the three houses owned by Jones," followed by a description by metes and bounds describing a house in another block. There are two descriptions, either of which may be a complete description and capable of identification, but they are inconsistent with each other, and it is competent to inquire outside the record what was the real intent of the parties. Sometimes ambiguity may be solved by reference to the natural situation of the property.

There is no ambiguity, however, in a description by metes and bounds which is referred to natural monuments; the natural monuments control the metes and bounds. If a description begin at a definite point and go thence one hundred feet to an oak tree, and if the distance from the definite point to the oak tree be more or less than one hundred feet, the distance will have to give way to the monument which controls; and there would be no ambiguity in the instrument, because, by legal construction of the instrument, its intent is definite. If the instrument be unambiguous on its face, it must be construed by itself, and it is improper to seek evidence outside of the record as to what was the intention of the

parties. In dealing with the instruments which have been placed upon the public record, no matter what have been the mistakes or ambiguities or misunderstandings between the parties, those who come after them are secure as against any claim that there was an ambiguity or misunderstanding between the parties. A very distinct line is drawn between latent ambiguity and patent ambiguity.

159. *Appurtenances.*—The property is to pass as it is described, "with the appurtenances." Appurtenances are those things which depend upon and are part of the real property, although not contained within the described bounds. The right to keep a wall on a neighbor's lot is an appurtenance. The right to travel over a neighbor's field to reach the highway is an appurtenance. As matter of legal construction appurtenances go with the land, whether specifically conveyed or not. The clause, "together with the appurtenances and all the estate and right of the party of the first part in and to said premises" is rather rhetorical than useful. The property would be conveyed just as effectually without that sentence.

160. *Habendum.*—The habendum of the deed, which follows the description, may limit the quality of the estate conveyed by the granting clause. It is expressed in formal language, the last vestige of really formal language in the instrument: "To Have and To Hold the above granted premises unto the said party of the second part, his heirs and assigns forever." Our present system of land holding is traceable back to the feudal system; and to understand the real significance of this clause, we must go back to the time when ownership of land was not an absolute ownership, but was a mere "holding" of the land from the feudal over-lord. Only

in modern times was it appropriate to say, "Unto the party of the second part, his heirs and assigns forever."

There should be a clear expression of what it is intended to convey. If only a life estate is being granted, this clause should read: "To have and to hold the above granted premises unto the said party of the second part, for and during the term of his natural life." Indeed if the conveyance were carefully drawn, the quality of estate would be limited both in the granting clause and in the habendum. If the property were being conveyed upon trusts, after granting the property to the grantee, his successors or assigns, the deed should say: "To have and to hold the above granted premises unto the party of the second part, his successors and assigns forever, upon trust, however, to and for the following uses," and then set forth upon what trust or confidence the property was conveyed to the trustee.

161. *Bargain and sale deed.*—The form of deed under consideration then calls to witness the signature and seal of the party of the first part. That completes a deed of bargain and sale, and it would be a perfectly efficient deed to give under a contract which did not specifically require any specific covenants to accompany the grant.

162. *Quit claim deed.*—Another short form of deed is a quit claim deed, which is exactly similar in form to a bargain and sale deed, except that in place of the words used being, "grant and release," they are "remise, release and quit claim." A quit claim deed is just as efficient to convey the entire estate of the grantor as is a bargain and sale deed, but it is more properly used for the purpose of releasing some claim upon the property, rather than the entire estate.

163. *Bargain and sale deed with covenants.*—If the grantee under an instrument desires not only a present transfer, but some other or further collateral assurance with relation to the estate conveyed or the character of title which the grantor or transferrer has, it is appropriate and usual that there shall be such collateral assurances in the instrument, and they are known as covenants. A deed of bargain and sale may contain a covenant by which the grantor covenants with the grantee that he has done nothing by which the estate conveyed may be encumbered or defeated, but he may covenant nothing as to the future nor as to what any predecessor in title has done. A deed containing such a covenant is known as a deed of bargain and sale, with covenant against grantor's acts.

This covenant is usually made by persons dealing in fiduciary or representative capacity. A trustee or executor or other person carrying out a power to sell in behalf of somebody else is not responsible for the doings of any predecessor in the title, nor is he in any way obligated to bind himself as to what will happen in the future. If he covenants at all, he merely covenants as against his own doings.

If, however, a purchaser desires to have assurances not only as to the present situation, but as to the past relations of the title, and assurances that all will be done that can be done to protect him in the future, so far as the grantee can do anything, he requires in his contract, that he shall get a full covenant and warranty deed, in which, after the habendum, there are five covenants on the part of the grantor.

The form of such a deed, in use in New York, is as follows:

Warranty Deed.—Full Covenants.—No. 3134 N. Y.

THIS INDENTURE, made the ..... day of ....., in the year nineteen hundred and ....., between .....

part.. of the first part, and .....

part.. of the second part: WITNESSETH, that the said part.. of the first part, in consideration of .....

dollars, lawful money of the United States, paid by the part.. of the second part, do.. hereby grant and release unto the said part.. of the second part, ..., heirs and assigns forever, all

TOGETHER with the appurtenances, and all the estate and rights of the part.. of the first part in and to said premises. TO HAVE AND TO HOLD the above granted premises unto the said part.. of the second part, ..., heirs and assigns forever.

AND the said ..... do.. covenant with said part.. of the second part as follows:

FIRST.—That said ..... seized of the said premises in fee simple, and ha.. good right to convey the same.

SECOND.—That the part.. of the second part shall quietly enjoy the said premises.

THIRD.—That the said premises are free from incumbrances.

FOURTH.—That the part.. of the first part will execute or procure any further necessary assurance of the title to said premises.

FIFTH.—That the said ..... will forever warrant the title to said premises.

IN WITNESS WHEREOF, the said part.. of the first part ha.. hereunto set ..... hand.. and seal.. the day and year first above written.

IN THE PRESENCE OF:

[L. S.]

STATE OF ....., COUNTY OF ....., *ss.:*

On this ..... day of ....., in the year nineteen hundred and ....., before me came .....

to me known to be the individual.. described in, and who executed the within instrument and acknowledged that ..he.. had executed the same.

164. *Full covenant and warranty deed.*—With respect to all these covenants, knowledge of the facts which make the breach does not deprive the covenants of their efficiency. If the seller is willing to give the purchaser a full covenant and warranty deed where the property is encumbered, and the purchaser is willing to take it, the fact that the purchaser knew of the encumbrance is no defense. These covenants divide themselves into two classes, those which relate to the past and those which relate to the future. The covenants which

relate to the past are said to be covenants not running with the land. Covenants which relate to the future are said to be covenants which do run with the land. Those covenants which relate to the past are the covenant of seizin and the covenant against encumbrances. The covenant of seizin assures that the grantor is seized of the property, i. e., that he is then the owner and in possession of it. The entire covenant imports that the grantor owns the property, possesses it, and has a good right to convey it to the grantee. If any of these elements do not exist at the moment of delivery of the deed, there has been a breach of covenant, and cause of action for breach of the covenant has arisen immediately upon the delivery of the deed. It is, therefore, a covenant which does not run with the land.

The other covenant which does not run with the land is that the premises are free from encumbrances. That covenant may be modified, if the property be conveyed subject to encumbrance, by enumerating the encumbrances in an appropriate place in the deed, either after the description or after the habendum; and then that clause will read: "That the said premises are free from encumbrances, except as aforesaid." Then, if the premises be not free from all encumbrances, except as stated in the deed or such as the expression, "except as aforesaid," covers at the time of the delivery of the deed, there is immediate breach and cause of action.

While it is said that these covenants do not run with the land, to distinguish them from the others, it does not necessarily follow that subsequent conveyances do not operate to assign cause of action for breach. They may. But the cause of action will have arisen, damage will have accrued, and the time of limitation will have begun to run from the time of delivery of the deed.

165. *Covenants which run with the land.*—With regard to the covenants which do run with the land, there is no cause of action at the time of delivery of the deed, but the cause of action arises when a covenant is broken at some time in the future, and accrues to the owner of the property at the time of the breach; therefore the covenant itself, not the cause of action for breach, runs with the land, and runs with the land until broken.

The first of these covenants in the form of deed under consideration is, "That the party of the second part shall quietly enjoy the premises." That covenant is broken if the owner is disturbed in his possession by reason of some right or cause of action which existed at the time of the delivery of the deed, but was not asserted until some time in the future. If, for instance, the seller has the title upon a fee which may be defeated on the happening of a contingency, that would not amount to breach of the covenant of seizin because he has the title to the property and has possession and good right to convey it; but if, after he has conveyed the property, the contingency or condition were to happen which defeated his estate, and the grantee or those claiming under him were to be ousted from their enjoyment of the property, there would then arise a cause of action for breach of the covenant of quiet enjoyment; and that cause of action would accrue to and be enforceable by the person who then owned the property. Thereafter cause of action might pass with the property by implied or specific assignment, but the covenant having been broken, it would not thereafter run with the land except by assignment.

The next of the covenants which run with the land is the fourth: "That the party of the second part will execute or procure any further necessary assurances of

title of said premises." That covenant is not broken unless it be necessary that the grantor shall give some instrument other than the deed in order to perfect the title. If, for instance, the deed should have been imperfect in its execution or not properly acknowledged, the grantor can be sued either for specific performance or, if performance has been demanded and refused, for damage.

The last and most important covenant is the covenant of warranty, and that again in its history and in the limits of the measure of damage leads us back to feudal history. The covenant is: "That the said party of the first part will forever warrant the title to said premises." When the feudal lord put his tenant in possession he was obligated not only to give him the possession, but, if he were disturbed in that possession, to give him other land as good as that from which the tenant was ousted. In the same manner the covenant of warranty implies that the grantor guarantees the title of the grantee, but if the grantee should be ousted of his ownership and lose his property, while the covenant runs with the land to the remotest grantee, the measure of damage is not the value of the land at the time of breach, but the consideration paid for the conveyance in which the covenant is contained. The grantor is not bound to give the grantee anything more than the property was worth at the time be bought it.

166. *Enforcement of covenant of warranty.*—Before the covenant of warranty can be invoked, however, there must be actual ouster, i. e., the person who holds the covenant and claims recompense under it, must have actually been deprived of the land or some essential portion of it, before he can claim damage under this covenant. It results, therefore, from this principle that

the covenant of warranty is in no manner an assurance that the title of the property conveyed is marketable. Neither in the covenant of warranty nor in any other covenant is there obligation to respond until there is loss or liability through actual loss. In that respect the New York rule in relation to the covenant against encumbrances is more limited than in some other states, where the mere existence of an encumbrance may be sufficient to call upon the maker of that covenant to respond. In New York the holder of the covenant must actually buy his way out before he can recover against the covenantor.

167. *No redress under covenants for some unmarketable titles.*—There are many ways in which a title may prove unmarketable for which there is no redress upon any covenant in the deed. A house may encroach upon a neighbor's land, and the owner have no right to maintain it there. If he tries to sell the house, the purchaser may decline to take the title. He will be in possession of an unmarketable title, but he has not been ousted of anything which is within the bounds of the land described in the deed and has not been deprived of any valuable thing which was conveyed to him; and, therefore, has no redress under the covenant of warranty. A building may have an important projection upon a public street, so that the title is unmarketable, and a purchaser would not take, neither would a lender lend on it, and yet there be no redress under any covenant.

A title may be unmarketable because the chain of title is defective and still there be no liability under the covenants in the deed. For instance, if a purchaser owns a piece of woodland or salt meadow which has never been enclosed or reduced to cultivation, and has a chain of title which does not go back to the Sovereign or some other known source of title but nevertheless no one has or is

likely to attack the actual possession. If that state of affairs exists, the grantee is in possession and seized of the property and there may never come a time when he will be ousted or deprived of any of his rights as possessor. Still a purchaser may be excused from taking the title and the title be unmarketable because the chain does not reach back far enough and physical possession cannot be shown.

Another case in which a title might be unmarketable without giving the holder recourse upon any covenants in a prior deed would be if a former owner had died seized of the property leaving debts which, if within the statutory time they are enforced, may be a lien upon the property, but leaving personal property which may or may not be sufficient to pay those debts. Until the statutory time within which the lien might be asserted had run out or it developed whether the personal property was sufficient or insufficient to pay the debts, a purchaser might be excused from taking the title because of unmarketability, but yet it may turn out that the debts are never asserted against the property or the personal property is sufficient to pay them.

Another case may arise as follows: An owner may sell a piece of improved property with which there would naturally go appurtenances necessary to the conduct of the building as a going concern, such as gas fixtures, etc. These articles may not be owned by the seller free and clear, being affected by conditional bills of sale or other liens, and the title under the contract would therefore be unmarketable but no covenants in a deed of real property warrant the title to such articles, if they be not technically real property.

In each of the illustrations given the title in itself, in the chain of title, was clearly unmarketable, but as there

was no present loss and might be no deprivation, there was no recourse upon any covenant.

168. *Testimony clause.*—The covenants in the form of deed under consideration are followed by the testimony clause. It is purely formal; the deed would be just as good if it were not there, and if at the end of the covenant the names were subscribed.

169. *The seal of an individual.*—In most states it is necessary that a deed be sealed. In the State of New York deeds by individuals need not be sealed; they are just as efficient to convey title whether they be sealed or unsealed. It is to the advantage of the grantee, however, that he require formal instruments to be sealed, especially deeds, as, under a sealed instrument, the covenants will last longer after breach.

170. *The seal of a corporation.*—A corporation, not having hands, and not being able to write its own name, must act through agencies, usually through its officers, who are authorized to act by the legislative body of the corporation, whatever that may be. Corporations may be of various characters: they may be business, in which the legislative body is the board of directors or trustees; they may be municipal corporations, in which the legislative body is the board of aldermen or supervisors; they may be the people of a state in their character of state, in which case the legislative body authorizes a board or officers to act; they may be membership corporations, which act by the voice of its members or by the act of its trustees. Any of these corporations acts by the agency of some authorized person, usually, but not necessarily, an officer who is authorized to do the important act of affixing the corporate seal to the instrument.

A corporation does not usually subscribe. The name

of the corporation may be written under the instrument with a memorandum that it is written by one of the officers, but the important thing, and the thing under which the corporation acts is its corporate seal, if it have one.

A corporate seal is more formal than an individual seal: a mere scroll or device scratched upon the paper will not suffice. A corporate seal is an impression either directly upon paper or upon some substance affixed to the paper, the impression bearing some device which has been adopted as the common seal of those persons who constitute the corporation to testify their aggregate act. The most common form of corporate seal of a business or a stock company consists of two concentric circles, with the name of the corporation between the two circles, and sometimes the date or place of its organization. Accompanying the seal and by way of memorandum of how and when the seal came to be affixed, it is customary for the officers to sign their names at the place where a deed is usually subscribed by individuals; and sometimes they also write the name of the corporation. If there be more than one corporation signing the instrument, it may serve as convenient memorandum as to which corporation the officer meant to represent, if he sign the name of the corporation, especially where that officer may belong to several other corporations acting. If a corporation has not adopted a corporate seal, then it is proper that the instrument be subscribed by officers of the corporation, and be attested by the individual seals of the persons signing the instrument.

171. *Proof of instrument signed by a corporation.*— In either event, whether the corporation has or has not a seal, the execution of the instrument must be proved by an officer who has executed it. It is bad practice to

have an officer who is not the executing officer make the oath as to authorization to affix the seal.

The person executing the instrument should appear before a public officer entitled to take acknowledgments of deeds or conveyances. That officer certifies, somewhat in the form of an acknowledgment, that on the day mentioned, in the year mentioned, before him personally came the officer executing the instrument, who being to him known and being by him duly sworn, swears first, to the place of his or her residence; second, to the official connection which he has with the corporation, and that it is the corporation described in and which executed the instrument; third, that he knows the seal of the corporation; fourth, that the seal affixed to the instrument was such corporate seal, and that it was affixed by the order of the board of directors, or whatever might be the name of the legislative body of the corporation; and that he signed his name thereto by like order. A deed thus executed, with its seal thus proven, is evidence in all courts, and is entitled to be recorded in the same manner as the instrument of an individual properly acknowledged or proven.

CHAPTER XI

BOND AND MORTGAGE

172. *Transactions in which these instruments are appropriate.*—Deeds are appropriate instruments for the immediate conveyance and the transfer of title, but there are many transactions in which the transfer of title is not immediately contemplated but merely potential, in that land may be pledged as security for debts. In such a transaction the loan is secured by two instruments, one and the most important, being the evidence of indebtedness, and the other the mortgage. In New York State the bond is the principal instrument securing a loan of money. There are many states in which the evidence of indebtedness is a note; and there are places where the evidence of indebtedness is not only a single note for the principal but there are also issued at the same time notes for all the installments of interest contemplated.

A form of bond in use in New York is as follows:

KNOW ALL MEN BY THESE PRESENTS,

That .....
.....
.....
hereinafter designated as the obligor, do.. hereby acknowledge .....
..... to be ..... indebted to TITLE GUARANTEE AND TRUST COMPANY, hereinafter designated as the obligee, in the sum of .....
.....
dollars, lawful money of the United States, which sum ..... said obligor do.. hereby ..... covenant to pay to said obligee, its successors or assigns, on the ..... day of ....., nineteen hundred and ....., with interest thereon, to be computed from the ..... day of ....., 19.., at the rate of ..... per centum

per annum, and to be paid on the ..... day of .... next ensuing the date hereof, and semi-annually thereafter.

AND IT IS HEREBY EXPRESSLY AGREED THAT the whole of the principal sum shall become due at the option of said obligee after default in the payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand. All of the covenants and agreements made by the said obligor in the mortgage covering premises therein described and collateral hereto, are hereby made part of this instrument.

Signed and sealed this ..... day of ....., 19..

IN THE PRESENCE OF

The form of bond given above begins with a rhetorical flourish: "Know all Men by these Presents." It does not mean anything. The "obligor" means the person who obligates himself or makes the undertaking. It may be plural, and, if so, the word "ourselves" follows "acknowledged." If it be the bond of one person nothing is inserted after the words, "to be"; if more than one, they contract "jointly and severally." Upon a "jointly and severally" obligation all the makers of the obligation can be sued, or any of them. If only one is sued, he must seek contribution from the others; but with that the creditor has no concern.

The bond then proceeds to name the holder of the evidence of indebtedness and the principal sum. The modern form of bond provides only an obligation for the principal sum. Until within recent years it was usual and is customary still in a great many states that the bond should be in the form of a double obligation, the double amount being then known as "penal sum." If the obligation is written in the penal form, there follows it a condition in which the parties say that while they obligate themselves for double the amount the condition of the obligation is such that if they pay half the penal sum the obligation is void and of no effect. No more than the amount of the condition can be collected, no matter how many times the bond be broken.

173. *Legal tender.—"Lawful money of the United States."*—That is the usual obligation, which means all the kinds of money which are legal tender under the laws of the United States: gold, United States notes and silver dollars, and fractional currency for a limited amount. Bank notes are not legal tender. Certificates of deposit, silver certificates and gold certificates are not legal tender. As some foreign lenders feel there may not always be parity between the paper money of the United States and actual gold coin, it is appropriate when dealing with them, instead of expressing an obligation to pay in "lawful money of the United States," that the obligation be to pay "in gold coin of the United States of the present weight and fineness." If the obligation be written in that form it is usually known as a gold bond.

If the bond is in the plural after "hereby" the words "jointly and severally" may be again inserted. Then follows the due date. Unless the instrument provides that it may be paid on or before the due date, the obligor has no option to pay the amount earlier than the due date. If he desires to pay off the debt before the day specified, he must have an express provision in the bond for that purpose. It may be expressed by putting after the word "on" the words "or before." It may then be paid at any time without notice, but cannot be demanded until the due date. The privilege to pay may also be expressed in a clause, providing for payment on notice, or on special terms.

174. *Interest on Bond.*—The interest is usually computed from the day the money is lent. The first interest payment may be six months from the day on which the loan is made, or upon the first of any month, or upon an arbitrary date. Large money lenders, espe-

cially corporations, have specific interest days, and they will make the first interest day the first of the special days on which they like their money to come in; and then interest will be paid, usually, semi-annually thereafter. That is mere custom: there is no reason, in law, why interest should not be paid every day as it accrues and there are places in which it is paid quarterly. Interest is not payable in advance; it is paid, after it has accrued, in the installments specified.

The rate of interest is limited in some states by law, so that no more than a certain rate may be taken for the loan of money. If interest be paid in advance at the full legal rate for any considerable period, the lender not only gets his interest, but also the use of the interest money before it has been earned, therefore he is really getting something in excess of the legal rate as it has accrued, and the courts have held that a transaction of that sort may be usurious. Banks are expressly authorized to take discount in advance. Lenders who are getting the full legal rate should not take interest in advance. If interest be taken at a greater rate than the lawful rate, that constitutes usury. The penalty of usury, if it be pleaded and proven, differs in various states, in some the lender may lose the entire sum loaned and the interest thereon. In many states a corporation cannot plead usury. If, therefore, money be loaned to a corporation, the lender can get any rate of interest or any sum over the lawful rate which he is able to obtain, without the danger of committing usury.

Savings banks often have their mortgages written for a year at a specified rate greater than they exact. They do not require the money to be paid when it is due, nor do they take all the interest which is written in the bond, but they will notify their borrowers from time to time

with what rate of interest they will be content. Especially do they do this with overdue loans, and they always like to have their loans overdue so that they can call the money when they want it, or whenever they feel the security is depreciating; and ask for such rate of interest as is satisfactory to them. They do not usually exact as great a rate of interest as other lenders, because they try to get and keep the best loans: they are content with better security and lower interest rates. There is a pitfall in some forms of bond on this very subject. Sometimes the bond reads: "With interest to be paid at the rate of — per cent per annum and to be paid on —— and semi-annually thereafter until said sum be fully paid and discharged." There is a contract that the rate of interest shall be so much until the sum is fully paid and discharged. When such an obligation is overdue the obligee may not notify the borrower that unless he pays on a specified day that thereafter he will charge him such rate of interest as is satisfactory to the obligee, up to the legal rate. If the obligor has contracted to pay only 4½ per cent "until said sum be fully paid and discharged," he can refuse to pay more than 4½ per cent no matter how long the obligation may remain overdue. In cases where mortgages are written without this stipulation, but in ordinary short form, the best opinion is that lenders have a right to insist upon such interest after demand of payment, as is satisfactory to them, up to the legal rate.

175. *Privilege to pay off.*—If the borrower has agreed with the lender that he will pay his debt at a certain time, but desires to have the privilege of paying off at some earlier time, the space left in the bond is appropriate for that purpose. Large sums of money are usually kept out at interest, and are not always capa-

ble of investment immediately; for that reason lenders will insist that if they accord a privilege to pay off before the due date, that before such a privilege is exercised, they shall have notice in writing of the intention to make payment. Sometimes, in addition to notice, they will insist that they have interest not only up to the time of payment but to some later time in advance, sometimes thirty or sixty days. Such payment is not usury, because there is no obligation to pay it; it is a mere payment for a privilege which the borrower may or may not exercise, as he sees fit. If he exercise the privilege, he must pay the stipulated price for the accommodation. There are some money lenders who insist that there shall be provision in the bond that if it be not paid on the due date, it cannot be paid until some time after notice, and such a provision is not usury, because there is no obligation to make the payment; it is merely a penalty for non-payment.

176. *Usury laws.*—Economically and at base all usury laws are wrong. They are all fallacious; they do not protect the borrower. The needy borrower who must pay the legal rate when money is worth more than the legal rate will pay that excess in the shape of commission or expenses, and not only the excessive rate which money is worth over and above the legal rate, but he will pay more than that, because lenders who are willing to commit usury will want a bonus for the risk they are running; so that the direct operation of a usury law is not to protect the needy, but to make the needy pay more than the full worth of the money. If the lender did not fear that the money could be traced to his hands, if he did not have to get expert counsel to show him methods of evading the usury law, the borrower would pay only what the money was worth and not, in addition,

insurance against usury and fees to expert counsel to get around the usury law.

177. *Default in payment of interest, taxes, etc.*—The next stipulation in the bond is intended for the protection of the lender, indeed all the instruments which are exchanged at a loan are framed for the protection of the lender. He is the one who parts with money, and he does not have to part with it unless he gets satisfactory security. This clause stipulates that if the interest be not paid when due, the borrower still has, say, thirty days in which to pay it, but if at the end of such thirty days it is not paid, then the holder of the bond may call the whole amount due and demand payment of the entire sum, with interest. If he does so demand, he can sue on the bond or foreclose the mortgage for the whole amount; and coming in on the thirty-first day with the interest will not reinstate the term of credit. In the same manner, if there be default in the payment of taxes or assessments for a stipulated period, and the default be ascertained and the holder of the bond exercise his option, he may forbear so long as he pleases, but that does not necessarily reinstate the term of credit. If the borrower wants a stipulated time thereafter, he must get a new agreement. If the interest or taxes be paid before the lender exercise his option, the default is waived.

All options of the lender may be waived; even if a lender has exercised an option he may, by agreement, waive it and reinstate the credit.

178. *Execution and Enforcement.*—The bond next proceeds by incorporating into it all the covenants and agreements made by the obligor in the mortgage, which is collateral to the bond, and which is made part of the instrument. Thus, by reference, all the valuable parts of the mortgage are made part of the principal

obligation. The instrument is then signed and sealed. It should be signed, sealed, subscribed and executed in the same manner as a conveyance. It is not necessary to its enforcement that it be either acknowledged, proved or witnessed; so long as the instrument is subscribed, it is enforceable. It is an obligation for the payment of money only, and may be enforced separately from the collateral security. If the obligor so elects he may sue on the bond and collect as much as he can, and then hold the mortgage, which is collateral, for the balance, and foreclose it, the only stipulation in that regard which the law makes being that if he proceed first on the bond, the obligor must exhaust his remedies under that instrument before he can enforce the mortgage. If he does not want to sue on the bond first, he can sue to foreclose the mortgage, and in the same action ask, not that the whole bond be paid, but that if there be any deficiency after the mortgage has been enforced against the property, that he get judgment on the bond for that deficiency.

A person can sue on a sealed bond within the time of limitation for sealed instruments after it is due, or after there is a payment of principal or interest. If the bond be unsealed, the time of limitation is shorter. Limitation upon an obligation for money begins to run from the due date or the last time when there was any payment on account of the debt, or acknowledgment of the obligation.

The law of supply and demand affects interest rates more quickly than it does any other commodity. Money is a mere commodity in the lending market. When the demand is great and the supply short, the interest rate goes up; when money is plentiful the interest rate falls.

179. *Mortgage recording tax.*—Mortgages are per-

sonal property. If the owner of a bond has no debts to offset against it, he is liable to be taxed as the owner of so much personal property. The taxing of debts only imposes the burden of the tax upon the borrower. The lender will insist, whether he pays tax or not, upon getting net for himself the current rate of interest which the most fortunate lender can get. If there be a lender who does not pay any tax, who can get 4 per cent for his money, every other lender will want 4 per cent for his money net over the taxes. The result is that the lender who does not pay taxes, who lends his money at net 4 per cent and has to give nothing out of it, will get the first chance at the good loans.

Seeing the falsity of taxation upon debts, some states have provided that instruments of debt secured by mortgage upon real property, instead of being generally taxable as personal property, shall be subject to a special tax (sometimes a recording tax, which is paid once for all, and sometimes an annual recurrent tax), and that thereafter the mortgage, the bond and the debt which it secures all are free of any kind of taxation in the state, except that the mortgage is liable to transfer tax upon the death of the holder, where there is such a tax.

The question will come up very frequently whether if money is lent at the full legal rate, it can be required, in addition, that the borrower shall pay the mortgage tax. If there be no express provision against it, the best opinion is that such payment by the borrower does not make the loan usurious.

180. *Former method of pledging property for debt.*— Before modern forms of conveyance were invented, when land served to secure the payment of money, the title to the land was actually transferred by the borrower to the lender, who became to all intents and purposes

the owner of the land, and was entitled, if he so desired, to take possession. The borrower had a mere right in equity and good conscience that if he paid his debt, he might redeem his land.

181 *Equity of redemption.*—The interest which the owner retained in the property, the potentiality of getting it back upon payment of a stipulated debt became known as the "equity of redemption"; and that term has continued to designate, until the present day, the right which remains in the owner of the land over and above the interest of the pledgee.

In some states a mortgage transfer to this day is an actual transfer of the title; except for the fact that the borrower retains possession and collection of rents the mortgagee is regarded as the owner of the property; and when the debt is paid off the fact of payment is evidenced by a quit claim deed, transferring the title back from the mortgagee to the person redeeming. In New York State, and in many other states, the interest of the lender is not an ownership of the land, but is a lien upon the title. It falls naturally within the classification of liens which are known as, "voluntary liens," and within the classification of a special lien. It has all the general incidents of liens upon real property.

A mortgage interest, being personal property, passes at death to the personal representative, and not to the heirs. It is taxed to the holder as personal property, unless it be exempt because it has paid special tax. It passes by assignment or by delivery, and not by deed, and in order that title under it may be taken from the owner of the equity of redemption there must be some legal procedure to cut off the right of redemption. Because it is a chattel interest and a lien upon the land, and not an effectual transfer of title, there may be a first,

second or third or as many mortgages as the borrowing capacity of the land will stand, each taking its rights in the order of its precedence, the subordinate or junior being subject in their rights to the senior or prior mortgages.

Taking up the instrument by which the creation of this lien is accomplished it will be seen that in its structure it seems to be an absolute conveyance of the property, but upon condition that if certain things be performed that then the conveyance of title transferred shall be void and the property shall revert to the mortgagor. This is a vestige of the old form of the transaction, but as a matter of fact in those states in which a mortgage is a lien and not a conveyance of title the transfer is not accomplished until the equity of redemption has been cut off by foreclosure; and the instrument, notwithstanding its form, creates a lien or personal property interest only.

The following is a form of mortgage in use in New York:

THIS INDENTURE, made the ..... day of ..... in the year nineteen hundred and ....., between .... hereinafter described as party of the first part, and ....hereinafter described as party of the second part.

WHEREAS, the said ..... by virtue of a certain bond or obligation bearing even date herewith, ... justly indebted to the said party of the second part in the sum of .... dollars, lawful money of the United States, secured to be paid, together with the interest thereon, at the time and in the manner expressed in said bond or obligation.

IT BEING THEREBY EXPRESSLY AGREED, that the whole of the principal sum shall become due after default in the payment of interest, taxes, or assessments, as hereinafter provided.

NOW THIS INDENTURE WITNESSETH, that the party of the first part, for the better securing the payment of the sum of money mentioned in the said bond or obligation, with the interest thereon, and also for and in consideration of one dollar paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby grant and release unto

the party of the second part, and to .....
..... and assigns, forever, all
.....
TOGETHER with all fixtures and articles of personal property attached to, or used in connection with said premises, all of which it is declared are to be covered by this mortgage.
TOGETHER with the appurtenances, and all the estate and rights of the party of the first part, in and to said premises. TO HAVE AND TO HOLD the above granted premises unto the party of the second part,
.....
and assigns forever. PROVIDED ALWAYS, that if the party of the first part .....
or the heirs, executors, or administrators of the party of the first part, shall pay unto the party of the second part, ...
or assigns, the said sum of money mentioned in the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said bond or obligation, that then these presents and the estate hereby granted, shall cease, determine and be void.

AND the party of the first part covenants with the party of the second part as follows:

First.—That the party of the first part will pay the indebtedness as provided in this mortgage and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises herein described, according to law. Said premises may be sold in one parcel, any provision of law to the contrary notwithstanding.

Second.—That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the party of the second part. Should the party of the second part by reason of such insurance against loss by fire, as aforesaid, receive any sum or sums of money, such amount may be retained and applied by the party of the second part toward payment of the sum hereby secured, or the same may be paid over either wholly or in part to the party of the first part, ...
..... or assigns, to enable the party of the first part to repair said buildings or to erect new buildings in their place, or for any other purpose or object satisfactory to the party of the second part, without affecting the lien of this mortgage for the full amount secured thereby before such damage by fire, or such payment over, took place.

Third.—And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the party of the second part after default in payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand; and also, that the whole of the said principal sum shall become due at the option of the party of the second part upon any default in keeping the buildings on the premises insured against loss by fire as required by paragraph marked "second" above, or immediately upon the actual or threatened demolition or removal of any building erected upon said premises, or if after application by any holder of this mortgage to two or more fire insurance companies lawfully doing business in the State of New York, and issuing policies upon real property situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

Fourth.—That the holder of this mortgage, in any action to foreclose it, shall be entitled, without notice and without regard to the adequacy of any security for the debt, to the appointment of a receiver of the rents and profits of said premises; and in the event of any default or defaults in paying said principal or interest, such rents and profits are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness.

FIFTH.—That until the amount hereby secured is paid, the party of the first part will pay all taxes, assessments and water rates which may be assessed or become liens on said premises, and, in default thereof, the holder of this mortgage may pay the same, and the party of the first part will repay the same with interest, and the same shall be liens on said premises and secured by this mortgage.

SIXTH.—In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage, and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of said land requiring the payment of the mortgage debt, and it is hereby agreed that if such notice be given, the said debt shall become due, payable and collectible at the expiration of said thirty days.

SEVENTH.—That the mailing of a written notice or demand by depositing it in any post-office, station or letter box, enclosed in a post-paid envelope addressed to the owner of record of said mortgaged premises and directed to such owner at the last address actually furnished to the holder of this mortgage, or, if no such address has been furnished, then to such record owner at the mortgaged premises, shall be sufficient notice and demand in any case arising under this instrument.

EIGHTH.—That the party of the first part will execute any further necessary assurance of the title to said premises, and will forever warrant said title.

IN WITNESS WHEREOF, the said party of the first part has signed and sealed this instrument the day and year first above written.

IN THE PRESENCE OF

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.:

On this ..... day of ....., 19.., before me, came .....
to me known to be the individual.. described in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same.

182. *"Bearing even date herewith."*—In its commencement the instrument is like a deed. It then recites, "Whereas the said" (the party of the first part) "by virtue of a certain bond or obligation bearing even date herewith." It is usual that the bond or note shall be dated on the same day as the mortgage, although this is not absolutely necessary in law. It is possible to secure by mortgage an antecedent debt. The lender may desire additional security for an antecedent debt, and the borrower may pledge his real property to secure that antecedent debt; and the transaction would then, so far as its effect upon the real property was concerned as between the parties, be entirely similar to one in which the

pledge accompanied the making of the loan. Or a person may pledge his land to secure the debt of another, and in its effect upon the title the result will be the same as if he were pledging his land to secure a loan made to him at the time of giving the pledge. Cases of that sort arise frequently. Lenders may loan upon the bond of a man, and get a mortgage upon his wife's property. No matter whose obligation it is, so long as the pledge is to secure some specific obligation, it is quite appropriate that land be pledged as security. After "justly indebted to the said party of the second part in the sum of" is inserted the principal amount of the loan.

183. *"Secured to be paid, together with the interest thereon, at the time and in the manner expressed in said bond or obligation."*—This is a recent frill in conveyancing, making a mortgage which does not disclose anything as to the terms of the loan, except the amount of the principal sum. The bond never goes on record, and it is very often desirable, both from the view-point of the borrower and of the lender, that no more of their transaction be disclosed to the public than is necessary; and this form of mortgage is gradually forcing itself into general acceptance because it discloses that which it is necessary to disclose, and does not disclose those things which are really only matters which interest the parties to the transaction.

There is no reason why the business of dealing in real estate, being now a commercial business, should be conducted with any greater publicity than private transactions with relation to any other commercial business. A merchant who discounts his paper at a bank is not obligated to tell all the world upon what terms he can borrow money; and a bank which lends its money to one

customer at such rate as is appropriate to the security which he offers and the soundness of his business reputation, is not obligated to disclose those terms to the next borrower who has not as good security or whose business standing is not as high as that of the first man. It is also an embarrassment in a commercial transaction between two persons, who ought to be free to negotiate upon the basis of their own affairs only, to know that people are necessarily invited into their confidence, and are able to instance what has been done by them.

If it is desired to disclose the rate of interest and the due date, a blank is left in which they can be added after the words "bond or obligation." There is always a way to obtain the due date: where mortgages are made by large institutions, they always keep a record of the terms; and they will usually be disclosed to persons who have a right to know them. If this form of mortgage finds general acceptance, the business community will adapt itself to it.

The instrument then recites the clause to which attention was called in the bond. This is followed by a clause granting, in the form of a deed, the real property intended to be the subject of the loan, to the mortgagee, his heirs and assigns forever. The description of the real property should be inserted in this instrument with the same care and particularity as in a deed.

184. *"Together with the appurtenances," etc.*—This is a distinct departure from the deed. The instrument, not being the result of a contract which provided that certain articles of personal property which were appurtenant to and used with the land, should pass by the deed, the mortgage expressly provides that the conveyance shall include not only the land, but all fixtures and articles attached to or used in connection with the property

covered by the mortgage. It is intended thereby to catch under the lien all those things which are personal property, but which are generally used with and necessary to the use of the property as a going concern. The mortgagee would not get a man's furniture under that clause, but he would get the gas fixtures which were attached to a house, and the ranges which were appurtenances of a flat building. This clause is followed by the habendum.

185. *The defeasance.*—If the instrument stopped here, it would be a complete deed, but the habendum is followed by the defeasance, so called because it provides that the title of the lender or mortgagee may be defeated. The law provides in many states that if a conveyance be made accompanied by a defeasance in writing, that unless the defeasance be recorded at the same time that the conveyance is recorded, the grantee shall take no benefit from the recording of the instrument, the intention being that there shall be, so far as the law can control it, no hidden conditions of this sort.

It is therefore customary that the defeasance be written immediately after the conveyance and in the instrument which creates the lien.

As already stated, the interest of the mortgagee is usually a personal interest, and while in the part of this form that looks like a deed an interest is conveyed to the mortgagee, his heirs and assigns; and in the habendum it reads, "to the party of the second part, his heirs and assigns," it must be remembered that the debt belongs to the mortgagee or his personal representative or assigns, and the defeasance provides that if payment be made to the mortgagee or his personal representative—not to his heirs—that this will defeat the title which has just been conveyed, and that then, "these presents and

the estate hereby granted, shall cease, determine and be void."

If the instrument stopped there, it would be a complete mortgage, perfectly efficacious to carry out the intention of the parties, but there are a number of important covenants in the instrument, which lenders exact in order to improve their security.

186. *First covenant.*—The first covenant is a repetition of the obligation in the bond, a promise by the party of the first part to pay the indebtedness, and then a stipulation that if default be made, the party of the second part shall have power to sell the premises according to law. That is an important stipulation. It confers a power under which the holder of the mortgage may transfer the title to the land; and if the law had not stepped in to protect borrowers and save their equity for them, under this clause the lender could, upon any default, execute a deed in the name of the mortgagee, conveying the property, and thus cut out all intervening interests.

The last sentence of the first covenant provides that, "The premises may be sold in one parcel, any provision of law to the contrary notwithstanding." The general provision of law upon this subject is that when the premises comes to sale under a foreclosure, if it consist of more than one lot, the property, for the benefit of the mortgagor, shall be sold in separate parcels. If there are several lots they must be offered for sale in such separate lots as form natural divisions, so that no more is sold of the owner's property than is sufficient to raise the debt. But lenders make loans very often not only upon the value of the separate lots but also taking into consideration the fact that they are more valuable by reason of being in one ownership, and that structures

upon the property may be more useful when operated together than separately; they therefore require that they shall have the right to sell the property in one parcel. However, if a property is foreclosed by action of the courts, they will relieve from this stipulation, if it be too harsh, and if the owner who is about to be foreclosed of his rights can show that the property falls into natural divisions and will probably raise enough money if part only be sold. Then the courts will require that the property be sold in separate parcels, but provide that if the sale of the property in separate parcels does not raise enough to pay the entire mortgage debt, that then the mortgagor may offer the property as a whole.

187. *Second covenant.*—This covenant relates to fire insurance. The structures upon real property are as much real estate or real property as the soil itself. Where the property is adequately improved, they are usually the most important part of the security of the loan. Loans are made upon improved property usually at a lower rate and for a longer term than loans upon unimproved property. Improved property is the subject of investment or use by its owner. Some lenders require for their security that there shall be adequate fire insurance obtained by the owner of the property, and this is provided for specifically in the second covenant. The form of that transaction usually is that the policy is issued with loss payable to the owner of the property, but with a slip attached by which the insurance company agrees that if there should be loss it will pay that loss, first, to the holder of the mortgage to the extent of the interest of the mortgagee; and after that, the owner may have any surplus of insurance that remains. It is usually enacted that the original policy or policies be deposited with the holder of the mortgage, and the owner

of the land must be content with a copy or with a certificate of the insurance company. Mortgage clauses usually provide that while there may be contribution among the insurance companies who have issued policies to the mortgagee, that there need not be contribution by those companies who have not issued policies to the mortgagee, thus the mortgagee gets his money out of such companies as have issued policies to him or policies which bear this mortgage clause, without caring whether the owner has or has not outside insurance.

The next sentence in this covenant provides that if any sum of money be paid by the insurance company by reason of a loss, that the amount thus paid may be retained by the holder of the mortgage and credited to the debt, or it may be paid over to the owner of the land to enable him to repair the building, or for any other purpose satisfactory to the holder of the mortgage, without affecting the lien of the mortgage for the full amount.

188. *Third covenant.*—This covenant contains stipulations under which the mortgage may become due earlier than the term of credit prescribed in the bond.

The thirty days' notice is not absolutely necessary; it may vary according to agreement of the parties. The interest clause is very often twenty days; the tax and assessment clause is very often sixty or ninety days, or some period after notice and demand has been made.

This clause also stipulates that, at the option of the holder, the amount owing shall become due immediately upon the "actual or threatened demolition or removal of any building erected upon said premises." It must be remembered that the owner of the property remains in possession, and the holder of the mortgage has no

control over the uses of the property so long as his interest is paid and the principal sum has not become due. The owner may at any time tear down a building or remove an important part of the security. If the mortgagee knows of it soon enough, he can get an injunction enjoining the owner of the land from committing waste. But, for the reason that the holder of the mortgage may not know of the removal or demolition before it is accomplished, in addition to enjoining the destruction of the building, it is provided that if the building should be demolished or threatened to be demolished that the holder of the mortgage may call for payment of the whole amount owing.

If the owner put a new building on the property, it becomes part of the realty and immediately falls under the mortgage: there need not be any other instrument. The mortgage attaches to the land and all that is real property so long as the lien continues. This clause also provides that the loan shall come due if for any reason it shall be impossible to obtain fire insurance. It may happen that property has been put to some extra hazardous use after the mortgage was made, and in order to prevent that casualty, the holder of the mortgage stipulates that if that sort of thing happen, he does not have to leave his money on that property but can demand payment.

189. *Fourth covenant.*—The fourth covenant contains stipulations by which the income may be paid to the holder of the mortgage in certain cases. First, it is provided that if action be brought to foreclose, a receiver of rents and profits shall be appointed. It may happen that it will be necessary to foreclose, and that the land and improvements at that time will be found to be rather slender security for the amount owing. Interest and

taxes may have been allowed to run; the property may have run down; or the holder of the mortgage may find that he has made a mistake and loaned more upon the property than is safe. He may want to have the rents applied as soon as possible to the payment or redemption of his debt; he stipulates, therefore, that if he must foreclose, he can apply to the courts for the appointment of a receiver. The courts, however, are jealous of their prerogative, and claim that parties cannot stipulate for the appointment of a receiver of the court to act as their collector unless there be reasonable ground to fear that the property will be slender security or will not bring enough to answer to the debt. The courts say the mortgagee by contract cannot force them to appoint their officer, but if colorable reason be shown for the intervention of a receiver the courts will act upon this clause. Even if there be no receiver's clause, after due notice, and if there be danger to the holder of a mortgage, the courts may appoint a receiver.

This covenant further proceeds to pledge the rents and profits in case of any default in payment of principal and interest of the mortgage, as further security of the indebtedness. This assignment can be enforced only through the instrumentality of a receivership in a foreclosure suit, or through the voluntary giving up of possession by the owner of the land. There is no way by which the holder of a mortgage, to whom rents and profits have been pledged and assigned, can push aside the owner of the land, and require the tenants to pay to him. If he tried to give notice that the rents were pledged to him, they would pay nobody; not that the tenants would be actually relieved of the obligation to pay rent, but that is the way it would work out. If, however, in order to obtain forbearance, the owner of

the land voluntarily gives up his possession and instates his mortgagee under this clause or under any other voluntary arrangement, to collect the rents and become thereby a mortgagee in possession, that does not deprive the owner of his equity of redemption, but merely adds security to the lien. It puts upon the holder of the mortgage the obligation of managing the property prudently not only for the reduction of his lien, but also for the benefit of the owner who has put him in possession and makes the mortgagee in possession practically trustee of the income, to apply it first to the fixed charges upon the property, and then to the reduction of the principal debt; and, if the mortgagee does while in possession work out income enough to pay off his debt, from that moment the owner is entitled to resume his possession, to be reinstated in the collection of his rents, and to have an accounting and discharge of his mortgage. If there is not enough income to pay the entire principal and interest, then, in case of foreclosure, there will be an accounting taken and anything that may have been collected by a mortgagee in possession will be credited upon the mortgage debt. A mortgagee who is thus in possession never acquires an adverse title to the owner; he is merely a trustee until there is an accounting or a conveyance.

190. *Fifth covenant.*—This covenant relates to taxes and assessments. Under the operation of the third covenant, the owner is required to pay all taxes and assessments within a stipulated time, or the property may be foreclosed. Under that clause also the holder of the mortgage may require from time to time, if he manage his affairs prudently, that all tax receipts be produced to him, so that he may keep in touch with the situation and know whether the taxes have been paid.

But if the taxes are allowed to run into default, and the security be ample, the holder of the mortgage may not care to demand payment of his debt, and may under this fifth covenant pay any taxes or assessments which are upon the property, and add them to the amount owing to him. If he does so, then he will be entitled not only to the payment of his principal and interest, but also to whatever he may advance for taxes on the property, with interest on that amount; and if he foreclose, he may have his foreclosure for the total debt thus built up.

191. *Sixth covenant.*—This clause relates to the subject of special taxation of mortgages. Very many forms of taxation on mortgages have been tried, all of them unsatisfactory because the borrower finally pays all taxes on debts; and no matter in what way it was attempted, the result necessarily was to increase interest rates by the amount of the special tax. The proper theory is that there should be no tax at all upon mortgages, either special or general, because the needy borrower must always pay the tax on debts.

Lenders making their loans with the understanding that they are getting a tax exempt security, require in this clause that if there be any legislation on the subject of mortgage taxation, so as to affect the security which has been given to the lender, that then the lender does not have to leave his money out liable to some new form of taxation, but may demand payment.

192. *Seventh covenant.*—This clause provides merely for the giving of such notice as the holder of the mortgage desires to give to the owner. Under the form of mortgage security given above there is no notice that the holder of the mortgage must give to the owner. It is the duty of the borrower to seek his creditor, under

every stipulation in this instrument. But if the lender does desire to ask for fire insurance to be renewed, the production of the tax receipt, to send notice that interest will become due or to make demand or give notice of any sort, it is here expressly stipulated that if he send it by mail to such address as is furnished by the owner, that this is all that is required.

193. *Eighth covenant.*—This clause is borrowed from the deed form. It covers the covenant of further assurance and the covenant of warranty found in deeds. Under the operation of the covenant of warranty, if, at the time the loan is made, the borrower does not own the entire title to the premises which are mortgaged, and afterwards acquires any additional interest in the premises, that additional interest immediately, by action of the warranty clause, comes under the lien.

194. *Special clauses in subordinate mortgages.*—All the above are clauses which are required in ordinary loans, but there are other clauses which may be appropriate in special mortgages. A piece of property may be encumbered by two, three or any number of mortgages, one taking precedence of the other. The rights of a second mortgagee are subordinate to those of the first mortgagee. If there be default on the first mortgage, and the holder begins to foreclose, and if the second mortgage be not yet due, the interest of the holder of the second mortgage may be seriously jeopardized. For that reason it is usual to stipulate, in subordinate mortgages, that if proceedings be commenced to foreclose the prior mortgage, or if interest be not paid, or if there be any other default upon the prior mortgage, that the holder of the second mortgage may demand the amount owing to him; and further, that if there be any default in taxes, or interest on the prior encum-

brance, that the holder of the subsequent encumbrance may pay those charges and add them to his security; and may thereupon call his debt for payment. Very often in order to stop a foreclosure upon a first mortgage, the holder of a second mortgage will pay the taxes and the interest on the first and then start to foreclose the second, in order to avoid embarrassment and to obtain for the property the benefit of the terms of credit still remaining on the first mortgage. All those contingencies are provided for in a properly drawn second mortgage form.

195. *Lifting clause.*—Suppose a purchaser buy a piece of property for $10,000, on which a savings bank has an overdue first mortgage of $5,000, and he is to give a second of $3,000 payable in five years. If the mortgagee wants his money and goes to the bank and gets it to foreclose, that five-year term of credit does not do much good; so that it is often stipulated in subordinate mortgages, that if the prior encumbrance be paid off, the mortgagor may borrow the same amount upon a new first mortgage, and that the amount so borrowed shall be secured by a new first mortgage, the second mortgage remaining second to the new instrument. This is known as a "lifting clause"; the prior mortgage is lifted out and another put in its place. It is appropriate that there should be such a clause pursuant to contract, or where a longer term of credit is desired than the term in the prior encumbrance.

196. *Foreclosure by advertisement.*—There are two methods of foreclosure, the first, most simple and least employed being the procedure known as, "Foreclosure by advertisement." This is not a proceeding at law, but is applicable only as the execution of the power to sell the property which is granted in the mortgage

instrument. If our system of law had not regulated and circumscribed the power to sell which is contained in the instrument, it would be feasible for the holder of a mortgage whenever there was default, to step into possession of the property, sell it at the best price he could obtain, bid it in if there was no one to bid against him, and then cut off the equity and all interests subsequent to the mortgage. The statutes with regard to real estate mortgages do not deprive the holder of a mortgage of his power to sell, but requires the giving of notice to the owner of the equity—if he can be found —the posting of notices in public places, and then the sale at a public auction in a public place. If these formalities be observed, the certificate of the sale is sufficient to entitle the purchaser to possession of the property. The trouble with using this method of foreclosure is, that the owner of the property, not having had a chance to test the validity of the lien and require it to be adjudicated and it not being a process of a court under which the purchaser can get possession, it may happen that after he has properly executed his power of sale, he may not get into possession. The owner of the land may retain the possession, and then there is no other way to get in except by the costly and cumbersome action for ejectment. For that reason, although apparently the most direct method for foreclosing mortgages, it is the least used.

197. *Foreclosure by action at law.*—The customary method of foreclosing mortgages is by action at law. The mortgage being in default for some reason, the first step in foreclosing is to make search to ascertain what interests there are subject and subsequent to the mortgage all the holders of which must be made defendants to the suit. Every person who has or claims

an interest in the property which is subsequent to the mortgage, should be made a defendant. Any person who has or claims some interest superior to the mortgage may be made a defendant, but nothing is gained by this. A person who has an interest superior to the mortgage, properly recorded, if made a defendant, is not required to answer the allegation, and the judgment of foreclosure does not affect his rights. All that can be cut off is some subsequent and subordinate interest.

If the holder of a second mortgage wants to affect the right of the first mortgagee, he must make a further allegation with regard to it which the first mortgagee is called upon to answer, for instance, that his right, while appearing to be first, is really second.

Another important class of cases in which it often happens that persons are made parties is where they are owners of conditional bills of sale. The owner of a properly executed and filed conditional bill of sale claims, not an interest in the property which is subject and subordinate to the mortgage, but that the property on the premises never became real estate, but still retains its character as personal property, and was never subject to the mortgage; and if the owner of a conditional bill of sale has properly safeguarded his interest, he does not care how many times he is made a party to a foreclosure suit: he would still be able to take out his property, if it were not paid for.

198. *Method of procedure.*—All parties whose interest is subject and subordinate to the mortgage having been ascertained, they are made parties to an action, and are entitled to be served with a summons, and given an opportunity to defend the action. If there be answer on the part of any person, the issue must be tried out. If there be no answer, then the plaintiff obtains

judgment as matter of course. Whether the issue be tried or the plaintiff obtain judgment upon an uncontested case, when it is ascertained that he is entitled to judgment, the amount owing is computed either by the court or by a referee. The amount of the lien having been ascertained in that manner, a judgment is entered directing the sale of the property by a master, referee or sheriff, under the direction of a court. All parties to the action who have appeared, are entitled to notice of the sale, which must be advertised. Then the sale must be had at public auction in a public place, and all persons who desire to bid must have a fair opportunity to do so.

The property having been offered for sale, and having been bid in, one of two things may happen. Enough may be bid to pay the mortgage and those encumbrances which are ahead of it, or the amount paid may not be enough to pay these charges. The plaintiff in framing his complaint may allege of any person who is liable for the principal debt that that person is so liable, and claim, in addition to getting his judgment of foreclosure and sale, that if there be any deficiency that he have a personal judgment for the amount of that deficiency. In cases where there is more than enough to pay the mortgage, the defendant is entitled—unless there be a special provision in the mortgage to the contrary—to have the property sold in such separate lots or divisions as it may fall into naturally. This is principally for the reason that if it should develop that the plaintiff's lien can be raised by the sale of less property than the whole, as soon as enough has been sold to raise the lien, that ends the plaintiff's interest; of course the referee or officer of the court is authorized to sell only enough property to raise the claim for which judgment is obtained.

The defendants are entitled to have the divisions of the property sold in a special order, in order to protect purchasers. Persons who have paid for their lots and who have purchased from the owner of the equity subject to a mortgage or other claim, are entitled to have the property sold in the inverse order of alienation, that is, in the inverse order from that in which the common owner of the property has parted with it.

At the conclusion of the sale, the referee gets the purchaser to sign the terms of sale, and after the period fixed for examination and closing of title, he receives the price bid for the property. Out of that price he is directed to pay first all taxes and assessments which there may be against the property; second, to pay the costs and expenses of the foreclosure suit, his fees and the expenses of advertising the sale; and third, to pay the plaintiff's debt. If there is not enough money on hand to pay the plaintiff's debt, he gives the plaintiff what he has and reports the amount of the deficiency.

As soon as the report of sale is filed with the county clerk, the deficiency may be docketed as a money judgment; and the plaintiff is then entitled to the same remedies as he would be on any other money judgment. If, however, the referee finds more than enough money to pay the plaintiff's debt, the extra amount is called the surplus. In that case he pays the plaintiff's debt and pays the surplus into court; and then all persons who have claims against the property which would be valid if not cut off by the foreclosure suit, give notice of their claim against the surplus, which stands as a substitute for the land. It is then ascertained in what order those claims should be paid, and the amount of the surplus which remains in the court is equitably divided and paid over to the persons claiming it, according to legal pri-

ority, just as if they were making their claim against the land. If there is enough to discharge all liens, the owner of the property gets what is left. All persons who have claims against the property are interested to see to it that at the sale it brings all that it is worth. The purchaser, having paid his money to the referee, is entitled to two things: first, to a deed, which becomes a record evidence of his ownership; and, second, to possession. If he does not peaceably obtain possession upon presentation of the referee's deed, he is entitled to the aid of a court in a process under which the sheriff is entitled to go to the property and assist the purchaser to get possession; and under a writ of assistance the sheriff is authorized to put out of possession every person bound by the judgment or named as a defendant in the action. That is the utility of making tenants parties. If a person is willing to take a property subject to a tenancy, it is not wise to disturb the tenants, because just as soon as they are served with a summons, they may stop paying rent. If they are made parties, they are bound by the effect of the judgment and can be put out of possession if they will not pay their rent to the new owner.

CHAPTER XII

LEASES

199. *Definitions of landlord and tenant.*—A landlord is an owner of an estate in real property or of an interest therein, when considered with relation to another hiring the property and agreeing to pay rent, who is known as a "tenant."

200. *Rent.*—Rent is a definite, periodical return for the use of land. The expression "definite" does not necessarily mean absolutely ascertained by the agreement, but that which can be made definite, is definite. If A rent a farm to B, and in return is to get a definite share of the produce, while neither party knows what that share is to be worth, the fact that when the return is to be paid, it can be definitely ascertained, makes it a definite return; and "leasing upon shares," as it is called in the country, is an appropriate method of establishing the relation of landlord and tenant.

In addition to the fact that the return shall be definite, it is necessary that it be periodical, i. e., that the period when the return shall be paid be specified. It may be that the entire rent is paid when the tenant enters upon the premises, or that he pays it in installments, once a month, once a year, or even once a day, but it must be at a fixed time or period.

A janitor of an apartment house who is paid wages and permitted to occupy an apartment, is not a tenant. He is a mere employé, part of whose wages is paid by a right of occupation. If the landlord end the employ-

ment, he does not have to go to the trouble he would be obliged to take to remove a tenant from the premises. For that reason, when permitting a person to occupy property, although the owner may look at the relation as a hiring in all its essentials, if he wants to protect his property from the right of occupation becoming such that it is difficult to end it, it is best to raise the conventional relation of landlord and tenant. If a purchaser is let into possession under a contract, it is best to give him a lease for a definite term, even if at a nominal rent, so that it is a definite, periodical rate; and make him sign an instrument under which he agrees to go into the property as tenant, and in no other relation.

201. *Term of lease.*—The time during which occupancy is to last is known as the "term of the lease," or, technically, as "the term." There is no limit to the term of a lease, as matter of law: it can be made for 999 years or for one year.

The landlord's interest in the rent, the right to receive rent and his expectation of being restored to possession of the property at the expiration of the term, remains real property. The tenant's interest, no matter how long the lease may be, remains personal property, and is assignable as personal property and goes to the personal representatives rather than to the heirs.

It is customary in New York State in writing leases, where it is intended that they shall run for a longer term than twenty-one years, to make provision for an apparent term of twenty-one years, with the privilege or right to renew. The reason is that in order to keep all property from being tied up with leases in fee which will never end, or leases for a very long term, the tax law of that state provides that on a lease for more than twenty-one years, in addition to the ordinary

tax upon the land, the rent may be taxed as personal property to the person who is entitled to receive it. If that person is not within the state, it may be taxed against the tenant; thus on leases for more than twenty-one years in New York State there is a double burden of taxation, and so the expedient has been adopted of writing the lease for twenty-one years, with covenant and conditions in relation to renewal.

202. *Assignment of leases.*—Unless the lease expressly provides against assignment, a tenant's right may be assigned. It may be mortgaged, the mortgage being a lien upon the tenant's term or right to occupy. If a lease provides by covenant that it shall not be assigned by the tenant, as leases usually do, and if the tenant, notwithstanding that covenant, assigns the lease, and the landlord receive rent from the assignee, knowing of the assignment, that is held to be a waiver of forfeiture; and subsequent assignments would not amount to another breach of that covenant, but the term of the lease would then be freely assignable. If the landlord wants to protect himself not only against his tenant assigning, but against all assignments subsequent to the first, he must make express provision not only that the tenant shall not assign, but that no subsequent assignee shall assign.

It is usual to provide, as penalty for breach of the covenant against assignment, that it shall operate as a forfeiture of the term, but the landlord is not entitled to summary proceedings for breach of that covenant; he can regain possession only by the cumbersome method of an action for ejectment.

If the term be assigned, under a properly drawn lease, the tenant still remains liable upon the covenant to pay rent, but is entitled to be credited with the amount

paid by his assignee. He is bound for the balance on his covenant to pay the rent, and may be sued whenever the installments of rent are due or at the end of the term for the whole amount. Any occupant of the premises, not the original tenant, may be held liable for his occupancy at a fair rental, but unless an express agreement or obligation to pay rent can be shown, an occupant cannot be sued except for the value of the occupancy during his actual use.

203. *Leases created verbally and by writing.*—A lease for the term of one year or less may be created verbally. A lease for a term exceeding one year must be in writing and must be subscribed by the person to be charged, in the same manner as the other writings which have been considered. The elements of subscription, and the necessity for clearly expressing the entire contract in the instrument are the same as in regard to other instruments. A lease for a term greater than one year may be valid not only between the parties but binding upon third persons without necessity of record, for if the tenant be in occupancy, and claim the benefit of his term, no matter how long it is, it must be remembered that the principle of notice by occupancy applies to leaseholds just as it does with regard to the fee or any other interest. A purchaser or person dealing with property is bound to respect the rights evidenced by occupancy and claim, just as much as though they were of record, so it is not safe to conclude, when dealing with real property, that because the tenant has not recorded his lease, his term is not over one year.

204. *Tenancy at will.*—Leases may be divided according to the length of term, the first and longest in the eyes of the law, being a tenancy at will. This is the tenancy which is entered into at will without limitation

of time: it may last forever, at the will of the parties, and can be terminated only upon giving notice by either party of the intention to terminate. If it is desired to make a hiring anything else than a tenancy at will it should be made definite.

205. *Tenancy for years.*—A tenancy other than at will may be a tenancy for a year or years or from month to month. A tenancy for years may last for twelve months or longer. It is usually fixed upon the basis of an annual rent payable in installments. A tenancy for years, or a tenancy which is a definite hiring for longer than from month to month, ends of its own force, without notice, on the day fixed. If there be hold-over, the landlord has the option of treating the tenant as a hold-over from month to month or, if the term has been for a year or more, of treating him as an annual tenant for another year; or, if he requires possession, a landlord can put the tenant out.

A landlord has those three options, if he exercises his rights promptly; and it is the part of prudence to exercise the right on the very day the term ends. If the tenant be held as hold-over, he is liable for the rent in accordance with the terms of the hold-over. If nothing be said on either side, the presumption is that he is a hold-over as an annual tenant upon the same terms as the former lease. The relation having been entered into and the rent accepted, the landlord will be bound for another yearly term.

206. *Obligations of landlord and tenant.*—The obligation of a landlord is to accord the tenant the possession of the property he has hired, and to protect him in that possession. The obligation of the tenant is reciprocal. He must protect his landlord's interest, give him prompt notice of all matters which affect that in-

terest of which he learns by reason of his occupancy; and he may not recognize any person as landlord or pay rent to any person who claims in hostility to the maker of his lease. The tenant must be loyal to his landlord and is liable for damage if he breaks that obligation.

207. *Ground lease.*—A form of lease for years is the lease which is known in some cities as a "ground lease," and in other cities as "ground rent." It is a form of lease the characteristics of which are: first, a term longer than ordinary hiring; second, the incident that the improvements on the property are usually made by the tenant, which is the reason that it is known as a "ground lease," because the first subject of hiring and the basis for fixing rent in the beginning of the term, is the value of the ground or land as vacant ground. Leases of that sort are appropriate from the standpoint of the landlord, where he has either a large tract or some valuable property without capital to erect a valuable improvement, or without the desire to invest large sums of capital and do intricate financing for the purpose of raising money to put into construction. In some cities it is a favorite method of fixing investment values of land. In New York, partly because of the operation of the public policy law against long term leases, and partly because its operation there has been to show that tenants whose terms are not assured for very long terms, do not put upon the property improvements commensurate with the rest of the neighborhood, it is not such a favorite method of leasing.

In order that it shall be possible for a tenant to erect upon land which he has leased a building commensurate with the surroundings and of sufficient character not to retard the progress of the district, it is necessary that the tenant can at least expect to be able to get out of

the difference between the ground rent which he pays with the interest, and the actual rents thereon from occupancy, enough to make the investment attractive. Or the tenant must be assured that when the first term is over, he shall have a right to renew, even though he does lose the ownership of the building, upon such terms as will really operate as an extension of the first term. The improvements when they are made, although the tenant has a limited ownership in them, immediately become the property of the landlord, no matter whether or not as one of the terms of the lease it is required that at the end of the term the landlord shall pay the value of the improvements. The improvements are real property; the landlord has an insurable interest in the property, and the entire property passes to his heirs, or, under his will, by devise.

The stipulation with regard to rent may be for a rental fixed upon the basis of the land value alone, with provision for periodical readjustment of the rent, but for practically a perpetual option of renewal upon the part of either the landlord or the tenant. In New York City that form of lease is usually for a term of twenty-one years, with provision that at the end of the term the landlord shall have the option either of renewing the lease or of paying the tenant the value of the improvement. If they cannot agree, it is usual to make provision in the lease for arbitration. The basis of rental being fixed at a percentage, the only thing to be ascertained by the arbitration is the value of the land.

Another form of lease is that which provides, not for perpetual renewal, but for a limited number of periods of renewal. Still another, and a most important form of lease, is that which provides for one term and renewal, or at most two renewals. The tenant is required to put

up an expensive improvement, the landlord very often making a loan to aid the tenant in constructing the building, and taking a mortgage on the building for the amount of the loan. The problem of the tenant, in a case of that sort, becomes the problem of amortization of the investment; the rent must be so much lower than the expected return from the building that at the end of the terms and renewals the tenant will get back his cost of construction, a fair return upon his investment, and a fair compensation for the rest of the transaction. That is a very complicated problem of financing, and few can engage in it successfully.

208. *Tenancy from month to month.*—The shortest tenancy known to the law or commercial experience is the tenancy from month to month. It looks like a separate arrangement for each month, but in reality it is not. It is usually a continuous term, self-renewing, continuing forever, the incidents of the tenancy being that the rent is payable monthly, that the tenant can vacate at the end of any monthly term, but that the landlord cannot terminate the tenancy at any time except upon the last day of a monthly term and upon giving notice of his intention to require possession, and cannot raise the rent unless he give the tenant notice to vacate, if he will not voluntarily pay the increased rent. In all legal computations, Sundays and holidays count, except when they are the last day.

In the city of New York there is a very thin wall between the tenancy at will and the tenancy from month to month; and a tenancy at will will tie up the property to the first of May, while a monthly tenant can be put out at the end of any month. If it is a tenancy from month to month, the landlord should see to it that the receipt reads plainly to that effect, and the tenant should

understand when he goes into possession that he is a tenant from month to month, and not upon a yearly hiring or a hiring without term.

209. *Termination of leases.*—First, and most important, every lease ends at the expiration of the term. Except at the end of the term, leases may be terminated by a voluntary offer of surrender on the part of the tenant, and a voluntary acceptance of that offer by the landlord. If there be such surrender and acceptance, from the time thereof, all obligations under the lease, on the part of both landlord and tenant, are ended. The tenant is liable for rent up to the time of surrender, but not beyond that.

Surrender and acceptance may be implied from the acts of the parties. Unless the landlord has a provision in his lease that if the property become vacant he may resume possession for account of the tenant and continue charging him rent up to the end of the term, it may be implied from the act of the landlord in taking possession of the property when the tenant left it vacant, that there has been an offer of surrender by the tenant and acceptance of possession by the landlord. Landlords who have taken possession of property in order to protect it against depredation have found themselves in the position of having accepted surrender of the property. A verbal surrender, followed by the actual occupancy by the landlord, is sufficient. It is not varying the terms of the written instrument, but is the limitation or ending of an obligation. Anything that is an exclusion of the tenant from the property may be predicated as an acceptance of an offer to surrender.

The relation of landlord and tenant may be severed by breach of a condition of the lease. The conditions

in the lease may be divided into two classes, those for which the landlord can get a summary dispossess, and those for which he cannot get a summary dispossess. A landlord can get dispossess and summary possession of his property for three causes:

First: If the tenant hold over after expiration of the term;

Second: For non-payment of either rent, taxes or water rates, if the tenant has covenanted to pay these charges;

Third: For unlawful use of the premises.

For any other breach of the covenant of the lease a landlord is not entitled to a summary dispossess, but must sue his tenant for ejectment under the lengthy process of an action. In order to obviate that necessity, important leases are often drawn in such manner that all the conditions of the lease which call for payment of any sort by the tenant are put in such form that those payments, if they become owing, are made additional rent; for instance, if the tenant should be liable for damages to the premises, or should be required to make repairs, or to comply with the orders of municipal departments and fail to do so, the landlord is at liberty to do these things, all of which can be liquidated in money payments; and those payments thereupon become additional rent, collectible with and in the same manner as the fixed rent reserved. All other covenants should be made conditional limitations upon the length of the term, i. e., it should be provided in the lease that if a covenant be broken, the landlord shall have the right to give notice that he elects to end the term of the lease at a fixed time. That is known technically as a "conditional limitation." If the tenant remain in possession after the time thus fixed, he remains as a mere

hold-over, and can be put out in the same manner as if he were a hold-over after a natural expiration of the term. Complicated clauses of that sort are only worth while in leases for long term of valuable property. In cases where the tenant is not put in occupancy of the entire building, there is seldom anything which the tenant is required to do for which, in case of default, the landlord has no efficient remedy.

A dispossess proceeding is brought, not in the supreme court, but in a court of minor jurisdiction. In cities it may be brought in the city courts or in the municipal or district courts; in the country it may be brought in the courts of justices of the peace. No one has ever been so harsh as to question the right of a judge in a district court to withhold signing the warrant for a few days when the tenant has made an appeal to his compassion; but, as matter of legal right, the landlord is entitled to the signing of the warrant immediately.

The signing of the warrant results in the breach of the relation of landlord and tenant; and only such covenants remain enforceable as are expressly made to continue after the owner has regained possession. If, after the warrant is signed, the tenant will not voluntarily quit the premises, the warrant will be executed by a public official who will physically remove the tenant and his belongings from the premises. That ends the situation, so far as the summary proceeding can accomplish it.

In some states in long term leases if, after the dispossess, there remain more than a specified number of years of the term, notwithstanding the issue of a warrant of dispossess and its execution, a tenant may come back any time within a specified time, pay up the back rent,

and redeem the premises. That situation is met in long term leases by requiring from the tenant an express waiver of the right of redemption.

210. *Repairs.*—Unless it be expressly covenanted in the lease, there is no obligation on the part of the landlord to do anything in the matter of repairs. The landlord is not obligated to do anything except to let the tenant occupy and pay rent. The tenant has a general obligation to commit no waste upon the premises but is not obligated to make permanent repairs. He can let the premises go along in ordinary wear and tear until they are worn out, so long as he does not commit actual waste.

211. *Constructive eviction.*—Another way in which the relation of landlord and tenant may be severed is by a constructive eviction, which occurs where a tenant is not accorded the occupancy of the premises by reason of some act or omission of the landlord, or where the property is not kept in such a manner that it may be used for the purpose for which it was hired with the knowledge of the landlord. If a tenant rent an apartment in an apartment house, in which he depends for heat upon the steam-heating apparatus of the building, and there is no heat in his apartment so that he cannot use it for the purpose for which it was hired, i. e., for living purposes, that would amount to constructive eviction and give the tenant the right to remove from the premises; but he must take advantage of it at the time.

212. *Option in case of fire.*—In some states a lease terminates if there be a fire on the premises so as to render them untenantable. If there be no such law, or if there be express stipulation to the contrary, the tenant remains liable under his lease no matter from what cause the premises become untenantable. A fire

does not necessarily break the lease, but if, by reason of the fire, the premises are made untenantable, and the tenant has the option to vacate, he must exercise that option within a reasonable time, and if he does not vacate the obligation of the lease remains. It is usual in ordinary leases to extend that option to the landlord by the fire clause, which may be seen in many printed forms.

The following is a form of lease which may be studied with advantage:

THIS INDENTURE, made the ..... day of ...., in the year one thousand nine hundred and ....., BETWEEN REALTY ASSOCIATES, a corporation organized under the laws of the State of New York, hereinafter designated as Landlord, and .... hereinafter designated as Tenant, ...

WITNESSETH, that the Landlord has agreed to let and hereby does let, and the Tenant has agreed to hire, and hereby does hire from the Landlord all that portion of the premises in the Borough of Brooklyn, County of Kings, City and State of New York, known as and by the street number ..... more fully described as follows:— .... ; for a term of ..... which term shall commence on the ..... day of .... and end on the ..... day of ....., unless sooner terminated as hereinafter provided, for the annual rent or sum of ..... dollars.

AND THE TENANT COVENANTS AND AGREES:

1st. To pay the rent as aforesaid as follows:—

2nd. To make all repairs, both exterior and interior, and also all repairs to elevators and elevator machinery, and any other apparatus belonging to the building, and the Landlord shall not be liable for any manner of repairs in or about said premises or to any part of the street, sidewalk or vaults in front thereof;

In case of default by the Tenant under this paragraph, then, and in that event, the Landlord, its successors or assigns may make such repairs as may be necessary, and all necessary expenses consequent thereupon shall be borne by the Tenant and shall be deemed collectible as additional rent, and shall become due and payable by the Tenant to the Landlord immediately after the same shall have been paid or incurred by the Landlord, and the Landlord shall have the right to enter in upon said premises to make such repairs;

3rd. IN CASE the Tenant shall have repairs made to the building and a lien shall be filed upon the premises, forthwith to take such action as will remove the lien from the premises, and in default thereof for ten days after notice, the Landlord may pay the amount of such lien or discharge the same by deposit and the amount so paid or deposited shall be deemed additional rent reserved under this lease and payable with interest

from the date of such payment upon the next day upon which rent shall accrue under this lease;

4th. To make good all damage resulting from misuse or neglect;

5th. To take good care of the premises and suffer no waste or injury;

6th. To pay as additional rent on or before the thirty-first day of July in each and every year a sum equal to all charges which may be made for the use or rent of Croton or other water in said premises, and also to pay within sixty days after the same shall have become payable all taxes imposed on said premises, except as follows, ...

7th. To pay as additional rent at all times during the said term, all premiums upon policies of fire insurance which may be taken upon the said premises; .....

.....

8th. At all times during the said term at the expense of the Tenant to insure and keep insured in favor of the Landlord, all plate glass in the store fronts, windows and doors of the above described premises in such amounts as shall be satisfactory to the Landlord, and to furnish the Landlord with policies of insurance covering the same;

9th. In case the Tenant fails to furnish such insurance as above provided or to pay the premium or premiums upon the same, or in case the Tenant shall fail to pay such water rates or any charge of tax, as above provided, the Landlord may in each and every case procure such insurance or pay such amounts and may add the amount of such premiums or payments to the next installment of rent falling due and the same, with interest thereon from the date of payment, shall be additional rent reserved hereunder, payable on the next day provided for the payment of rent succeeding the payment of such premiums or payments by the Landlord;

10th. To furnish the Landlord at all times during the term of this lease with security in the sum of .....
..... dollars, which security shall be furnished as follows:—.....

.....

11th. To allow the usual notice of "To Let" to be placed upon the walls or in a conspicuous place upon the exterior of the said premises for six months prior to the expiration of the term of this agreement, and "For Sale" notices at any time during the term, and to permit such notices to remain thereon without hindrance or molestation, and also to permit applicants to inspect the interior of said premises during such period between the hours of 10 A. M. and 5 P. M. on each and every business day during such time;

12th. To admit representatives of the Landlord into said premises at all times for the purpose of making alterations or improvements;

13th. To comply at the expense of the Tenant with all rules, orders, ordinances and regulations of each and every department or bureau of the city, county, state or national government applicable to the said premises, and of the New York Board of Fire Underwriters;

14th. In case of fire to give immediate notice thereof to the Landlord, which shall cause the damage to be repaired as speedily as possible. If the damage be so extensive as to render the premises untenantable, the rent shall be paid up to the date of the fire, and shall cease until such time as the building shall be put in proper repair, and thereafter the Tenant shall again pay the rent herein reserved, and have no option to cancel this lease; but if the destruction be total, the rent shall be paid up to the time of such destruction, and then and from thenceforth, this lease shall cease, provided, however, that such damage or destruction be not caused by the carelessness, negligence or improper conduct of the Tenant, or the servants or agents of the Tenant.

15th. To quit and surrender the premises at the expiration of said term in as good state and condition as they were at the commencement of the term, reasonable use and wear thereof and damages by the elements excepted;

16th. Unless the written consent of the Landlord shall first be obtained, not to

a. Make any alterations in the premises,

b. Sublet the whole or any part thereof for any business which may be obnoxious or detrimental to the neighborhood,

c. Use the premises or any part thereof for any purpose deemed extra hazardous,

d. Assign this lease;

17th. To indemnify and save harmless the Landlord for and against any and all liability, losses, damages and expenses, causes of action, suits, claims and judgments arising from injury to person or property of any and every nature, and for any matter or thing growing out of the occupation of the demised premises, the demolition by the Tenant of the buildings now thereon, the construction of any building thereon, or arising or growing out of the use, occupation, management, possession or control of the demised premises, or of any building thereon, or of the streets, sidewalks or vaults adjacent thereto, occasioned by the Tenant, the agents, employés, assigns of the Tenant or by sub-tenants, or by their sub-tenants, their agents or employés, sub-tenants or assigns, respectively, or which may be occasioned by any person or thing whatever, at any time during the term of this lease;

18th. To hold the Landlord harmless from and indemnified against all damages including counsel fees and expenses to any person or persons by reason of an act commonly known as the "Civil Damage Law," or any other act of similar purport;

19th. That, in case of default on the part of the Tenant or on the part of any person or persons claiming through or under the Tenant in the payment of any of the rents herein reserved, or reserved in any renewal hereof, or in the performance on the part of the Tenant of any of the covenants contained herein, or in any renewal hereof, to be kept and performed by the Tenant, neither the Tenant nor any such person or corporation shall have or claim any right of redemption in said premises under Sections 2256 or 2257 of the Code of Civil Procedure, nor under any law now in force or hereafter enacted, after any termination of this lease by re-entry by the Landlord or by its obtaining possession under summary proceedings or otherwise in any lawful manner; and the said Tenant for the Tenant and every such person hereby releases all such right of redemption; AND the Tenant for the Tenant and every such person agrees that in the event of any action of ejectment brought by the Landlord, its successors or assigns for failure to perform any of the covenants herein, or in any renewal hereof, the Tenant for the Tenant and every such person waives all right to any second or further trial as matter of right or favor under Sections 1525 and 1526 of the Code of Civil Procedure, or any other law of similar import now existing or which may hereafter be enacted.

IT IS SPECIFICALLY UNDERSTOOD AND AGREED BETWEEN THE LANDLORD AND TENANT: THAT

1st. All improvements made in, to or upon said premises by the said Tenant shall become the property of the Landlord at once when made;

2nd. The Landlord shall not be liable for any personal or property damage caused by other tenants or persons in said building, or resulting from electricity, water, rain, snow or gas, which may leak or flow from any part of said building, or from the pipes or plumbing works of the same, or from any other place, nor for any interference with light or otherwise, by neighboring owners, or caused by the operations of the city in the construction of any public work;

3rd. The Landlord shall not be responsible for any latent defect or change of condition in any building now on the premises or in any building which may be put on the premises during the term of this lease or any renewal hereof, nor be liable to any person for damages to any such

building nor for damage to persons or property by reason of anything aforesaid; and the rent shall not be withheld or diminished on account of any such defect or change;

4th. If the Tenant shall make default in fulfilling any of the covenants and conditions of this lease or in making any payment herein provided, or in case the Tenant abandons the premises and the same shall become vacant, the Landlord may re-enter said premises and remove all persons therefrom, either by any suitable action or proceeding at law or by force or otherwise without being liable to indictment, prosecution or damages therefor, and in any such case the Landlord may give to the Tenant five-days' notice of its election to end the term under this lease, and thereupon the term under this lease shall expire and all right of occupation thereunder on the part of the Tenant shall end, and the Tenant will quit and surrender the said premises to the Landlord, and at the option of the Landlord, it may relet the premises as the agent of the Tenant and receive the rents therefor, applying the same first to the payment of such expenses as it may be put to, and then to the payment of the rent and other payments which may be or become due according to the terms of this lease, and the balance, if any, at the expiration of the term of this lease, shall be paid over to the Tenant;

5th. IN CASE of re-entry or of termination of this lease by summary proceedings, or otherwise, whether the premises be relet or not, the Tenant shall remain liable until the time when this lease would have expired but for the termination thereof, for the yearly rent and additional rent reserved herein, less the avails of reletting, if any there be, and shall pay the same monthly, or otherwise, as hereinbefore provided for payment of rent;

6th. The failure of the Landlord to insist in any one or more instances upon strict performance of any of the covenants or conditions of this lease, or of any renewal hereof, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or option, but the same shall continue and remain in full force and effect.

7th. ALL NOTICES provided for in this lease shall be given in writing and may be given by mailing and depositing the same in any post-office station or letter-box enclosed in a post-paid envelope addressed to the Tenant at the demised premises.

8th. This lease shall be subject and subordinate at all times to the lien of the mortgages now on the demised premises and subject and subordinate to the lien of any mortgage or mortgages which at any time may be made a lien on the demised premises, and the Tenant covenants that the Tenant and all persons having any interest in this lease will execute proper subordination agreements to this effect at any time upon request of the Landlord. If the Landlord shall at any time fail to pay the interest or any installment of principal which may become due and payable by the terms of such mortgage, or shall fail to pay the taxes and assessments charged against the said premises, or shall fail or neglect otherwise to comply with the terms of such mortgage or mortgages, and the holder or holders of such mortgages shall have previously demanded such payments or such compliance, the Tenant shall have the right to make payment of such interest, taxes or assessments, or any other payment required by the terms of such mortgage or mortgages and, to the extent of such payments, to be subrogated to the rights of the holder of such mortgage, and the Tenant shall have the right to consider such payment as an advance rental of said premises; and if the Tenant shall not have the use of the said premises for the entire period for which such advance rental shall have been paid, the Landlord hereby agrees to pay to the said Tenant the entire amount of such advances, less, however, such proportion thereof as may be properly chargeable as rent for the period of the Tenant's occupancy of said premises.

THE LANDLORD FOR ITSELF, ITS SUCCESSORS AND ASSIGNS COVENANTS TO AND WITH THE TENANT,

That if, and so long as the Tenant pays the rent and additional rent reserved under this lease and observes the covenants thereof, the Tenant shall quietly enjoy the demised premises and every part thereof, subject, however, to the terms of this lease and to mortgages as aforesaid, which may at any time be or become liens on the demised premises.

THE LANDLORD AND TENANT COVENANT TO AND WITH EACH OTHER

That this lease and each and every covenant herein shall bind and run in favor of the Landlord, its successors and assigns and the Tenant, and the executors, administrators, successors and assigns of the Tenant.

IN WITNESS WHEREOF, the Landlord has caused its corporate seal to be hereto affixed and same to be signed by its proper officers, and the Tenant has executed the same.

REALTY ASSOCIATES,
By .....
[L. S.]
Tenant.

CHAPTER XIII

ADJUSTMENTS AT CLOSING

213. *First steps in title closing.*—Before proceeding to an adjustment in a title closing, two things are necessary: First, a clear understanding of the commercial transaction which is to be adjusted; and, second, accurate understanding as to the present state of the title.

As to the first: if it be a sale or exchange of property, the closing of a mortgage loan or the making of a lease, there must be an intelligent study of the provisions of the contract or arrangement which is about to be carried out. It must be remembered that what is contemplated is the adjustment of a debit and credit account, which will adapt the present state of the title to the contemplated transaction, so that when the title closing is completed, each shall have his due, the purchaser will have his property, with all necessary allowances, and the seller will have his money without any deductions except such as he should justly suffer. If the transaction be the making of a loan, on the completion of the closing, the borrower should have the proceeds of the loan less only such things as he should justly pay out of it; and the lender should have parted with no more than the amount of the money which he is to lend.

The next step in a closing is to have a concrete and intelligible report of the present state of the title. It is not possible to adapt the present state of the title to

the intended transaction unless there be such intelligible written report.

Having these two things before him, a person can determine whether the title is marketable, meaning thereby whether it is a title which the purchaser must take under the contract, whether making necessary adjustments, he will get a title of such character and with such encumbrances, and such encumbrances only, as were agreed to in the bargain. In order to determine whether a title is marketable, it must first be determined what is the estate to be transferred, and then if the seller or mortgagor can transfer that estate. If the purchaser has bought a title in fee simple, the report of title should state clearly and succinctly that the seller is vested with or can convey a title in fee simple absolute, subject only to the encumbrances specifically enumerated.

If a purchaser buy only a life estate or an undivided interest, he will be able to judge from the report whether he will be able to get it out of the transaction. If the seller be acting in any fiduciary capacity, it should be stated specifically whether the fiduciary has power to convey the estate which the purchaser expects to get.

214. *Disposing of encumbrances.*—Having a clear report of the state of the title the encumbrances can be considered with reference to the money which should be available in the transaction. If the property is so encumbered that the seller cannot get along with the money available to give such title as the purchaser should have, then the first inquiry is how to dispose of the encumbrances. It may be that the seller has outside means or methods of removing those encumbrances in some way other than out of the money due him from the transaction. When that has been determined, the

report of title may then be considered with respect to the details of the encumbrances.

215. *Encumbrances subject to which purchaser takes title.*—Encumbrances are of two classes with respect to a title closing; first, those subject to which the purchaser is to take the title; and, second, those which are to be removed. If a purchaser is to take subject to a mortgage, he should ascertain from the report of title the date of expiration of the mortgage, what rate of interest it bears, what special clauses, if any, it contains, and should compare them with his contract to determine whether or not they are in accordance with his agreement.

If there has been any reduction of the principal or rate of interest, or any extension or shortening of the time of payment, the purchaser is entitled to have evidence which can be recorded, to adapt the mortgage to the terms of the contract. If a mortgage does not by its terms disclose the expiration date or interest days, courts have held that this is no defect of marketability of title; but the purchaser is entitled to have a reasonable opportunity to ascertain whether the mortgage does or does not comply with the contract. If he cannot ascertain this, if, for instance, the holder of the mortgage is away, or does not answer his inquiry, although the question has not yet been decided, it may be that the purchaser is entitled to hold up the closing until such time as will give him a reasonable opportunity to ascertain those important particulars.

In the same manner the leasing or lettings which are reported as affecting the property, should be examined before proceeding to a title closing. If there be a variance and the purchaser or person closing the transaction be not acting in his own behalf, he should not take the

responsibility of waiving the variance without instructions.

A purchaser should require that the property be inspected and should check up to ascertain whether the rents are in accordance with representation. He should be particular to ascertain whether there is any one in possession claiming a title hostile to that about to be conveyed to him, because occupancy is notice of the claim. He should ascertain from the occupants not only whether they claim title, but the terms of the letting which they claim. It is not enough at a closing if the seller produce a set of leases which seem to comply with the contract. The purchaser should go to the property and find out what each tenant claims as to his rights in the property. A purchaser may be handed a set of leases, but he may not be told of the agreements for renewals, the promises of rebates and extraordinary repairs, unless and until he make an inspection to find out whether the tenancies and occupancies are in accordance with his contract.

A property may be encumbered by restrictive agreements. The purchaser should have precise information as to the form of restrictions and restrictive covenants which affect the property, before proceeding to the closing adjustment. It frequently happens that upon a report of closing there will appear restrictions or restrictive covenants which were not mentioned in the contract, and often they are considered not to be detrimental to the property or to injuriously affect its value; but a closer should not waive them at the closing, if he is only a representative, without referring the matter to his principal. If the purchaser finds that the covenants and restrictions are in accordance with the contract or do not injuriously affect the value, he is ready

to enter upon the financial adjustment, if there be no other encumbrance or defect.

A purchaser is entitled to delivery of a house in practically the same physical condition as it was at the time the contract was made. If it has been materially injured or changed to its detriment, he can decline to take it. Orders and requirements of municipal departments are not encumbrances for which a purchaser can reject title or for which he can require adjustment, unless he has specially stipulated in his contract to that effect.

After looking over a report of title and contract, and determining whether he will or will not take the property, a purchaser should inquire what are the encumbrances which are to be removed from the property and whether the proper discharges are present. If they are not present, he should inquire of the holders of the encumbrances where the discharges are and what sum of money is required to obtain them. He should also inquire how to draw the checks. The purchaser is entitled to have his property free of taxes, assessments or specific encumbrances before he pays his money. It is the seller's business to have the title clear and to have all instruments which are necessary to clear it present at the time of closing. It is customary, if satisfaction pieces are in known places in the hands of holders who can be found when they are wanted, for the purchaser to go and get them, if the other adjustments have been made; but, as matter of legal right, he is not required to do it.

Under the contract, the seller is entitled to insist upon legal tender money. It is customary that certified checks be accepted, but nothing less than a certified check, or the check of a well-known financial institution is usually accepted. Checks of a bank, or savings bank,

or insurance company, or title insurance company, are usually accepted, if the signatures are known.

216. *Debits against purchaser.*—The adjustment is made in the form of a debit and credit account. The first debit against the purchaser is the gross price which he agreed to pay. Assuming for the purpose of illustration that a transaction closes on the 1st of March, in which the purchaser has agreed to buy a piece of property for $25,000, this amount would be the gross debit against the purchaser. Usually, the only other debit to adjust is the value of the fire insurance policies. Assuming, in this case, that the purchaser either is under obligation or is willing to take and pay for the insurance policies, the method of adjustment is to take the gross premium and apportion it, so that the purchaser pays the proportion of the gross premium represented by the unelapsed time of the policy. If the policy had three years to run when it was issued, for which $10 was paid, and has still six months to run at the time of closing, the value of the premium for that unelapsed time would be one-sixth of $10 — $1.66, which is a debit against the purchaser. There may be one other debit; for instance, if the closing is as of the 1st of March, but the actual exchange of instruments and payment of consideration does not take place until the 9th. If the contract provided for closing on the 1st, and there had been adjournments as of the original date, there would be interest chargeable against the purchaser upon the unpaid balance of the purchase price from the 1st until the 9th of March. If no stipulation had been made as to the interest rate, it would be at the legal rate. The stipulation may be that the rate shall be greater or less than that, and it would not be usurious if it were greater, because it is not payment for a loan of money,

but a stipulated penalty for an adjournment or variance of the terms of the contract.

217. *Purchaser's credits.*—The purchaser's first credit is the amount which he has paid upon making the contract. Assume in this case the amount so paid to be $1,000. Although the seller may have had this money since the contract was signed, he does not pay any interest on it, because it was part of the transaction that $1,000 be paid when the contract was signed.

The next credit on the purchase price is the mortgage subject to which the purchaser takes the property. Assume in this case that the amount of the mortgage is $15,000, the interest rate 5 per cent, and the interest days the first of December and the first of June. On the first of June the purchaser will be required to pay six months' interest, but the seller has had the use of the money during December, January and February, therefore the next credit will be three months' interest —$187.50

If, in addition to taking the property subject to mortgage, the purchaser gives back a purchase money mortgage of, say, $3,000, that would be the next credit.

If a property be tenanted, and some tenants have paid their rent beyond the time, as of which the adjustments are made, the purchaser is entitled to have adjusted to him at the closing or that he have cause of action against the seller for rent collected out of the premises beyond the time as of which the adjustment is made. In this case, if some of the tenants have paid in advance from 15th to 15th, the seller will have on hand rent from the 1st to the 15th belonging to the purchaser; and if there be a store which has paid rent quarterly in advance on January 1st, the seller will have on hand rent for the store for the month of March. Assuming

that he has advance rents of $125 on hand, this amount would be the next credit. It is customary that the rent allowance be made on the gross amount of the rents, not on the net amount. If the seller has employed an agent to collect his rents, the purchaser does not bear a part of the agent's commission.

218. *Payments to be made by the seller.*—A report of title may show that the property is encumbered by taxes. Unless the contract specifically provides that there shall be a division of the taxes, it is not customary that there be any adjustment on that subject, but a memorandum should be made elsewhere of the things that the purchaser expects the seller to pay. There will really be two balances, one the balance between buyer and seller, which will be the money which the buyer must provide; and the other, the net balance, which will be the money the seller will carry away with him.

Assume the amount of taxes to be paid to be $350. If this title were to close the day before the taxes became a lien, the seller would not pay them; if it closed the day after the taxes became a lien, the seller would have to bear them. If there are assessments against the property which have become a lien, the seller must pay them. Assume assessments of $25. There may also be water rates. There is no adjustment customary with respect to water rates; if they have become a lien, they are chargeable against the seller. If water has been used and measured by meter, such meter charges as are fixed by the reading of the meter by the public authorities are chargeable against the seller from the last time when the meter was read up to the time of adjustment, either by estimating and averaging or by holding up a deposit so that when the meter is read the exact amount may

be taken out. Assume in this case, the water charges against the property to be $10.

219. *Payments made by the purchaser.*—These include the drawing and recording of the purchase money mortgage and the mortgage tax on it, if there be any.

From the above figures, the final statement can be made.

Dr.		*Cr.*	
Purchase price	$25,000.00	Paid on contract	$ 1,000.00
Insurance premium	1.66	Sub. to mtge.	15,000.00
		3 mos. int. allowed	187.50
	$25,001.66	Purchase money mtge.	3,000.00
		Rent collected by seller	125.00
			$19,312.50
		Amount on debit side	25,001.66
		Gross balance	$ 5,689.16

Payments to be made by Seller.

Taxes	$350.00		
Assessments	25.00		
Water rates	10.00	$385.00	385.00
	Net balance		$5,304.16

Payments to be made by Purchaser.

Drawing mortgage	$10.00	
Recording mortgage	3.00	
Mortgage tax	15.00	$28.00

The purchaser must provide, in order to carry through this transaction, $5,689.16. In addition he must pay the seller's attorney $28. Out of this $5,689.16 the seller must pay $385, leaving his net balance $5,304.16. The amount paid by the purchaser to the seller has been called the "gross balance"; that which the seller carries away the "net balance."

220. *Encumbrances not provided for in contract.*—Every transaction may not be as simple as the foregoing. It may be that there are encumbrances upon the seller's property which are not provided for in the

contract. The general rule with respect to such encumbrances is that it is the duty of the seller to remove them at his expense, and to discharge them of record. If there were a second mortgage, all the expense of paying principal and interest, paying for drawing of satisfaction piece and of recording satisfaction of mortgage would have to be paid by the seller. Where there are judgments which are liens upon the property, or decedents' debts or mechanics' liens, things which while encumbrances and troublesome, could perhaps be adjusted in a few days, the custom is that the seller shall leave with a safe depository which both parties are willing to trust a sum of money which is estimated to be sufficient to provide for clearing those encumbrances, and something in addition, both as safeguard to the purchaser and as incentive to the seller to get his encumbrances off.

221. *Closing of exchange contract.*—The adjusting of the closing of an exchange of real property is made upon the same principle as that just outlined. It is a debit and credit account. If it is desired to simplify the account, instead of charging each buyer and each seller with the purchase price or the fictitious contract price of each parcel, if there is a difference to be paid in cash as the result of the exchange, that difference may be charged to the person who is to pay it, as a first debit, and then the items adjusted in each parcel which do not figure in the contract. For instance, if a person were to exchange one house for another, and it was an even exchange, it might be that the permanent encumbrances could be eliminated from the contract; and in that case all there would be to adjust would be the interest on the respective mortgages and the rents collected. Each party would be charged with these items, and the differ-

ence between them paid by check by the one who owed that difference. If there was a payment to be made of the difference of exchange, that would also be charged against the one who was to make it.

222. *Closing of transfer of leasehold.*—The adjusting of the transfer of a leasehold is simple, except where the ground rent is paid at the end of the term, as it often is, when the seller would be charged not only with the rents which he had collected from the tenant, but, having had the property for the period from the time up to which the ground rent was paid up to the time of adjustment, he would turn over not only the advance rents which he had collected, but also a proper adjustment of the ground rent. If the situation were reversed and the seller had paid rent in advance, he would be entitled to get from the purchaser the ground rent for the unexpired term up to which rent had been paid.

223. *Closing of loan transaction.*—In a loan transaction the principle is entirely different; the only principle that governs a loan transaction is that the borrower pays everything. The lender does nothing but advance the principal sum which he has agreed to lend, and all adjustments are on the other side of the account. The borrower pays the expense of examining the title for the lender, the expense of title insurance and furnishes the fire insurance policy; he pays off all other mortgages and encumbrances, all taxes, brokerage, the mortgage tax, and the expense of recording all instruments. There is no debit and credit account; it is all debit.

224. *Rents due and not paid.*—This is a difficult matter to adjust. If there be a responsible agent in charge of the property, it is customary to permit him to finish collecting, and give him instructions as to the division

of the rents. It is a delicate matter for a purchaser to refuse to trust a seller to collect such rents, or for a seller to refuse to trust a purchaser; it must be adjusted by mutual accommodation.

225. *Methods of figuring interest.*—Interest is customarily figured, in real estate transactions, on the basis of a 360-day year; each month is considered to be one twelfth of a year; and it is customary for the purpose of short figuring to take each day as the thirtieth of a month, so as to use the ordinary 6 per cent method of calculating interest. As matter of law, when figuring interest for a period consisting of months and days, each month is considered to be one-twelfth of a year, and only the odd days are figured on the basis of a 365-day year. When figuring interest, it is proper to exclude the first day and include the last day.

226. *Rejection of title.*—If a purchaser has good reason for rejecting the title, he is entitled to have returned to him any sum which he has paid on the contract, together with interest at the legal rate from the time when he made the payment up to the time when it was returned to him. He is entitled also to have returned to him his reasonable expenses of examination of title, which means that a person can charge merely the actual value of the expense of examining title in accordance with the customary rate. He cannot obtain consequential damage or compensation for loss of prospective profit, or brokerage incurred upon the re-sale of the property, unless the seller is convicted of fraud in making the contract, then only can the purchaser get secondary damage.

In a contract of exchange, if there be rejection and a payment has been made, the purchaser is entitled to recover the amount paid and also his reasonable expense

of examination of title to the property which he was to receive. He is not entitled to recover commission paid for bringing about the contract. Commissions are paid for obtaining the purchaser and bringing about the making of a contract.

CHAPTER XIV

METHODS EMPLOYED IN ARRIVING AT VALUATION OF REAL ESTATE

227. *What finally determines in land value.*—The value of land is not what the owner can sell it for, or what he must take for it, if he wants to get rid of it, but the actual value of land in its last analysis is based on the income, actual or potential, which is to be derived from the ownership of the property when it is adequately or appropriately improved. Experts agree that an inadequate or inappropriate improvement does not actually figure in the selling price of property, but only those improvements which can be made to bring in income in competition with neighboring structures figure in real estate values.

In America we have a rather more difficult problem in determining land values than in a settled country like England. In England a piece of property is worth so many years' purchase of the net income. Because of the continual growth, the shifting and changing of population and the constantly differing methods of utilization of specific land, it is more a speculative article in America. As the value of land is determined very much by its income-bearing capacity, it is highest in those places where the most lucrative business can be transacted, and grades down from that to the places where the greatest space is required without a commensurate ability to earn large return.

(a) In great cities and great money centers the most

expensive land is the land which is used for the housing of the financial centers. In the city of New York, Wall street and the streets adjoining it, which are used for the office buildings of the financial centers of the country, are the most expensive land.

(b) After the financial center, the next in income-bearing value, and therefor in absolute value, is land used for high class retail business; and in places where there is no financial center that is the highest priced land.

(c) The third in value is high class residential property, property used for the mansions of people who can afford to pay high prices for fine and exclusive surroundings. They will pay almost as much for land which they desire to occupy as the owners of retail shops.

(d) The next in value is land used for hotels or high class residential apartments, and office buildings not in the financial center.

(e) Next in value is land which is in wholesale business districts. Often the highest priced land which is used for wholesale business is that which is nearest the retail shopping district.

(f) The next in value is land which is useful for ordinary tenement purposes, which takes in anything from the six-story apartment house in a reasonably good neighborhood to the flat or tenement of any character which can be constructed; and land which can be used for small residences, the latter being a little lower than land which may be used for apartments and tenements.

(g) Next in value is land which can be used for suburban or detached residences.

(h) Land which can be used for factory purposes.

(i) Farming lands.

(j) Lumber lands.

(k) Wild and unimproved tracts.

228. *General rules for determining land values.*—No absolute rule can be given for determining the land value of any specific piece. All that can be done is to give arbitrary rules to aid in determining the value, after the first important steps have been taken.

In valuing improved property, the land value should always be separated from the value of the land with the improvement on it and the land value as thus separated should be considered first. In so doing the first step is to determine the value of a typical lot, say 25 x 100, of the character under consideration. To determine this value the appraiser must have information of sales, in the neighborhood, of lots similarly situated and similarly used. He must take into consideration not only the present use of the lot, but its potential use. Often he must leave the present use out of consideration altogether.

With respect to the use or possible use of the property, the appraiser must consider its relation to transit facilities; even if it is right in the middle of the city, the transit facilities add to the land value, the value tapering off as the property leaves the lines of transit. He must consider the land with respect to nuisances and detriments to the neighborhood; especially is it necessary to look out for nuisances or undesirable occupations in a neighborhood where land is being valued for use for residential purposes. A school is not a nuisance in itself, but land immediately adjoining or opposite a school is not as valuable for living purposes as if the school were not there. If there are factories in the immediate neighborhood which employ large numbers of workmen who pass back and forth, that will detract from the value of the property, although the factory may be run in such manner as not to be a nuisance.

When a property is off the line of transit or out of the centers of population, the capacity of being reached by transit lines at some time in the future will affect its present value. For the same reason the appraiser must look at the permanence of desirable features of the neighborhood. He must consider the trend of population and of changes in business. It may be that a lot which is good for residential purposes may be more valuable after a while because the present residential purpose will be supplanted by an important business purpose, which may be tending toward the neighborhood, and that tendency will cast its influence before it.

The price actually paid for property is not necessarily a true criterion of its value, and in making valuations even though the appraiser knows prices in the neighborhood, he must bear that in mind. The true value is not what A paid for it or what B had to sell it for, but the nearest thing to the true value which may be called the ruling price, is what B would sell it for if he were willing to sell it but did not have to, and what A would give for it, if he were willing to buy it and did not have to. The true value may be very much higher than the ruling price, because A may have some knowledge of a special use to which the property may be put; and the value of land is not the use to which it can ordinarily be put, but the greatest use to which it can be put.

229. *Auction prices.*—Prices at foreclosure sales are entirely misleading. Unless it happens to be a particularly choice parcel and very attractive terms are offered, there is not usually public bidding at foreclosure sales. To begin with, the property is usually offered all cash. If a second mortgage is being foreclosed, and the property is offered subject to a prior mortgage, it is usually one which is due or about to be-

come due, and no definite terms of credit are offered. It is understood that the person to be foreclosed is not able to pay his debts, and there is not likely to be anybody there who will bid more than the plaintiff. Prices at partition sales may be nearer value, but they are not absolute either. Auction prices at a big sale are misleading, as people may be carried away by enthusiasm and men who need pieces of property in order to help out other lots may pay extravagant prices.

230. *Valuing short lots.*—Computations in real estate are based on a typical lot; for example, a lot twenty-five feet wide in front and rear by one hundred feet in depth, the side lines being at right angles to the street. If the appraiser knows the typical lot value, it is easy enough to say that a similar lot in the same neighborhood is worth the same money. But if the lot were only eighty feet deep, it would be a different proposition. Looking at it superficially, it might appear if the lot 25 x 100 were worth $10,000, a lot eighty feet deep would be worth four-fifths of that, or a $8,000; but an owner could not get $8,000 for an eighty-foot lot in a $10,000 neighborhood. The most important part of any lot is the frontage to the street, and the rear is the least valuable part; and in order to determine the value of the lot the appraiser must know what relation those two parts of the lot bear to each other. There is no absolute modern formula by which this can be ascertained, but it does not need an expert to see that a lot eighty feet deep cannot be put to many uses for which a hundred-foot lot can be used, nor that a hundred-foot lot can be used for purposes for which an eighty-foot lot would be absolutely useless. If it were a neighborhood of shops and loft buildings, it would not make so much difference if the lot were short, as if it were a neighborhood where

you had to have every foot of depth you could get in order to come within some arbitrary rule of the tenement house law. All this must be taken into consideration.

231. *The Hoffman rule.*—In attempting to determine the relation of the parts of a lot to each other and to the total value, people have, by a system of inductive reasoning established certain rules. The rule most frequently referred to in New York is known as the "Hoffman rule," compiled by Murray Hoffman, a corporation counsel for the city of New York, who acted for a time as commissioner in condemnation proceedings. He divides a typical lot into strips five feet wide across the lot, and then arbitrarily assigns values to each of those strips, premising that each part of those five-foot strips would be of equal value throughout.

THE HOFFMAN RULE.

A lot of ground	25 × 100 feet	$1,000	Aggregate Per cent.
" "	10 × 25 "	160	16
" "	15 × 25 "	235	23.50
" "	20 × 25 "	310	31
" "	25 × 25 "	375	37.50
" "	30 × 25 "	440	44
" "	35 × 25 "	500	50
" "	40 × 25 "	560	56
" "	45 × 25 "	615	61.50
" "	50 × 25 "	670	67
" "	55 × 25 "	715	71.50
" "	60 × 25 "	760	76.
" "	65 × 25 "	800	80
" "	70 × 25 "	840	84
" "	75 × 25 "	875	87.50
" "	80 × 25 "	910	91
" "	85 × 25 "	935	93.50
" "	90 × 25 "	960	96
" "	95 × 25 "	980	98
" "	100 × 25 "	1,000	100

232. *The Rule of William E. Davies.*—Recently William E. Davies, a New York real estate broker of experience in New York city, worked out and published a rule agreeing in many particulars with the Hoffman

rule, and better in some respects, because it ascribes a value to each foot in the lot, instead of assuming that every foot of each five-foot slice is of the same value. He has also made allowance for a modern condition which did not exist when Mr. Hoffman's table was made; that is the added worth of the land back of a line one hundred feet from the street, which has arisen by reason of modern conditions. Mr. Davies has allowed for the fact that a lot may now be two hundred feet deep, and the land all the way back may be worth money.

DAVIES RULE.

TABLE, BASED ON THE FOLLOWING FORMULA, FOR ESTIMATING THE VALUE OF STRIPS OF LOT 25 × 200.

$$Y = \sqrt{1.45\ (X + .0352)} - .226$$

NOTE.—This equation of the parabola is not arbitrary, but deduced from the mean of thousands of actual sales.

Depth	Ratio	Depth	Ratio	Depth	Ratio	Depth	Ratio
1	.030	51	.662	101	1.006	151	1.267
2	.057	52	.670	102	1.012	152	1.272
3	.082	53	.678	103	1.018	153	1.277
4	.105	54	.686	104	1.024	154	1.282
5	.126	55	.694	105	1.030	155	1.287
6	.146	56	.702	106	1.036	156	1.292
7	.165	57	.710	107	1.042	157	1.297
8	.183	58	.718	108	1.048	158	1.302
9	.200	59	.726	109	1.054	159	1.307
10	.217	60	.734	110	1.060	160	1.312
11	.233	61	.742	111	1.066	161	1.317
12	.248	62	.750	112	1.072	162	1.322
13	.263	63	.757	113	1.077	163	1.327
14	.278	64	.764	114	1.082	164	1.332
15	.292	65	.771	115	1.087	165	1.337
16	.306	66	.778	116	1.092	166	1.342
17	.319	67	.785	117	1.097	167	1.347
18	.332	68	.792	118	1.102	168	1.352
19	.345	69	.799	119	1.107	169	1.357
20	.358	70	.806	120	1.112	170	1.362
21	.370	71	.813	121	1.117	171	1.367
22	.382	72	.820	122	1.122	172	1.372
23	.394	73	.827	123	1.127	173	1.377
24	.406	74	.834	124	1.132	174	1.382
25	.417	75	.841	125	1.137	175	1.387
26	.428	76	.848	126	1.142	176	1.392
27	.439	77	.855	127	1.147	177	1.397
28	.450	78	.862	128	1.152	178	1.402
29	.461	79	.869	129	1.157	179	1.407
30	.471	80	.876	130	1.162	180	1.412
31	.481	81	.883	131	1.167	181	1.416

Depth	Ratio	Depth	Ratio	Depth	Ratio	Depth	Ratio
32	.491	82	.890	132	1.172	182	1.420
33	.501	83	.897	133	1.177	183	1.424
34	.511	84	.904	134	1.182	184	1.428
35	.521	85	.910	135	1.187	185	1.432
36	.531	86	.916	136	1.192	186	1.436
37	.541	87	.922	137	1.197	187	1.440
38	.550	88	.928	138	1.202	188	1.444
39	.559	89	.934	139	1.207	189	1.448
40	.568	90	.940	140	1.212	190	1.452
41	.577	91	.946	141	1.217	191	1.456
42	.586	92	.952	142	1.222	192	1.460
43	.595	93	.958	143	1.227	193	1.464
44	.604	94	.964	144	1.232	194	1.468
45	.613	95	.970	145	1.237	195	1.472
46	.622	96	.976	146	1.242	196	1.476
47	.630	97	.982	147	1.247	197	1.480
48	.638	98	.988	148	1.252	198	1.484
49	.646	99	.994	149	1.257	199	1.488
50	.654	100	1.000	150	1.262	200	1.492

EXAMPLE.—To find the value of lot 110 feet deep, if standard lot worth $75,000, multiply 75,000 by 1.06 = $79,500.

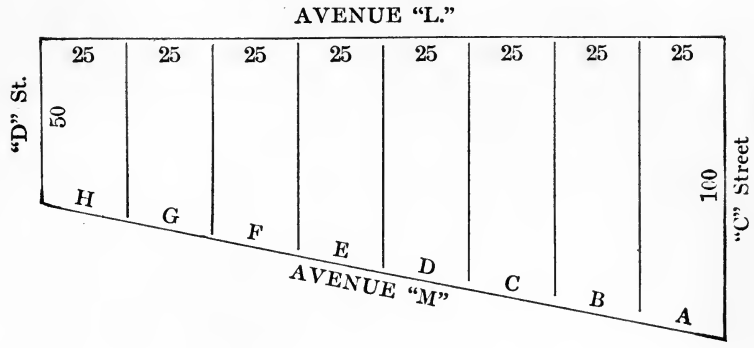
For depths with parts of foot or more than 200 feet, or where greater accuracy is desired than three places of decimals, use the formula in which Y = the proportion of value of lot in question to value of standard lot, and X = the proportion of depth of lot in question to depth of standard lot.

233. *Valuing lots more or less than a typical lot width.*—We come now to another problem. All lots are not twenty-five feet wide, and all improvements are not capable of being put upon a twenty-five-foot lot. The lot under consideration may be more or less than twenty-five feet wide. If an owner is offering less than a typical lot in the neighborhood, he will find that he will not get quite the same proportion for it as the width bears to twenty-five feet. If it is a private house street and if he offers so much for sale as is useful for a private house of the character which the neighborhood will bear, he will get nearly the proper proportion of the lot value; but if he offer less than that, he will be told that it is too small to do anything with unless the next lot is bought. Rentable space is always rentable, but if a lot is too small for the purpose of improvement, the owner cannot get as much for it proportionally as for a lot that is a little too large. There is no absolute rule for figur-

ing the ratio of a lot to the typical lot with regard to width; that must be governed by the judgment of the parties concerned, and the advice of their appraisers. If a lot be irregular, that is another problem. It is usual to take the average of the two lines, and say that that is the depth of the lot. But if the irregularity of shape make the property difficult to improve, that would not be reasonable. Very large allowances would have to be made for difficulty of construction, and lack of income after the improvements have been made.

234. *Plottage.*—Where more than one lot can be adequately and economically improved to better advantage proportionately than can a single lot treated alone, it is self-evident that the putting together of the two lots into a plot adds immediately to the value of each of the lots concerned. It has added to each lot an element known as "plottage." In sparsely settled neighborhoods, and where vacant lots are plentiful and cheap, and it is an easy matter for builders to obtain adjoining plots, plottage is not as valuable as in a neighborhood where vacant lots or lots with old buildings are scarce. In the former case the additional value, by reason of plottage, may be 10 per cent, whereas, in the latter case, it may amount to 25 per cent or even more. If a person has two lots which were each, when separate, worth $1,000, and he put them together, as soon as he has done so he has more than $2,000 worth: if plottage be figured at 10 per cent, he now has $2,200 worth.

235. *Illustration of method of appraising property.*—The lot illustrated in the diagram is an irregular plot containing fifteen thousand square feet. It is obvious that it would be absurd to value this as though it were a regular plot. Assume that the plot is situated on a



more or less important thoroughfare, and is suitable for improvement with a building having stores on the ground floor, and good apartments above, and assume that an ordinary, inside lot in the vicinity is worth $25,000.

For the purpose of valuation the plot is divided into lots each twenty-five feet front, varying in depth from fifty to one hundred feet. Lot A, being a corner, would be worth 50 per cent more than the inside lots, or $25,000 plus $12,500—$37,500. Unless there be some good reason to the contrary, it is usual to value corner lots at 50 per cent more than inside lots. This lot has an average depth of ninety-six and one-half feet, and is a double corner; it is the corner of L avenue and C street, and also of M avenue and C street. On the first count, applying the Hoffman rule, it is worth 98 per cent of a full lot, or $36,750. On the second count something must be added for the extra corner. Extra frontage is considered as adding 25 per cent to the value of the lot. In this case it is fair to add 33-1-3 per cent—$12,250, which gives a value of $49,000 for that corner lot.

Lot B has an average depth of ninety feet. Again using the Hoffman rule, 96 per cent of $25,000, is $24,000, plus 25 per cent for the extra frontage or

$6,000, makes B worth $30,000. The same theory holds good right through the line. Then to the whole plot it is safe to add 10 per cent for plottage, which works out a valuation of $270,000. This is at the rate of $18.00 a square foot for the entire plot, as against a lot basis value of $10.00 a square foot.

236. *Valuation of improved property.*—In making a valuation of improved property the appraiser should always separate the land value from the value of the land with the improvement, but should not try to separate the value of the improvement from the value of the land because there may be a very expensive building on a very poor lot, and the expensive building would not be worth the cost of construction and, in such a case, if the cost of construction and the land value be figured separately the appraiser's estimate will be too high on that building. He must figure the lot and the improvement according to the income which can be obtained out of the lot and the improvement as it stands, allowing for the lot value, what the lot will bring when adequately improved, allowing for the building what it would cost to reconstruct it—if it is an adequate and permanent improvement upon the land.

An adequate improvement put upon a lot is worth the cost of construction so long as the lot value has not risen beyond the place where the improvement is appropriate and adequate, and the best thing that can be done with the lot. The rule is that the land value increases by reason of the better use which can be made of the land; and therefore old buildings are incapable of competing with those which will bring greater income in the neighborhood. For that reason a time may come when the land value rises so high that the value of the construction disappears entirely, and there are lots in

old and superannuated neighborhoods where the land value has gone up so that the buildings, for the neighborhood, will not bring adequate rentals, and will not sell for more than vacant lots.

237. *Cost of buildings.*—The usual method of ascertaining the cost of a building is by taking the cubic contents of the building, and then figuring the cost per cubic foot of a typical building of similar character. That cost will of necessity rise or fall, with the rise or fall in the cost of building material, and of labor. In New York city appraisers in figuring cost, after allowing for depreciation or superannuation, say a non-fire-proof loft building, which is really a shell of walls without interior decoration, costs about 10 cents a cubic foot. They figure tenement houses, put up in the manner that a speculative builder puts them up, at about 12 or 15 cents, frame dwellings at about 15 cents, steam-heated apartments (walk-up, without elevators), at 16 to 20 cents, elevator apartments non-fire-proof at about 20 to 25 cents, elevator apartments of the speculative order about 30 to 35 cents, hotel buildings about 35 to 50 cents, fire-proof loft buildings about 25 to 30 cents, office buildings about 45 to 50 cents as high as $1.00 a cubic foot.

The object of the ownership of land is to derive income, so that the way to check a valuation is to compare it with the actual income from the property. If the property be properly and adequately improved, it will bring in a proper return on the investment; and appraisers after having tried other methods will check back their appraisals by comparing the rentals with their estimate of the value.

238. *Property taken in condemnation proceedings.*—As already explained there has always been attached to

the ownership of land the incident that whenever it was required for a public purpose it could be taken for that purpose under the right of eminent domain. It might be that under the public power of eminent domain property could be claimed by the public and applied to the public use, but under a free government we have given one another constitutional guarantee that when real property is required for a public purpose, it may be taken, but it must be upon due process of law, and upon the giving of just compensation. Due process of law involves not only notice but a just trial, and that such a trial shall result in the giving of just compensation for the right of property of which the owner has been deprived.

When we say that property may be taken for a public purpose, we use the word "public" in its very widest acceptation. We mean not only for the uses of the United States government, but for the uses of a state or a county, city or village upon which has been conferred the right to take property by eminent domain for public purposes. The words "public purpose" are wider yet. It is a public purpose if the needs of the public be served in a matter which individual effort could not accomplish without the aid of governmental intervention. If it is necessary that the public shall be able to travel by road or railroad, or to communicate with one another by telegraph or telephone, the rights which are necessary to be exercised over real property for construction of such a road or railroad, or telegraph or telephone lines are a public purpose, and may be obtained under the right of eminent domain. So, wherever a public purpose is to be served, the public confers its right of eminent domain upon its public

service corporations, and the use of property for those purposes is a public use.

When corporations take property under the right of eminent domain, they may take so much as is necessary for their public purpose, and no more. They cannot say they want a house, without showing why they need it. The power to take property under eminent domain or by condemnation is a legal proceeding in which two issues are tried, first, the issue of the necessity for taking the property; and, second, if that be decided in favor of the corporation or authority desiring to take, the issue as to what compensation shall be given.

As to the necessity for taking, it may be declared by legislature, and if so there is no absolute issue to try. The people may delegate that authority to their agencies of government, municipal corporations, counties, cities, villages, towns. They cannot delegate that authority to private corporations, even though those corporations be clothed with the right of eminent domain. A corporation other than a direct governmental agency seeking to take property must show, if the issue be raised, the necessity for taking. If that necessity be decided in favor of the corporation, then it must proceed to try the issue of what the property is worth. Values of real property are never absolute, and it often becomes a battle of experts. The public authority will offer through its expert evidence as to the value of the property to be taken, and the owner of the property will offer the evidence of his expert. They may differ very widely. The proceeding may be before a court, or it may be referred by the court to a commission appointed for the purpose of determining the issue.

239. *Expert appraising.*—The business of experts

who make it their work to make appraisals and defend them upon examination and cross-examination in condemnation proceedings is the highest paid, and in many respects the most difficult branch of the real estate business. It is difficult to lay down any rules as to how to testify as an expert in a condemnation proceeding. The following suggestions have been given by a successful New York real estate expert appraiser.

240. *Specialization in appraising.*—First, and most important, the expert must know his subject. He must be able to appraise the real estate taken in the proceeding in which he is employed, and he must be able to prove the values. It is a very difficult thing for a layman to go on the stand and by simply answering the questions which are put to him convey the information and knowledge which he has.

The best witnesses are those who confine themselves to one particular section of a city or one character of real estate. If a man, in his mind's eye, can see the surroundings of a piece of property, not only the very block, but the district for a mile in every direction, and can call to mind almost automatically the character of the buildings, recent changes, contemplated improvements, recent sales, leases and mortgages, and their true consideration, the inside history of the transactions, his testimony carries a great deal more weight and conviction than the answers of a witness who makes mistakes of fact.

241. *Methods of proving values before commissioner.*—The simplest and most effective way to prove the value of a conventional piece of property is by quoting sales of similar pieces in the immediate vicinity or similar locations. This is not always possible for various reasons. First, there may not have been any recent

sales analogous to the plot in question; or, second, the sales may have been at a figure below or above actual value, by reason of special conditions. Lack of sales in some neighborhoods does not necessarily mean that there is no demand for property there, but may mean merely that there is no property in the market for sale.

In some cases, where figures do not represent actual values, the expert must fall back on his general knowledge, and if in his qualification he has shown that he is thoroughly familiar with the neighborhood, his general knowledge will carry weight. A good deal of the value of the testimony of an expert is in the effect that it has on the commission, more than from what actually appears on the record.

Frequently a witness is asked in cross-examination if he knows of such and such a sale at possibly a wide diversity in price from that which he quoted as his basis of value. Then again his familiarity with the section stands him in good stead. He must know the why's and wherefore's of the sale; if improved, what kind of buildings are erected thereon. It may be that it is a superior improvement, or it may be inferior, or it may be that while the building is a good one, it is not a proper improvement for the land. If the property is vacant there may be a host of reasons why the price is above or below the one he has quoted. There may be rock or bad bottom or vice versa as compared to the plot in question, or it may be a small lot between two substantial buildings, the owners of neither of which care to buy, and which lot by itself is too small for an adequate and proper improvement.

242. *Valuing irregular and short lots.*—One of the most important things with which an expert should be familiar is the valuing of small lots less than one hun-

dred feet in depth, and those of irregular shape. Many real estate men differ as to the values of irregular lots, easements, plottage and added value for improvement. No fixed rule as to the handling of these subjects should be made, but it is advisable to work out a theory and stick to it. The use of the Hoffman and Davies rules must be intelligently applied, or they will prove to be valueless. A rule may work smoothly in one case, and work against a person in another, where it is not applicable. A double frontage may add very little to a certain class of private dwelling but may be of immense advantage to a certain kind of office building or high-class apartment house. It is safe to limit a general rule to specific cases, as a theory that at the time the testimony is given seemed to be true for all cases, may react against a person in some widely diverse case, where it is not applicable.

243. *Suggestions for the expert on the stand.*—As a general rule, it is well to avoid on the stand the valuing of property off hand on a different theory from the one adopted. Depend on notes, especially for figures, as far as possible, thus keeping the mind clear and wits sharp to parry apparently innocent questions. Frequently a question must be answered by "yes" or "no," and qualification or explanation of the answer may not be allowed. If possible, get the explanation in first, before the "yes" or "no;" then, even if it is struck from the records, its effect will remain.

The larger general knowledge of real estate an expert has, the more valuable witness he is, all other things being equal. Everyone whose property is taken for a public purpose is entitled to receive a fair and equitable compensation, and its fair market value. It is distinctly part of the duty of the expert to value the real estate

thus condemned under its most favorable circumstances, i. e., he must know what are its most valuable uses, its most advantageous methods of subdivision and all its favorable aspects; and be able to bring these out in the answers to direct questions. This method can only be successful after long experience, with good judgment, and knowledge of the methods of cross-examination. A good working knowledge of the rules of evidence is a very valuable adjunct to the witness.

The simpler and more direct a witness can make his direct testimony, the less likely it is to be shaken on cross-examination. Most condemnation lawyers understand this, and ask only the most necessary questions in the examination.

In appraising vacant ground care must be taken to examine the physical aspects very carefully and compare with the damage map. The expert should study the grade, the abutting property, the condition of surrounding streets, and the status of the assessment. If there is rock on the property and the bottom is bad, he must find out the cost of putting the property in shape for building. It is convenient to value land as at grade, and then make such additions or deductions as may be necessary by reason of existing conditions. In considering all these conditions the appraiser should be able to explain their effect on the final estimate of value. Nothing he has left unsaid is taken for granted, and if some feature beneficial to his side of the case is not brought out by the questions while under cross-examination, it is his duty to try to bring it out. The expert witness should call things by their right names. He must know the difference between a street laid out on a map, one that is graded and regulated, and one that is paved and sewered. A common error is confounding open

streets with those that are not only opened, but regulated and sewered. A street is legally open whenever title for the same is vested in the city, and is not necessarily one over which access is possible, as in the case of a graded and regulated street.

244. *Knowledge useful to the expert.*—If an expert has some knowledge of the building business, so much the better, but lack of such technical knowledge does not prevent his being able to value simple buildings in connection with land. Every real estate man knows the cost of the standard type of building most commonly erected, and can tell, after inspection of such a building, very close to what it can be built for, although he may not know the price of lime, brick, etc. An expert must also have some knowledge of the existing building laws, and keep himself in touch with the amendments to these laws.

245. *Valuing parts of property, easements, etc.*—Where the entire fee is taken in a proceeding, and nothing remains, the case is simpler than one in which only a part is taken, or none of the land or improvements, but only some inherent right, as light, or air, or access in whole or in part. In these cases there usually enters an element of consequential damage.

If an easement over land be taken, as a right of way for a railroad or a right to tunnel under land or to put telephone or telegraph poles in front of a house, it is difficult to find a rule, but one rule that must always be observed is that there shall be at least compensation for that which is taken away. If a man own two lots, one of which is taken in a condemnation proceeding, the benefit which accrues to one lot cannot be offset against the damage to the other. It is a rule of law

that benefits may not be offset against damages for condemnation.

It is also true that, in addition to the absolute value of that which is taken, the owner is entitled also to consequential damage. Consequential damage is damage to the remainder of a plot, part of which is taken, in addition to the actual value of the land taken. In some instances, where only a part of the land is taken, the remainder may be of so little substantial value, that the damage may be considered as total, but where a part of a plot is taken, and the remainder has intrinsic value, the approved method of appraising is to value the whole piece in its entirety, then value the part that remains, and the difference between these two will represent the damage. Damage to a piece of property by taking away an easement, such as light, air or access, may be computed in the same way. The element of consequential damage may be very important, as the erection of a structure in front of a property may change the character of a neighborhood, and the plot which may have been suited for a high-class apartment or hotel, may become fit only for a stable or a factory.

CHAPTER XV

THE SURVEYOR'S RELATION TO REAL ESTATE

246. *Necessity for accurate survey.*—When dealing with land as the subject of commercial transactions or as an article of use it is important that the extent of the land be ascertained with minute accuracy, as well as the relation to the land of the structures upon it and surrounding it. This is the subject of a separate profession—the profession of the surveyor. A surveyor has nothing to do with the question as to whether the title be good or bad, and it is an assumption on his part when he attempts to give his opinion as to marketability of title.

247. *The survey.*—Having been provided with a description of the property concerning which he is employed, the surveyor makes his return upon a diagram. These diagrams are horizontal projections of all structures and encroachments that are found upon or bounding the premises. There are two elements to be taken into consideration in determining the result of a survey, first, the property owned by the person whose land is being surveyed; and, second, the relation of the structures and encroachments to the land thus owned. Having in mind the extent of ownership of the person whose land is being surveyed, the first and most important thing to consider, is, are the structures entirely within the bounds? Every time they are not, an important question of marketability of title arises, and in order to solve the question of marketability of title, a person

must be familiar with the principles of law applicable to the situation.

248. *Encroachment upon highway, etc.*—An important consideration always is not only to find out whether the building encroaches upon a neighbor's land, but whether it keeps off the public highway. The public streets of cities are often owned in fee by the city, but charged with the public use. In country communities they may be owned in fee by public authorities, or the public authorities may have acquired, on behalf of the public, an easement to use the highway for travel, the title to the land remaining in the original owners or their grantees or successors in title. In either case, except with the authority of the legislature, no person has a right to obstruct the highway, especially with a permanent structure, and appropriate it to his own use. The fact that a person may be liable to pay damage for an encroachment, or the fact that he is liable to have his building removed from a neighbor's ground, makes his property not as useful as it would otherwise be; and may make it a different thing essentially and commercially from what it was represented to be when the contract was made. A purchaser is not compelled to take a title unless he gets upon the property those structures which were the subject-matter of his bargain, with a good right to maintain them.

249. *Beam rights and party walls.*—If a building has three walls and a good beam right in an adjoining wall to maintain the fourth, that three-walled structure would be a good delivery, and a marketable title. In the same manner if a house is supported by party walls, and a person purchased the building with a good party wall right, it is a good delivery and the title is marketable with respect to that. It need not be specifically

set forth in the contract, but it is usual to be fair and mention it.

A good party wall right may arise either by special agreement between the owners of the two neighboring structures, or because the builder of the houses described his line as running through a party wall. A party wall must remain so long as it will naturally stand and either party wishes it to remain for support of his structure. If it be destroyed by natural means, unless there be special agreement to that effect, neither party has a right to have it restored. If one owner remove his building he must leave the entire wall for the support of the remaining building; and if he wants to put a new structure on his land, he must either incorporate it or build around the party wall.

250. *Encroachment by neighbor.*—A building may be entirely within its bounds and somebody else may be encroaching with his structure upon it. In such a case the title to what remains unencroached upon is not affected by the fact that another wall comes over upon the lot. When considering a survey where property is encroached upon, the question is not so much a question of marketability of title, as it then becomes a commercial question, and the courts will so consider it. If the court finds that the encroachment by the neighbor's structure does not materially diminish the property purchased, so as to make it substantially different in value from the subject of negotiation, the purchaser will be compelled to take. If the court does find that it is substantially different, the purchaser will not be compelled to take, or will be given an allowance for the difference in area, depending upon the facts of the case.

251. *What a survey should show.*—In rural communities or residential streets of cities, it is often important

that houses shall set back from the street lines, and that there shall be restrictions as to the character of the encroachments. The information to determine these things should be upon the survey.

In cities there are various encroachments upon public streets which are not clearly authorized, such as bay-windows, porches and porticos, and a survey should show all encroachments of this character.

Another important subject which should be shown by a survey is the relation of the premises with regard to street changes. Village communities are laid out either by selling lots along a road or street or having a map made by a surveyor who simply takes a field and cuts it up into such number of lots as seems to him advisable. He seldom locates his streets accurately, or monuments them in any way. As a city grows, it takes in these village communities, and imposes its accurate street system upon these inaccurate street and lot lines, and it is important that a survey should show the relation of the present or projected street system to the former lay-out of the lots and streets.

252. *A modern sub-division survey.*—In making a survey of a tract to be subdivided the surveyor gives the meridian to which he refers his line, and the distances of the salient corners of the property from a definite assumed point. He locates a definite street, or road and the perimeter of his tract; then he is prepared to cut it up. There is not only a definite piece of land to be cut up and shown in its divisions, but the places from which to measure in order to find any subdivision of any piece of land are shown and can be identified on the ground by monuments.

253. *Builder's surveys.*—Another important function of surveyors is to furnish to persons intending to erect

structures, information as to how and where to locate those structures. A person may own a lot, and think he knows just where it is, but if he were directed to put a wall around the perimeter of that lot, he might not be able to pace it off. It is the duty of a surveyor to make marks on the ground indicating where structures may be put with relation to the ownership of which he has been informed, and also indicating the perimeter of the lot. He furnishes a diagram showing where those marks are, and gives information as to where the highest point in the curb is opposite the property, and also gives the grade. Very often the entire lay-out of the building is importantly influenced by the depth of sewer level. Having a proper survey an owner can do two things: he can instruct the architect what kind of building he wants; and can send the builder there to strain his line from the marks on the curb to the back of the lot, and start his foundation work.

It is not wise to assume when negotiating for a building operation, that having gotten a building mark from a surveyor, that is the end of the survey. After the builder has put in his foundation, it is the part of prudence to call the surveyor in again and test the lines before starting the brick work.

CHAPTER XVI

WORK OF THE ARCHITECT

254. *Architect's relation to real estate.*—The architect's work touches the real estate business at many points. Some of these are as follows:

While negotiating for a sale, a broker frequently consults an architect in order to obtain from him the approximate cost of a prospective improvement. The value of the property as an investment is largely dependent upon the solution which the architect makes of the problem, and not necessarily upon the cost of the structure itself. The responsibility for determining the type of building to be put upon the lot rests with the real estate man. The architect does not claim to be a specialist in what may rent best in a particular locality; all he claims to be able to do is to take the real estate man's advice upon such matters, and to apply that advice to the solution of the particular problem.

255. *Preliminary rough sketch.*—It is frequently necessary and often desirable, before purchasing a piece of property for the purpose of building, to secure from an architect a rough sketch of what may be placed upon it. Some problems are so simple that they solve themselves, but with the many complications of tenement house laws and sanitary codes, it is the cautious way to obtain such sketches from an architect. These differ radically from the sketches an architect would make for the construction of a building. They show

a typical floor, to demonstrate how many rooms can be gotten out of the space available, what space they would occupy, and how they would be lighted; and from that the real estate man is able to figure out the rentals, and the approximate cost.

A matter which the architect finds very important to determine is the possibility of the light being shut off. Surveys usually show the height of the adjoining buildings, and their relation to the lines of the property, and having these data an architect can determine with reasonable certainty what the light is likely to be in a particular house.

256. *Architect's opinion as to cost of construction.*—After the rough sketch is made, the broker asks the architect what the contemplated building would cost, and the architect gives his opinion. That opinion is not as definite as the real estate man usually takes it to be. Many people have an idea that the architect must be familiar with the building trade, and able to tell within a few hundred dollars, what a building should cost. That is absolutely impossible for an architect, because the building market is changing continually; and the cost can only be approximated on the basis of things which have been done of a similar character. The courts have decided in this country that the architect is not bound to the estimate unless there is a specific order to that effect before he begins. In the English courts it has been decided that an architect does his duty if he comes within 15 per cent of his instructions.

257. *Working drawings.*—These drawings contain a great deal of construction information, as to the thickness of walls, size of doors, etc. From these drawings, with the aid of specifications, the contractors take off accurate quantities, and figure out the cost of the build-

ing. In obtaining estimates, it is astounding to learn the extent to which they vary. The only explanation is that one contractor gets his sub-bids from men who are busy, and the next contractor gets his from men who have more time. One man may agree to put up a building for $10,000, and another man may ask $20,000 for the same building.

258. *Matters about which the architect should be informed.*—A matter which affects tenements and apartments is the grade of the street. There are a number of city streets where the city ordinances may differ with regard to projections; the questions of easements, electricity, steam heat, the kind of foundation, whether or not there are party walls—all are matters about which the architect must consult the real estate man.

259. *Survey furnished to the architect.*—The first thing an architect asks for, before he makes his working drawings, is a survey of the lot. The surveys in the real estate office are different from those furnished to the architect: the architect gets a different type of information. He not only wants the size of the building and the lot, and the size of the adjoining buildings, but he requires the height of the adjoining building, the building line, depth of sewer below the street and the pitch of the curb. After the lot has been thus surveyed, the surveyor puts upon the adjoining walls or stakes, marks corresponding to those indicated upon his survey, upon which the levels are started top and bottom. It is of great importance that the first measurement be absolutely true.

260. *Walls which lean.*—It is frequently necessary to find out if the adjoining walls lean. Unfortunately, very few walls are plumb, and it is a great annoyance in building a steel frame building to find that the wall

of a neighbor projects over at the top, although it may be on line at the bottom.

Another important thing to know is the depth of a neighbor's wall, as under existing laws the burden of protecting the wall may cause considerable expense.

261. *Choice of an architect.*—The first man consulted in a building operation is the architect: he comes into the operation first, and is the last man to get out. In private work the architect is selected by direct appointment; in large or public works, by competition. There are competitions of various kinds: the public competition, where anybody may submit a set of drawings; the limited competition, to which certain men are invited, and which others may enter if they want to do so; and the invited competition, in which every man is paid for his services.

After the selection, the architect proceeds to make the sketches already described. There may be an agreement that if, for instance, the property be not sold, that the architect shall not be paid for these sketches; but under ordinary circumstances, he expects to be paid for them. After they are approved, the architect is instructed to make his working drawings. If he proceed with that work, and then the owner comes back and makes radical changes, the architect has a right to charge for that extra service. It is the architect's duty to make as many of the small sketches as necessary, but when the scheme is determined upon, and he begins his working drawings, the owner is committed to that scheme. The architect's charge is usually 5 per cent upon the cost of a new building. His services include—to quote from *Schedule of Proper Minimum Charges* indorsed by the American Institute of Architects:—

1. The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large scale and full size detail drawings, and of the general direction and supervision of the work, for which, except as hereinafter mentioned, the minimum charge based upon the total cost* of the work complete, is six per cent.

2. On residential work, alterations to existing buildings, monuments, furniture, decorative and cabinet work and landscape architecture, it is proper to make a higher charge than above indicated.

3. The Architect is entitled to compensation for articles purchased under his direction, even though not designed by him.

4. If an operation is conducted under separate contracts, rather than under a general contract, it is proper to charge a special fee in addition to the charges mentioned elsewhere in this schedule.

5. Where the Architect is not otherwise retained, consultation fees for professional advice are to be paid in proportion to the importance of the question involved and services rendered.

6. Where heating, ventilating, mechanical, structural, electrical and sanitary problems are of such a nature as to require the services of a specialist, the Owner is to pay for such services. Chemical and mechanical tests and surveys, when required, are to be paid for by the Owner.

7. Necessary traveling expenses are to be paid by the Owner.

8. If, after a definite scheme has been approved, changes in drawings, specifications or other documents are required by the

*The total cost is to be interpreted as the cost of all materials and labor necessary to complete the work, plus contractors' profits and expenses, as such cost would be if all materials were new and all labor fully paid, at market prices current when the work was ordered.

Owner; or if the Architect be put to extra labor or expense by the delinquency or insolvency of a contractor, the Architect shall be paid for such additional services and expense.

9. Payments to the Architect are due as his work progresses in the following order: Upon completion of the preliminary studies, one-fifth of the entire fee; upon completion of specifications and general working drawings (exclusive of details), two-fifths additional, the remainder being due from time to time in proportion to the amount of service rendered. Until an actual estimate is received, charges are based upon the proposed cost of the work and payments received are on account of the entire fee.

10. In case of the abandonment or suspension of the work, the basis of settlement is to be as follows: For preliminary studies, a fee in accordance with the character and magnitude of the work; for preliminary studies, specifications and general working drawings (exclusive of details), three-fifths of the fee for complete services.

11. The supervision of an Architect (as distinguished from the continuous personal superintendence which may be secured by the employment of a clerk of the works or superintendent of construction) means such inspection by the Architect or his deputy of work in studios and shops or a building or other work in process of erection, completion or alteration, as he finds necessary to ascertain whether it is being executed in general conformity with his drawings and specifications or directions. He has authority to reject any part of the work which does not so conform and to order its removal and reconstruction. He has authority to act in emergencies that may arise in the course of construction, to order necessary changes, and to define the intent and meaning of the drawings and specifications. On

operations where a clerk of the works or superintendent of construction is required, the Architect shall employ such assistance at the Owner's expense.

12. Drawings and specifications, as instruments of service, are the property of the Architect.

262. *Superintendence.*—Superintendence by the architect does not require his presence on the work continually. The average architect, with moderate practice, will visit the work once or twice a week, but the number of times would entirely be determined by the progress of the work, and whether things were going smoothly. In larger pieces of work, it is necessary to have a clerk of the work, who is in charge all the time, and represents the architect. He is paid for by the owner, but reports daily to the architect's office.

263. *Charge for small work, etc.*—The architect's charge is different on smaller works which include the drawing of a large number of details, such as the designing of elaborate monumental works. Some architects make a practice of charging 8 per cent for new work that costs under $5,000, because it is difficult to make it pay at 5 per cent; for monumental work 10 per cent; and for work involving alterations 10 or 12 per cent. The prices quoted are those of the best practice; they have been adopted by the Institute of Architects; and have been recognized by the courts as right and proper. There are a great many architects who charge less than these figures.

264. *Specifications.*—After the working drawings are made, the specifications are prepared, in which the trades are divided up, mason work, carpenter work, steel and iron, plumbing, electric work, steam fitting, etc.

265. *Permits.*—Contractors who are invited to send in estimates on the proposed work are provided with a

copy of the drawings and specifications. While that is going on, the architect usually obtains the various permits which are necessary from the different municipal departments. After the permits are obtained, the next step is the selection of a contractor, by the owner, naturally, in consultation with the architect. The contract is usually what is known as the "Uniform Contract," which has been adopted by the Institute of Architects, and is amended from year to year.

266. *Detail plans.*—After the contract is made the architect begins to make his other working drawings. He then makes the framing plans, i. e., the details of the steel, which are sent to the mill, and from which the steel sections are gotten out, the details of door trim, doors, cornices, woodwork, terra cotta, galvanized iron, etc. That work proceeds practically during the construction of the building.

267. *Expert service.*—The architect frequently finds it necessary, in addition to the services spoken of, to provide expert service. That does not apply to ordinary work, but in the building of large hotels or public buildings. For instance, the science of electricity may have gone beyond the knowledge of the average architect, and he must retain a consulting engineer, the architect, however, retaining the control. The system of paying these experts is not definitely determined. The architects of larger practice who are able to dictate their terms have their clients pay for this additional service. In a large number of cases, the architect divides the commission on that particular part of the work with the expert. It is also sometimes necessary to have a sanitary engineer, who is compensated in the same way.

268. *Various kinds of contracts.*—Upon the basis of the uniform contract, contracts of various kinds are

made. The sort of contract entered into by the builders with the largest business and the best reputations is that based upon the cost plus a definite profit, usually 10 per cent. As a rule these contracts are only entered into by men of considerable means, who can afford to be placed in a position before going ahead with a building, where they are not exactly informed as to the cost. There is also the contract based on the cost plus percentage, but upon which the contractor gives a guarantee that the building will not cost over a specified amount. In most of these contracts the builder will submit his bill to the architect once a month or once in two months; that will be audited, and he will get the amount thus audited, plus 10 per cent.

269. *Subdividing contracts.*—The contracts on the 10 per cent basis are nearly all general contracts. In this country it is a rather rare thing, except in the case of very large construction companies, for the owner to employ directly those who do the work of the various sub-trades. The other system is that of dividing the work into four or five contracts, and it is probably the form used in the largest number of medium-sized operations. The divisions generally made are: mason work, carpenter work, plumbing, heating, electricity, and iron and steel. In that way the owner saves the profit which the general contractor would make upon each of those trades, if they were put into one contract. Even in this subdivision one class of work may include various sub-trades; for instance, masonry may include plastering, concrete, tiling, etc.

270. *Drawing and signing of plans and specifications.*—An important clause in the uniform contract is that which provides that the drawings and specifications be signed by the parties to the contract. This sometimes

seems unnecessary, but it is frequently of great importance, as it establishes beyond a doubt that they are the particular drawings which are called for. Sometimes there may be two sets of drawings for a specific lot, and the question will arise, which was the set intended to be included in the contract; consequently, the signatures are most important. The care with which the plans and specifications are drawn is also of great importance. The general clause of the specification, in particular, if properly written, will prevent many of those extra orders, which are so much trouble to owners.

271. *Extras.*—The system provided in most carefully drawn contracts is that when extra work is required the contractor shall submit an estimate for that extra work, and receive a written order from the architect. It is advisable that the owner or his attorney sign the order also, so that they may know that they are spending an extra amount. Such matters are more easily settled when the work is going on than when it is finished.

272. *Method of paying contracts.*—The method of payment of the contracts is sometimes by payment of a certain amount when a certain percentage of the work is done. That is the system in a great many contracts of the 10 per cent type, but it is apt to lead to a great deal of unnecessary controversy. The better way is to make a certain definite amount of money due when certain definite things are done, that payment being usually on the basis of 70 to 90 per cent of the value of that work, the balance being left for the last payment, so that the owner may be able to protect himself.

273. *Architect's decision impartial.*—The architect's position, in deciding upon these payments and all mat-

ters in relation to the interpretation of the plans and specifications, is supposed to be impartial. There is a belief that the architect is bound to decide with the owner, because he receives his fee from him, but that is not the position in which the architect considers himself. He considers that he should be an impartial judge; and that the owner employs him to act as his agent because he has technical knowledge, and is able to conduct the business of building better than he is.

In large undertakings an important part of the business of building is the conferences between all the people interested in the work. If one man does not do his work on time, the whole line is inconvenienced, so it is important that everybody be thoroughly informed as to the way the work is progressing.

274. *Necessary certificates.*—When a building in a city is completed, certificates are required from proper authorities before it may be occupied such as, for instance, a board of underwriters, departments of water supply, gas and electricity, the bureau of buildings, and the gas company. If the building be a loft building, the building law often requires that the amount of load which the floors will hold be posted upon the floors, the idea being to avoid accidents from over-loading.

275. *Planning an apartment.*—The general principle which governs an architect in planning a building for income is that there must be as much rentable space as possible, with the public space as small as possible. It does not follow that large spaces are convenient spaces, so the architect in providing large rooms, must place his fixtures and openings in such a position as to permit the maximum amount of use. He usually attempts to obtain large wall spaces by massing his openings.

The architect must plan within the apartment so that some rooms may be reached by the private hall, but that hall may be no larger than necessary.

Stairs and elevators are always placed, if possible, in a position equally distant from each apartment; and an attempt is made to mass the plumbing, so that it is back to back, not only for purposes of economy, but also for the purpose of sanitation, as the fewer pipes, the more free from obstruction they are likely to be.

The closet space is something which the American architect has learned to consider valuable, as it sometimes makes or unmakes an apartment; and he must utilize every possible space for the purpose of closets.

The occupancy of the basement and the height of the stories are determined by law; in fact the peculiarities of the buildings of almost every city in the world, in their last analysis, are legal peculiarities.

276. *Planning a warehouse or business building.*—In the planning of a warehouse, the problem is simple. It is mainly the securing of light, and the placing of stairs and elevators, depending on the size of the lot. If it is a single lot, the question of division does not present itself so strongly, but in the large buildings over twenty-five feet it is usual to try to place the elevators so that the loft can be divided, if necessary, and to place the plumbing and wiring in such a position that, if the building be altered, each tenant may have his own current and plumbing fixtures.

CHAPTER XVII

PROBLEMS OF MANAGEMENT

277. *Divisions of management business.*—The management of real estate is really housekeeping on a large scale, and includes not only the deriving of income, but also the keeping down of expenses. The difference between a good manager and a poor manager lies in two elements: First, the ability to keep tenants, that is to say, to get through with the fewest possible vacancies; and, second, the keeping down of expenses, still giving the tenants all that is due to them.

The work of management has five divisions:

First: Renting, that is, the securing and retaining of tenants;

Second: Collection;

Third: Purchases and expenditures upon the property;

Fourth: Accounting;

Fifth: The physical care of the property.

278. *Renting.*—The first thing a renting agent must understand is that he cannot regulate the price. The price is regulated by the law of supply and demand. There is practically no building so unique that the rentable space in it cannot be duplicated in some other building. There is practically no building so advantageously situated, either for business or residential purposes, that there is not another practically as good. All the renting agent can get is his share of the pros-

pective tenants by showing his building in its most attractive form, by calling it to the attention of the most people by proper advertising, and by so framing his business transactions with them as to get from them the most advantageous contract for the owner.

There are a hundred different ways by which the good renter brings his property to the attention of possible tenants. One of the most effective of these is by keeping his building attractive, particularly outside and in its public parts. The most important thing in the getting of tenants is the first impression a person gets when he enters a building.

The renting agent should make his contract upon a fair basis, and should not attempt to write a cut-throat lease in favor of the landlord. The man who tries to use a lease with too many clauses will never be a successful renter. The contract should be simple and understandable. The renting agent should not be afraid to tell a prospective tenant what the landlord's requirements are; if the landlord will not rent for less than a year, it is not worth while wasting time with a person who says he is only a monthly renter. It is not wise to try to change misunderstanding into understanding after the negotiations and when the parties should be ready to sign the lease.

279. *Collection.*—Having gotten the tenants and installed them, the next proposition is the organization of a collecting force. This force ought to be devoted, not only to collections, but to the care of the building. Collectors should be instructed, not only to go to the property and collect the rent, but also to watch the physical aspect of the property, and report its condition. When they meet the tenants, if any comments are made with regard to the property, whether by way of com-

mendation or complaint, it is the duty of the collectors to make note of these comments and report.

The collection force is the eyes of the office. The collectors see the property most frequently, and upon their discretion in handling tenants, a great deal of the success of the business depends. Where the force is large, it should be adapted as far as possible to the character of the property.

Rent and collections together are the usual entrance into the real estate business, and the quickest road toward the other parts of the business. They are not the easiest, for the renting and collection business involves practically all the discretion and care that are required in the rest of the business.

280. *Purchases and expenditures upon the property.* —The man who does a renting and collection business also, usually, has the care of the property itself. This includes the purchase of supplies and the care of the other expenditures of the building, and it is here that the difference in results can be shown. The man who makes his purchases with care will be able to show a profit, as against the man who buys at random without giving any thought to the matter. The man who knows qualities, and is careful to get sufficient quantities, can at the end of the year show a difference in net profit over the man who is careless with regard to these subjects. The man who scrutinizes his expenditures, who comes the nearest to collecting all his telephone bills from the tenants, who keeps a good janitor happy and contented at no more salary than his neighbor has to pay, is doing a great deal for his landlord. These things reduce themselves really to a housekeeping problem—care in purchasing and economy in expenditure.

281. *Accounting.*—The form of rent accounts varies

in different offices. It reduces itself to a simple debit and credit ledger account. The rent account is usually kept as a single entry account, and does not get into the double entry system of general bookkeeping until the results are obtained. It is a book in which there are columns: First, the designation of the floor or number of apartment which is occupied; second, the name of the tenant. Then, running across the page, there are columns, very often for as many as six months, for the rental. The larger the folio used, the less often the names of the tenants have to be transcribed. In the proper column for each month the full rent is charged, and a note made of the day from which the rent runs; then in the parallel column is credited the amount received. If the full rent is not received during the month for which it is charged, it is customary, in addition to the charge for the next month's rent, in the next column to make a new charge by carrying over the unpaid balance. That gives with regard to each tenant for the current month the whole amount that he owes. The column is closed for each month at its end and carried over so that the agent can tell how much his collections have been, and what his arrearage is.

At a convenient period of the month, usually toward the end, accounts are made up and carried over into the general ledger, and rendered by the collecting officers to the landlord. The account rendered to the landlord is again a simple debit and credit account. He is given an account of the receipts of his building in detail, and also the expenditures, with vouchers. It is usual for the agent either to get duplicate vouchers, or to send the originals to the landlord, trusting to get them back. Some offices do not submit vouchers, but merely an account of the expenditures, and have the vouchers ready

for examination in case any items are questioned. It is uniformly customary, however, to render specific accounts of all income and expenses and to accompany that report by check to balance. It is usual to deduct commissions upon collections at the time of rendering each account and sending in each monthly check. Those commissions are then credited over into the profit account of the firm. Commissions are computed upon the gross rental.

282. *Physical care of the property.*—It is the duty of the man in charge of a property to keep it in good physical condition for two reasons: First, for the purpose of attracting tenants; and, second, for the purpose of avoiding liability to action for damages by reason of persons being injured upon the property.

As a renting proposition, it pays to take good care of a property, not only when trying to get new tenants, but all the time. That does not mean that it is necessary to be extravagant. It means that the property should be kept in as good condition as the tenants reasonably have a right to expect, having regard to all other property in the neighborhood of similar character. There are more tenants lost in houses in which the mere matter of removing dirt is carelessly done than by any other means. The janitor's service and the cleanliness of the building are most important matters.

Care should be taken to repair all evidences of wear as soon as possible. In the upkeep of a building the maxim that, "A stitch in time saves nine" applies with as much force as in any other pursuit. A little paint, a little cheap carpenter work or a little work that the janitor can do, if properly and quickly done as soon as the trouble is discovered, will often save a very troublesome and expensive job later on.

The janitor should be carefully instructed and held to account for obeying all the little regulations which are put upon owners by municipal ordinances. He should see to the removal of garbage and ashes promptly; he should see that the fire escapes are clear of obstructions; he should report to the office as soon as possible whenever any representative of the municipality calls to make a complaint, or to give any directions with regard to the property. As part of the duties of managements, whenever any report of that sort reaches the office, it is the duty of the man in charge of the building to follow it up. If there has been cause of complaint against the building, it is best to remove the cause. If an inspector has called, and it is not known whether or not he has found any violations of the law, it is not advisable to wait until the owner has been served with a notice of violation: it is better to find out from the department if any violations have been reported.

If a building operation is going on in the neighborhood, the janitor should be instructed to report immediately, as soon as any construction is commenced; and it is the agent's business to watch his building carefully to see that no harm comes to it, and, when necessary, to report the facts to the owner immediately, so that he may take such steps as he may think advisable to protect his interests.

It is also necessary to keep a building in such condition that it will be safe for people to resort to it. The question as to who is charged, as matter of law, with liability to third persons resorting to a building and suffering injury by reason of improper conditions, is to be solved in the first instance by the question, "Who is in charge of the building?" The person who has charge of the building, or of the part of it in which the

injury occurred, is the person who is primarily liable.

If an owner is conducting an apartment house, he has charge of the public halls, the sidewalks, the cellar, the janitor's apartment, the roofs, the plumbing fixtures, all the general appurtenances of the building, and the elevator. He has charge also of the water pipes running through from one part of the building to another. The tenant has particular control over his apartment. The fact that there are tenants in the building does not excuse the landlord from liability for accident happening or damage done in any part of the building which is under his control. If there be overflow of water from one apartment to another, doing damage to the second apartment, if the damage was caused by one tenant letting the water run in his apartment from an outlet which was in good condition, and by reason of his act alone, the tenant would be liable. But if the overflow, for instance, should be by reason of a failure to repair, if the water pipe was out of order, the landlord having general charge of that utility in the building would be liable, the test being, "Who was in fault?"

If, however, the landlord has rented out his entire premises, and placed them in charge of a tenant, unless he has covenanted in his lease that he will make repairs, if the premises be in good condition when they are turned over to the tenant, then the liability for any damages accruing afterwards either to persons in the building or persons resorting to it, is upon the tenant.

In a case where the landlord has covenanted to make repairs, he would be liable only if he had notice of the defect, and an opportunity to make the repairs. In the same manner, if a person be engaged in construction upon his property, if he exercise reasonable care in

hiring an experienced contractor, giving him charge of the property, the contractor becomes liable to all third persons damaged by reason of the operations, and the owner is not liable.

A person who receives property, whether by purchase or inheritance, is not liable for damage to third persons occurring upon the property, unless its defective condition has been called to his attention, and he has had an opportunity to repair. All of these questions of notice and opportunity must be treated reasonably. A man may very well be called upon to make immediate repairs in an apartment house in which there are tenants living, which he actually sees when he is purchasing, whereas a person who inherits a pier, to which he does not often resort, may know nothing of its defective condition until it is specially called to his attention.

An owner is liable to those persons whom he may reasonably expect to resort to his premises: they do not have to show that they were there upon proper business. An owner is liable only to keep his property safe for ordinary and customary use. A person who goes upon a freight pier has no right to expect it to be as safe as a pier used for the landing of passengers, and if he is hurt by reason of merchandise being rolled on him, or stumbling over inequalities in the pier, the owner is not liable. If, however, an owner invite the public upon his premises for his benefit, as, for instance, if he keep a store and invite the public to come into the store to do business with him, he is not only required to keep his premises in reasonably safe condition, but he is held to have made a representation to the public, that the property was a safe place of resort, and, if it be not in that condition, he is liable for damage. If a man conducts a theater, and does not supply all the necessary exits which

the law calls for, and the appliances for safety which are not only called for by law, but which are customary beyond the requirements of the law, if there be a fire, he is liable for damages. If he has done his full duty he will not be liable. He is not held to a warranty of absolute safety, but to a representation that all has been done that can be done.

Another thing to be considered is how to cover oneself against loss, because no matter how careful an owner is, he cannot do it all himself. He has to leave his property in the charge of a janitor or superintendent; he does not always know the moment something falls into disrepair or someone gets in danger upon his property; and even though he exercise all the care which would exempt him from liability if sued, still no matter how well he will succeed in a suit for damage, he must hire a lawyer so that he may be successfully defended. For these reasons, the custom has arisen of taking liability insurance.

Liability insurance is covered by a policy under which the insurance company agrees to insure in an amount limited as to each item of loss, and undertakes, not only to indemnify, but also to defend an action for liability. The person who carries a liability policy is thus able to cover himself unless the action be brought for more than the amount of the policy, but the owner carries the risk beyond the company's limit.

A liability policy provides that the company must have immediate notice of any accident. Every time they do not get such notice—and it is very seldom they do—they will try to escape liability. Liability policies ought, in fairness, to be written so that the insured is obligated only to give notice within a reasonable time, and as soon as the owner learns of the accident: that

is really all an owner can do. If the janitor report as promptly as possible, and the owner report as soon as he hears of the accident, that ought to satisfy the requirements of immediate notice. It does in every other kind of policy, and should in this.

There is also an insurance of boilers and elevators. The first use of the elevator policy is the inspection, which is a periodical and expert inspection of the elevator and its machinery, and after which the owner is told if he ought to make repairs. When he gets notice from the company, it is advisable to make the necessary repairs, because the company has nothing to gain by requiring them. If they involve hundreds of dollars, it might be wise to ask expert advice, but, in small matters, it is the interest of the owner to do what the company asks.

In apartment houses the question of boiler insurance is not important, but in large manufacturing plants or office buildings, liability may be thrown on an owner by reason of a boiler explosion. Here again, the principal use of boiler insurance is the periodical inspection. If an owner employ a really expert engineer, he hardly needs boiler insurance. If he is not sure of the ability of his engineer, it is safer to carry a policy of boiler insurance.

CHAPTER XVIII

UNSETTLED PROBLEMS

283. *Organization of real estate interests.*—In the real estate business there are a number of problems and questions upon which the people in the business disagree, and others upon which, if they do not actually disagree, they have at least not yet made up their minds.

There are organizations of real estate owners, organizations of tax payers, organizations of tenement house owners, boards of brokers, each looking out for their little special interests. There are also organizations like the Allied Real Estate Interests in New York City, which make it their business to look after the larger general problems affecting the business, such as the watching of legislation. But all of these organizations are now alive with the idea that while each of them is caring for its specialty, they have a general interest—the interest of those, dealing and making their living out of real estate and the various pursuits which relate to it, and the idea of general organization in the real estate business is spreading—not that there is any necessity for individuals engaged in the business to protect their interests as against others, but that it is necessary that they protect their mutual interests. This is a problem of growing importance.

284. *Expressing consideration of conveyances.*—Another problem that is before the real estate world is the question of whether or not it is proper and feasible to disclose the considerations of conveyances. There are

two questions involved in that problem: first, the question of taxation; and, second, the business question as to whether or not it would tend to the advantage of the business.

As to the first question: We raise most of our money for local taxation by direct tax on real estate, and in order that that tax may be just, the assessment must be equitable. The taxing officers would like to know what is paid for each piece of property in every transaction so that they may, if possible, out of the multiplicity of transactions draw an average price. The objection to that is, on the one side, that prices are not necessarily values. Prices may be indexes of values, if enough of them not only in number but also in time can be obtained from which to draw an average of the actual value, but value economically consists in and is measured by earning capacity, so that the man who wants to buy investment capacity only, is the man who governs values.

Whether, as a business proposition, it is desirable or not that values be disclosed, the assessors could get a better index of the value from an intelligent study of the record of mortgages, for here there is no reason for using fictitious amounts, and they have the opinions of the most expert appraisers in the market—the advisers of the lending institutions.

The other question involved in this matter of disclosing the actual considerations is the question of its influence upon the trade and the lending markets. It is contended, on one side, that the disclosure of the actual price will encourage purchasers to offer reasonable prices, and that they will be encouraged to know that the property is supposed to be worth quoted prices. On the other hand, it is claimed that to disclose prices will absolutely discourage trade, that when a man knows what

the seller has paid, he will not give any more than a mere trades profit; and that in no other business is it seriously contended that the seller should be required to apprise the purchaser of what he has paid for the thing he is offering for sale. It is said, on one side, that every store discloses its price, the price at which it desires to sell; but the answer to that is, that no store discloses the price at which it buys, and, while every store discloses the prices which it asks for staple goods, few stores disclose except to a possible purchaser, the price asked for specific goods.

285. *Tax on mortgages.*—Another question which is still unsettled in many states is that of taxation of mortgages. The taxing of debts, and especially of interest-bearing debts, is taxing for the support of the government the most needy part of the community, that is, the part of the community which must borrow. It is placing a tax upon industry, and is a discourager of enterprise. The man who is satisfied to do business only on such capital as he has, without borrowing upon his security, is circumscribing his business, and is not enterprising. The man who keeps his security working in the world by borrowing upon it to a reasonable extent, and using that capital in other enterprises, is helping to carry forward the world's work. When a tax is placed upon debts, the result is that the interest rate is increased. The lender never really pays the tax and the enterprising and needy are required to contribute more to the support of government than the wealthy. The mortgage tax would seem clearly to be a misdirected and harmful effort. All taxation upon debts, as a matter of public policy and public economy, is wrong.

In the State of New York, the mortgage tax is one-

half of 1 per cent upon mortgage debts, which is paid once, and thereafter the mortgage is free of all taxation for state, county and local purposes. In other states the problem is still an unsettled one, and wherever it comes up for discussion, it will have considerable influence upon land values.

286. *The single tax.*—Another question which is up for consideration is the question of the abolition of general taxation on personal property, leaving real property the only object of direct taxation. This subject involves numerous considerations. It is true that it is difficult to frame a just tax law applying to personal property generally. On the other hand, it should be remembered that real property is not the only property which gets the safeguards of the State's protection and the benefits derivable from civilized government. Nor is the argument valid which claims that all persons use real property and, therefore, taxation on real property will fall on everybody, for the tax will not fall on everybody in accordance with the benefits derived. For example, a diamond merchant can do a much more lucrative business in a small office than a produce merchant can do in the same space. The topic will have to be considered with regard to local conditions and tax laws in each state.

287. *Confidence and good-will.*—It should be remembered that the real estate business is one in which the only stock in trade is confidence and good-will. The greatest problem of the business is so to conduct it as to gain the respect, good-will and confidence of the community. The man who has done satisfactory business with you is your best advertising medium. Never try to get a man to do a piece of business which you think will turn out to his loss, even though you may make a

commission on it. The man who has made money from the transactions into which you have put him, is the man who will let you make money again. Try to have as large a number of such customers as possible.

QUIZ QUESTIONS

PART I

INSURANCE

(*The numbers refer to the numbered sections in the text.*)

CHAPTER I

HISTORICAL SKETCH OF INSURANCE

1. What is insurance? Does it guarantee against disasters occurring or against loss from them?

2. What peoples early made use of insurance?

3. Name the four main branches of insurance. Illustrate each by a concrete example.

4. Upon what theory is the insurance business based? How does it differ from gambling?

CHAPTER II

MARINE INSURANCE

5. Among whom was marine insurance early developed?

6. Trace by the history of Lloyds the origin of the underwriter. The premium.

7. What change has taken place historically in the group who do the insuring?

8. Why is not more modern language used in wording marine policies?

9. What conditions violated will render a policy void?

10. What is meant by general average? Illustrate.

11. Explain the difference between particular average and general average.

12. In general, what dangers are insured against and what not?

13. In what connection at Lloyds is the bell tolled? Explain the term, constructive total loss.

14. To whom is salvage paid? Who pays it?

CHAPTER III

FIRE INSURANCE

15. How may fire insurance be defined?

16. What was the origin of fire insurance? How did the great fire of London compare with that at San Francisco?

17. What were the contributions of Barbon and Povey?

18. Why must fire underwriters be alert to the times?

19. Whence did fire insurance draw its practices?

20. Sketch briefly its history in the United States.

21. Whence may be secured reliable statistics of the business?

22. About how many companies are engaged in the business? What of changes in the number of these companies?

23. What amount of capital is now invested? Does this vary much from year to year?

24. What can be said of the capital investment of foreign companies?

25. What is the amount of fire insurance written per year at the present time?

26. To what extent are its premium receipts expanding?

27. Why is it difficult for insurance managers to estimate losses? Have losses in your town been even or fluctuating widely?

28. How is the rate of premium stated? Is this rate increasing or decreasing?

29. What are the rates of dividends? Why do they vary? Are they exorbitant?

30. Distinguish between expenses and losses. Into what two classes may expenses be divided and what is the share of each?

CHAPTER IV

THE ORGANIZATION OF FIRE INSURANCE COMPANIES

31. Under what four forms of organizations may fire insurance be conducted?

32. Discuss the history of Lloyds, and its present method of doing business.

33. In what does the essential principle of the mutual form consist?

34. Of what importance comparatively is the stock form of organization? How is such a company formed?

35. Explain the deposit requirement. Must a company deposit in each state where it does business?

36. To what reason is due the practice of selling fire insurance stock at a premium?

37. Does an insurance company favor concentrated or widely spread business? What two forms of organization of territory?

38. Discuss the duties of the special agent.

39. Of what importance is the adjuster's work?

40. What service do inspectors furnish to the companies?

41. State briefly the duties of the other employés.

42. Discuss the work of the local agent. With what other businesses does the small town agent combine his insurance?

43. What are the local agent's responsibilities? His relations to the home office?

44. In what consist the essentials of insurance as a business? In this connection why does the managing underwriter's work assume such importance?

CHAPTER V

OFFER, ACCEPTANCE AND INSPECTION RISKS

45. What information must the insured furnish in applying for insurance? Compare the present method of securing this information with that formerly employed.

46. Of what value to the assuring companies are inspections?

47. Describe briefly the method of making a plan of the risk.

48. Mention several points that are considered in reporting on the risk.

49. Why must the inspector beware of believing all that is told him?

50. How does machinery enter in to affect the risk?

51. Explain how materials affect the risk.

52. What attention is to be paid to heating, lighting, and power?

53. What information should be secured concerning appliances for extinguishing fire?

54. Mention some causes of fire.

55. State the qualifications of an inspector, and his method of securing information.

56. Into what classes may buildings be divided?

57. What is a frame building?

58. Due to what advantages is the ordinary building of less risk than a frame structure?

59. Explain what is meant by mill construction.

60. How is a building fireproofed?

CHAPTER VI

FIRE PROTECTION

61. How much is the annual per capita loss from fires in the United States? Compare this with other countries.

62. In what way do statistics provide a sure basis for fire protection work?

63. How did the fire door come to be developed?

64. Describe a standard fire door. How can these be made to close automatically?

65. What is a standard fire shutter?

66. What was the first use of wired glass? To what fact is its value due?

67. In what different ways may pressure be obtained for forcing water through pipes?

68. Of what capacity and pressure should hydrants be to produce an efficient water supply?

69. How should water pipes be arranged?

70. Of what use is a fire boat?

71. Out of what system did the public fire department grow?

72. For what reason have concerns often developed a fire department of their own? How might such a department be organized?

73. What is a standpipe system and of what use is it?

74. Upon what does the special value of the automatic sprinkler depend?

75. Give a brief sketch of the history of these sprinklers.

76. Show by comparative results the value of these sprinklers in fire protection.

77. How widespread is the use of sprinklers likely to become? In what way is the sprinkler head adapted to particular conditions?

78. What are the general requirements for sprinkler protection?

79. Why is an alarm system needed in connection with sprinklers?

80. How does the dry pipe system differ from the wet pipe system?

81. What is the purpose of open sprinklers?

82. What function is served by the chemicals in fire extinguishers?

83. For what special properties is a chemical engine on wheels adapted?

84. What percentage of fires is estimated to be put out by means of fire pails?

85. What object is sought through the installation of signaling systems?

86. In what way does the best type of electric signal act?

87. In what way do insurance companies encourage firms to employ watchmen?

88. What purpose is served by the automatic sprinklers alarm system?

89. Are mechanical devices likely to supersede watchmen?

90. What regulations apply to ashes?

91. How prevent fires starting from oily waste?

92. Name several materials particularly inflammable.

93. Why are inspection standards needed?

94. What standards have been promulgated by the National Fire Protection Association?

95. Describe the work of the laboratories.

96. How is the work of the laboratories supplemented by field inspection?

97. What part does the engineer play in fire protection work?

CHAPTER VII

FINANCIAL ASPECT OF FIRE INSURANCE PROTECTION

98. How is the development of fire protection bound up with insurance ratings?

99. Illustrate how this works out in practice.

100. What has limited the work of fire prevention?

101. Upon what consideration must the engineer make his recommendations?

102. What is the chief difference in these sample reports?

CHAPTER VIII

RATING

103. Upon what basis were the early rates made?

104. What was the first classification system adopted?

105. When were prospectuses first used?

106. What rating practice was common in Great Britain but never prevalent in the United States?

107. Name provisions of the Philadelphia Contributionship correct in principle.

108. How did the Green Tree Company originate?

109. What investigation was made in founding the Mutual Insurance Company?

110. In the schedule shown, upon how many items does the special rate depend?

111. Name the important steps in developing rates.

112. Sketch briefly the work of the National Board of Fire Underwriters.

113. What were local organizations?

114. On what grounds have the attacks on rating organizations been based?

115. What may be said in their defence?

116. In what way does Kansas seek to regulate rates?

117. Over what elements should the rating organization have reasonable control?

118. What are some of the complexities in rate making?

119. In what way do stores combine with dwellings to complicate it still further?

120. Name some intricate risks found among business buildings.

121. What is the main point of this chapter?

CHAPTER IX

MINIMUM AND SPECIFIC RATES

122. How may rates be classified? Of what advantage is the minimum rate?

123. Contrast specific rates with minimum rates. How would the former be determined?

124. What is the principle upon which schedule rating depends?

125. Point out the difficulties that may exist in classifying some risks such as hotels.

126. Which seems more successful at present, a general schedule or a class schedule?

CHAPTER X

UNIVERSAL MERCANTILE SCHEDULE

127. Tell how this schedule was originally prepared.

128. Upon what fundamental principle is it based?

129. Why are schedules being continually modified and adopted?

130. What two things are necessary in order that a risk may be rated?

131. What is a key rate, and how is it determined?

132. Explain how the schedule is applied in rating a building.

133. Into what elements is the hazard on stock divided?

134. How does the presence of fire appliances modify the rating?

135. Explain what is meant by the exposure of a risk.

136. What amount of co-insurance is usually carried?

137. Name some faults of management. Why is their rating made high?

138. In what way does the location of stock affect rates?

139. Why is rating risks a very complex problem?

140. Summarize in general terms the process of finding a rate.

CHAPTER XI

ANALYTIC SCHEDULE

141. What two schedules are most widely used?

142. In what particular principle does the second schedule differ from the first?

143. Show how the percentage system, as compared with the fixed amount system, secures relativity.

144. What is made the basic rate?

145. Name some elements that affect the rate.

146. Compare the example here given with that of the other schedule, section 140.

147. Why are schedules necessarily being studied and changed constantly?

148. What is the most that can be hoped from any system of rating? Apply this general statement to a concrete problem.

149. Why is rating coming to be the work of specialists?

CHAPTER XII

INSURANCE CONTRACT

150. What is a policy?

151. What was the early history of the insurance contract? What evils developed?

152. In what state was the first standard policy used? The standard policy of what state is now most widely used?

153. What are the general provisions of the law applying to standard policies?

CHAPTER XIII

NEW YORK STANDARD POLICY

154. Does the word "noon" in a policy mean local or standard time?

155. What is included under direct loss by fire?

156. Explain the limits of indemnity.

157. Why is the location of property so carefully specified?

158. Why is the contract limited?

159. Mention certain things that may void a contract.

160. In what respects is the contract specially limited?

161. For what items will an insurance company assume no liability?

162. Why should the limit of liability be based upon the actual value of the property?

163. What are the provisions concerning the cancellation of a policy?

164. Why should one appreciate highly the form and wording of our present policies?

CHAPTER XIV

CLAUSES AND WARRANTIES

165. What is a "rider"?

166. Explain the term "co-insurance," and the difficulties it involves in practice.

167. What percentage of a property's value is usually fixed on as a limit of insurance?

168. Illustrate how the average clause operates in practice.

169. How does the forbidding clause in regard to electricity illustrate the method by which standard policies are gradually involved?

170. Name other standard clauses.

171. How is the contract still further modified for particular cases?

CHAPTER XV

FORMS AND POLICY WRITING

172. What is a form? What are its essentials?

173. Show how insured and insurer each prefer a different sort of statement.

174. What difficulties are met in drawing up a form?

175. What is meant by saying all parts of policy and form should concur? Why is this important?

CHAPTER XVI

LOSS SETTLEMENTS

176. Of a thousand policies written, about how many are subject to loss?

177. State the conditions out of which loss bureaus have grown.

178. In insurance terms what is the cash value of the property?

179. Why do companies prefer not to make repairs on damaged property?

180. When a loss occurs, what things must the insured do?

181. Why are appraisals sometimes necessary?

182. Why is it deemed not good practice immediately to pay insurance loss?

183. In general are insurance losses difficult to settle?

184. Of what advantage is it to a company to settle losses promptly and fairly?

CHAPTER XVII

BROKERS, BROKERAGE, MORAL HAZARD, AND UNDERWRITING

185. What duties in fire insurance are performed by the broker?

186. Explain what "moral hazard" means. What percentage of losses is ascribed to it?

187. How did the name underwriter come to be used in connection with policies?

188. What are some of the difficulties which the underwriter has to meet?

CHAPTER XVIII

ORGANIZATION OF LIFE INSURANCE COMPANIES

189. What is life insurance? Is its policy based on indemnity?

190. How did the lack of a scientific basis retard the development of life insurance?

191. Tell what you can of the early English societies. When was life insurance first successfully launched?

192. Into how many periods may life insurance development be divided?

193. Upon whose life was the first American policy written?

194. Name some of the early American companies.

195. Since what year has the advance of insurance been uninterrupted?

196. Discuss the internal organization of an insurance company.

197. Name the three main departments, and briefly state the duties of each.

198. How do the assets of life insurance companies compare with savings bank deposits?

199. What advantage in investing have life insurance companies over fire insurance companies? May they invest in stock?

200. Why does difficulty arise in connection with the borrowing of money on policies?

201. How is the prevalency of this practice to be explained?

202. What argument is made for life insurance as a savings account?

CHAPTER XIX

MORTALITY TABLES

203. What is a mortality table?

204. Discuss the invention of these tables by Halley.

205. Upon what data are such tables compiled?

206. How did Dr. Price construct his table?

207. From what statistics was the Carlisle table constructed?

208. Explain why insurance companies come more and more to use their own records in compiling tables.

209. Why may new and better tables be expected? Describe the American Table of Mortality.

210. How is the amount of premium computed?

211. Why have the mutual companies so often been obliged to raise their rates of assessment?

CHAPTER XX

POLICIES AND PREMIUM RATES

212. What two classes of policies are there? How account for "dividends" issued by life insurance companies?

213. Explain life policy, endowment policy, term policy.

214. Contrast the annuity with the usual policy?

215. Into what three classes may risks be classified? What influence has weight? Occupation?

216. How does climate affect mortality?

217. What are the rights of company and insured in canceling life insurance contracts? Of what importance is the moral hazard?

218. Name some of the special provisions of the policy.

219. What provisions have been made for the lapsing of policies?

220. Explain the cash value provision.

221. Why is medical inspection with modern companies much more thorough than with the early societies? Judging by the sample report, are all essential points covered?

CHAPTER XXI

INDUSTRIAL AND ASSESSMENT INSURANCE

222. What is the chief difference between life and industrial insurance?

223. Were the first attempts at industrial insurance successful?

224. Describe the early efforts of Dryden.

225. What can be said of the early growth of the Prudential?

226. What seemed to be Mr. Harvey's opinion of the industrial business?

227. Upon what four principles is its success based?

228. Upon what plan is assessment insurance based?

229. To what fraternal order is due the original use of the assessment plan?

230. What fact of mortality has often not been provided for by the assessment companies? What results?

231. Among what organizations does the assessment plan still widely prevail?

CHAPTER XXII

CASUALTY INSURANCE

232. What is casualty insurance? Which branch of it is most popular?

233. Of what volume is the casualty business?

234. To what risk was casualty insurance first applied?

235. What company was the pioneer in America in assuming accident risks?

236. To what forms of risk is accident insurance now coming to be applied?

237. Are these relative proportions of losses the same as most people would suspect?

238. Is it true that injuries are inflicted for the sake of premiums?

239. Of what importance do you consider the workmen's compensation form of insurance?

240. In law, what is the meaning of negligence?

241. Illustrate the difficulty in determining negligence.

242. How were the rules of common law worked out to cover the employer's responsibility?

243. Name the three defences of the employer, and illustrate each by concrete example.

244. What is the outlook for volume in liability and compensation insurance?

245. Of what various types is liability insurance composed?

CHAPTER XXIII

WORKMEN'S COMPENSATION

246. What additional advantage has workmen's compensation over employer's liability? Who pays, in the end, the compensation?

247. Briefly discuss the experience of foreign countries with such laws.

248. In what ways do these countries limit compensation?

249. What provisions do they make for fatalities?

250. How do they distribute losses?

251. What are some of the plans of organization followed?

252. Explain the provisions these countries have made for the sick fund.

253. To what extent is workmen's compensation now found in the United States?

254. State briefly the general provisions of these laws.

255. How may one secure the full text of any state's compensation law?

256. Name some abuses that have already crept in.

257. Why cannot authoritative opinions be given at present regarding such laws?

258. About what proportion of claims are followed by compensation?

259. Discuss the movement for accident prevention.

260. How can executives cut down the hazard in their factories?

261. What suggestions might be made in a printed pamphlet or posted on bulletins?

262. Is it agreed as yet how the risk attached to workmen's compensation should be carried?

263. Describe the state fund plan for carrying this risk.

264. How may employers co-operate to carry their risk?

265. Is it advisable for an individual employer to assume the risk?

266. What advantages do the regular stock companies appear to offer the employer?

267. By what general test must be decided which is best of these different ways of carrying industrial risks?

268. What wholesome influence will rate making exert upon hazardous industrial conditions?

CHAPTER XXIV

OTHER BRANCHES OF CASUALTY INSURANCE

269. What forms of casualty insurance have now been treated?

270. Comment briefly upon plate glass insurance.

271. What is the aim of steam boiler insurance?

272. Where did boiler insurance originate?

273. What was the first American company to write boiler insurance and what may be said of its career?

274. Are boiler explosions due to one or many causes?

275. In what way do the insurance companies reduce the risk of explosions?

276. What is the outlook for the future business in boiler insurance?

277. When did credit insurance develop?

278. Explain how risks are classified.

279. What may be claimed as the benefits of credit insurance?

280. What provisions are included under automobile insurance, and what are the prospects for such insurance increasing?

281. Discuss briefly title insurance.

282. What are some of the risks covered by burglary insurance?

283. What sort of risk is covered by surety and fidelity insurance?

284. Name the general classes of surety and fidelity insurance.

285. In what respects is contract insurance business difficult to handle?

286. On the other hand, which form of surety bond is of little risk to the insurer?

287. Why must insurance on bonds of deposit be written with special care?

288. For what reason has excise insurance so increased?

289. What is the purpose of fidelity insurance?

290. Would you advise stock companies to write unemployment insurance?

291. What is your opinion of Lloyds' vacation insurance?

292. In what way during the war in 1914 did the government co-operate with its marine insurance companies?

293. Upon what principle, simply stated, is insurance based? Is its importance likely to diminish or increase?

PART II

REAL ESTATE

CHAPTER I

INTRODUCTION

1. Tell why the vocation of the real estate man does not rank as a profession.

2. State the necessity for high ethical standards in real estate business.

3. Name the divisions of the real estate business. What capital is required in order to engage in them respectively? Define the divisions of the business.

4. State the purposes for which investments in real estate may be made.

5. Enumerate the various ways in which real estate

operations may be carried on, and state how these ways subdivide, and explain them.

6. Define agency; name and define the parts into which agency is divided.

7. Define "real estate" as used in the business and "real property" and explain the distinction between them.

CHAPTER II

INTERESTS IN LAND

8. Into what two main divisions are interests in land divided? How are they measured?

9. What are the limitations upon the absolute ownership in land?

10. What is the police power of the State as it affects ownership of land?

11. Explain the principles on which the original and ultimate ownership of land in the State is founded.

12. Define Eminent Domain. What is limitation upon the right to exercise this power?

13. Define the power of taxation.

14. Define estate in fee simple absolute.

15. Define an estate upon condition subsequent.

16. Define an estate in fee determinable. What is the difference between an estate upon condition, and one in fee determinable.

17. Define a life estate. Define a remainder. Distinguish between vested and contingent remainders.

18. Define dower.

19. Define estate by the curtesy.

20. What is the principal chattel interest in land? Define it. What is a lien on land?

21. What is the earliest historical method of trans-

ferring title to land? State the later methods of transferring title. What is the present method of giving notice of interests in land?

CHAPTER III

BROKERAGE

22. Define the word "broker" (See Section 6).

23. What are the requirements of success as a broker?

24. How do real estate brokers find employment?

25. What is necessary to entitle a broker to compensation for services? What is this compensation called?

26. What are the obligations of a broker to his principal?

27. What statements may a broker make to the persons with whom he deals?

28. What information should a broker obtain before commencing work upon a transaction?

29. Who pays the brokerage, apparently and in fact? Can a broker take compensation from both parties to a transaction?

30. When and how is a broker's commission earned?

31. What is the claim of a broker who procures a transaction to be made between parties, who try to consummate the business so as to defeat his claim?

32. What is the situation of the broker's claim for commissions when a transaction is brought about by false representations, and then not consummated?

33. Why should a broker see to it that an enforceable contract is made between the principals?

34. Can a broker be required to wait for commissions until title closes? How?

35. Is a broker responsible if either party fails to complete a transaction?

36. What is "splitting commissions"? When and how is it proper to split commissions?

37. When is a commission for getting a loan earned? When is a contract to make a loan enforceable against the lender?

38. Who pays commissions on loans?

39. Is a lender bound to accept a loan from any particular one of a number of brokers who offer the same application?

40. Must an agreement for commission on a loan be in writing?

41. How are rates of commissions ascertained?

CHAPTER IV

CONTRACTS

42. What contracts in relation to real property must be in writing? Give the provision of law in this regard.

43. What part of the final understanding should be expressed in writing?

44. What are the commercial, as distinguished from the legal necessities for a written contract?

45. Define the word "contract." In real estate business what is meant by the word "contract"?

46. What are competent parties to a contract? What is the element of futurity in a contract? What is consideration? What is subscription of contracts? What authentication is necessary to their enforcibility?

47. Describe a good form of contract.

48. What are the main divisions of a typical contract for sale of real estate?

49. Is a date necessary to a contract of sale?

50. How are parties to a contract stated?

51. What should a purchaser about to enter into a contract investigate before signing?

52. What investigation should be made of the authority of trustees or corporation officers to enter into contracts of sale?

53. How can the earnest money be made secure if the responsibility of the seller cannot be determined satisfactorily?

54. To what extent do sellers investigate their purchasers?

55. When should the seller investigate the responsibility of the purchaser carefully?

56. Which of the parties is the practical owner pending a contract of sale?

57. What is the consideration of a contract of sale?

58. What does real property include?

59. Show the different points of view from which a seller and a purchaser may look at the drafting of a description for a contract of sale.

60. What considerations finally govern the selection of the form of description in a contract of sale?

61. How do the parties to a contract require the tenancies to be stated?

62. What is restricted property? How do restrictions affect values?

63. What is an easement? Describe a party wall. How may it be created? What is a beam right? How and why should they be mentioned in a contract?

CHAPTER V

CONTRACTS (*Continued*)

64. What is gross price? How may it be divided in a contract?

65. What considerations govern the amount paid down on making a contract?

66. How is the amount which is to pass on delivery of the deed paid?

67. What should a purchaser require to be stated in a contract concerning a mortgage which is to remain on the property? Explain the difference between buying property subject to, and assuming a mortgage.

68. What clauses should a purchaser and a seller require to be inserted in a purchase money mortgage? Why? Who pays the expenses incidental to the giving of a purchase money mortgage? Why?

69. Where is the deed usually delivered?

70. What are the usual stipulations as to division of rents, interest and mortgages and insurance premiums?

71. How are water charges provided for?

72. What form of deed complies with a contract where no special form is stipulated? What is a full covenant and warranty deed?

73. What personal property is usually deemed included in the bargain to purchase real estate?

74. What is the reason for requiring a clause that premises sold shall be free of violations of law?

75. Is earnest money a lien?

76. If premises be damaged by fire pending the contract, who bears the loss, if there be no stipulation on the subject.

77. What happens if either party to a contract dies before delivery of the deed?

78. Why is a commission agreement in a contract?

79. Must both parties sign each counterpart of a contract? What is a seal? What is the effect on a contract of sale?

80. What is the utility of having a contract wit-

nessed? What is acknowledgment of an instrument? What is proving an instrument?

81. What remedies has a purchaser if a seller fails to perform a contract of sale?

82. What remedies has a seller if a purchaser fails to perform a contract of purchase?

83. What is an exchange contract?

84. What is the consideration of an exchange contract?

85. How should descriptions be stated in exchange contracts?

86. How is the value of the properties to an exchange stated? How is the amount to be paid arrived at?

PROBLEM 1. (*Sections 42–80.*)

John Smith owns a house in your town, which he sells to Henry Jones; the property is known as 17 Sycamore Street, 50 feet wide and 100 feet deep, the sidelines being parallel with an avenue which you will name; it is tenanted, there being a store which is rented until May 1st next at $600 per annum, and apartments held by monthly tenants who pay $75 per month; all rents are payable monthly, but the store keeper pays from 15th to 15th and the other tenants pay on the first of each month. The property sells for $15,000, of which $500 is paid on contract, $9,000 is in mortgage falling due on a date to be named, about a year and a half from now, bearing interest @ 5% per annum; $2,000 is in purchase money mortgage falling due in instalments of $200 every six months, bearing interest @ 6% per annum, and the balance in cash on closing title.

Draw a contract dated now to carry out this transaction on a printed form usually employed in your

locality, filling in all other terms as you would consider reasonable. Send same in duplicate.

PROBLEM 2. (*Sections 83–86.*)

Henry Jones, who bought No. 17 Sycamore Street as stated in problem No. 1, now exchanges that property with Robert Robinson, for ten vacant lots in a recent addition to your town; the lots pass subject to a mortgage for $5,000 due June 1st five years hence, but they may be released on payment of $600 per lot or the whole amount may be paid on ten days notice. Jones gets $1,000 difference on the exchange of equities. Draw a contract dated now, to carry out this transaction, using a printed form if possible. Fill in all other terms as you would consider reasonable. Send same in duplicate.

CHAPTER VI

AUCTION SALES

87. Why are auction sales resorted to?

88. What is an involuntary auction sale? How is it brought about?

89. What are terms of sale? How should the property and its limitations be described in terms of sale?

90. May persons interested in the property bid at an involuntary sale? When may property at an involuntary sale be knocked down?

91. What is a voluntary auction sale?

92. When may there be protection bids at voluntary sale? When may there not be such bids?

93. How is the public attracted to auction sales?

94. How do the terms of sale at a voluntary sale differ from those at an involuntary sale?

CHAPTER VII

LIENS

95. Define a lien on real property.

96. Distinguish between general and specific liens.

97. Define a judgment.

98. How is a judgment lien enforced? What interest in real property is sold under a judgment lien?

99. How may the lien of judgment be discharged?

100. Define mechanic's lien.

101. How is a mechanic's lien asserted?

102. How is a mechanic's lien enforced?

103. How may a mechanic's lien be discharged pending litigation of its validity?

104. Define a conditional bill of sale.

105. Explain how debts of a deceased owner may become liens on real property.

106. What is the transfer or inheritance tax?

CHAPTER VIII

TAXES AND ASSESSMENTS

107. Define taxes.

108. Why is taxation on real estate considered direct?

109. Enumerate various regular taxes which may be levied and state their purposes.

110. What is a tax budget?

111. What is assessment for taxation? How is it done? Distinguish between market value and value at forced sale.

112. How is the tax rate fixed?

113. What is remedy when an assessment of land value is too high?

114. What is the remedy when the assessed value of the building is too high?

115. If the assessing officers will not correct their errors what is the remedy?

116. When do taxes become a lien?

117. How is payment of taxes induced and enforced?

118. What rights in property does a property tax affect?

119. Define assessments. How are they apportioned?

120. How are assessments laid?

121. State how a board of assessors proceeds to lay an assessment.

122. When do assessments become a lien? How are they enforced?

123. How is payment of water rates enforced when furnished by a municipality? How is the rate fixed?

CHAPTER IX

TRANSFER OF TITLE AND TITLE INSURANCE

124. In what ways is title to land transferred?

125. What was the method by which sales of land became transferable?

126. What was the original English system of transferring land?

127. What was the Statute of Frauds?

128. What is a deed, as the word is commonly used in relation to real estate?

129. What are the two kinds of conveyances now in use?

130. What are the provisions of law respecting a deed in your State? What are the necessary elements of a deed? What is necessary to the subscription of a deed? What is witnessing of a deed? What does it accomplish?

131. When does title pass by deed?

132. State the principle of notice by occupation. Explain the necessity for and operation of the system of public record of conveyances.

133. What is acknowledgment of conveyances? What is accomplished thereby? Name officials who are authorized to take acknowledgment of instruments to be recorded in your State. What is the proof of an instrument? How is it made?

134. Who can make delivery of an instrument?

135. How is property transferred by a Will? What are the requirements as to execution of wills in your State?

136. What is to be ascertained from an examination of the record of a title?

137. Why is it necessary to employ counsel to examine title to real property?

138. What is the responsibility assumed by a conveyancer who examined title to real property?

139. What is title insurance? What responsibility does a title insurance company usually assume?

140. What is a report of title? How should it be used?

141. What are the parts of an ordinary form of title policy?

142. What does the insurer undertake when it issues a policy of title insurance?

143. How is the subject matter of such a policy set forth?

144. What are "exceptions" in a title policy?

145. Name some conditions of a title policy.

146. How should a title policy be used when the property is sold?

CHAPTER X

DEEDS

147. What is the New York form of deed?

148. What is an indenture? How did the term arise?

149. Why does a deed bear date?

150. How are the parties to a deed designated?

151. Distinguish between good and valuable considerations. Explain how they severally affect the transfer of title. Why should a consideration be expressed?

152. What is a nominal consideration? How is it expressed? Why is it used?

153. What is the effect of a seal on a conveyance with regard to consideration?

154. What is the granting clause in a deed?

155. How should real property be described in a deed? What is a description by metes and bounds?

156. What is the effect if a description be uncertain?

157. What is the effect of ambiguity in a description?

158. What happens if a description is inconsistent with itself?

159. What are appurtenances to real property?

160. What is the "habendum" in a deed? What is its function?

161. What is a bargain and sale deed?

162. What is a quit claim deed?

163. What are covenants in a deed? What are "covenants against grantor's acts?"

164. Does knowledge of defects or encumbrances on the part of the grantee affect the liability of the grantor in a deed? What are the usual covenants in a full covenant and warranty deed? What covenants do not run with the land?

165. What covenants in a deed run with land? Explain them.

166. How and when can the covenant of warranty be enforced?

167. Give some illustrations of unmarketable titles, which do not give rise to a claim on covenants in deeds.

168. What is the utility of the testimony clause in a deed?

169. Is it necessary that a deed be sealed in your State?

170. What is a corporate seal? What is its effect on a deed?

171. How is the execution of an instrument by a corporation authenticated?

PROBLEM 3. (*Sections 147 to 171.*)

Prepare a full covenant and warranty deed to be delivered pursuant to the contract drawn under Problem 1. Use the printed form usually employed in your State. Send same in duplicate.

CHAPTER XI

BONDS AND MORTGAGES

172. What are the instruments by which a loan on security of real property is secured?

173. Explain the difference between an instrument calling for lawful money and gold coin.

174. When and how is interest usually payable on a mortgage? What is usury? What is the penalty for usury in your state?

175. What stipulation may be made with regard to the privilege to pay off a loan before it is due?

176. How do usury laws operate on the borrower?

177. If under a clause in the bond permitting the debt to be called before it is due, on default of paying the interest on taxes, the holder of the mortgage exercises his option, does subsequent acceptance of the payment reinstate the original term of credit?

178. How is a bond enforced?

179. What is a mortgage tax? Who pays it?

180. What was formerly the method of pledging real property for debt?

181. What is equity of redemption?

182. Must a mortgage be dated the same day as the obligation it secures? Give reason for answer.

183. Can a mortgage be prepared in such manner as not to disclose on record the terms of the loan?

184. Why is personal property sometimes expressly included in a mortgage of real estate?

185. What is the defeasance clause in a mortgage?

186. What is the stipulation under which the premises may be sold to raise a mortgage debt? Is the property to be sold as one piece or in parts?

187. Explain the fire insurance clause in mortgages, and how it operates.

188. Enumerate and explain the utility of the clauses under which a mortgage debt may be called for payment before the stipulated due date.

189. Explain the receivership clause in a mortgage.

How does it work in your State? What is "a mortgagee in possession"?

190. How may a mortgagee protect himself against taxes in arrears?

191. Is there special taxation of mortgages in your State?

192. How may mortgagee give notice to owner?

193. What is the effect of the warranty clause in a mortgage upon interests in the premises subsequently acquired by the mortgagor?

194. What special clauses are appropriate in subordinate mortgages? Explain them respectively.

195. What is a lifting clause in a mortgage?

196. How may a mortgage be foreclosed without suit at law?

197. Who should be parties to a suit at law to foreclose a mortgage?

198. What is the procedure in such a suit? What happens after the judgment is rendered?

PROBLEM 4. (*Sections 172–195.*)

Prepare the purchase money bond and mortgage delivered pursuant to the contract drawn under Problem 1. Use the fullest printed form in use in your State. Send same in duplicate.

CHAPTER XII

LEASES

199. Define the words landlord and tenant.

200. Define rent.

201. What is the term of a lease?

202. Is the tenant's right of occupation salable? What is the effect of prohibition against an assignment of the tenant's rights?

203. Must lettings be in writing?

204. Define tenancy at will.

205. What is a tenancy for years? Explain its incidents.

206. What are the obligations of landlord and tenant toward each other?

207. Explain the operation of a "ground lease" or "ground rent."

208. What are the rights of the parties under a tenancy from month to month?

209. How may leases be terminated before the expiration of the term? Explain the proceedings for summary dispossess. What is a conditional limitation clause in a lease?

210. What are the obligations of landlord and of tenant, with relation to repairs?

211. What is constructive eviction of a tenant?

212. What happens to the relation of landlord and tenant when there is a fire on the premises?

CHAPTER XIII

ADJUSTMENTS AT CLOSING

213. What is a title closing? What should be ascertained before entering into the transaction?

214. Where property is found encumbered for more than the money available at closing, what should be ascertained regarding the ability to dispose of encumbrances?

215. What investigation should be made concerning encumbrances which are to remain upon the property after closing? What should be made concerning encumbrances which are to be removed in the closing?

What kind of funds or checks are used in final settlement of a title closing?

216. What debits may there be against a purchaser in closing a title?

217. With what items may a purchaser be credited in closing a title?

218. What items must a seller pay which do not figure in the adjustment at title closing?

219. What payments should be made by purchaser?

PROBLEM 5. (*Sections 213–219.*)

Prepare a closing statement for closing the transaction pursuant to the contract prepared under Problem 1. The property is found to be marketable as prescribed in the contract, but there are taxes due amounting to $157. The value of the fire insurance policies is $7. The transaction has been adjourned for 15 days from the time fixed in the contract and is to close as of the original day. Show the adjustments, gross balance and net balance, in closing this transaction.

220. What happens when there are encumbrances upon property at the time of closing which are not provided for in the contract?

221. How are exchanges adjusted at title closing?

PROBLEM 6. (*Section 221.*)

Prepare a closing statement for closing the transaction pursuant to the contract prepared under Problem 2. The transaction closes as, and at the time provided in the contract.

222. What special items are to be adjusted in closing a transfer of a leasehold?

223. How are the adjustments made in closing a mortgage loan?

224. What adjustment is made of rents due but unpaid?

225. How is interest figured in closing titles?

226. What payments or adjustments are made if title be rejected, and not closed?

CHAPTER XIV

VALUATION

227. What is the basis of land values? What is the order in which land values are estimated, from most valuable down to those less valuable?

228. What are the steps by which a specific piece of improved property is analyzed for valuation?

229. What consideration should be given to auction prices in making a valuation?

230. What considerations must be taken into account in comparing the value of "short" lots?

231. What is the "Hoffman Rule?"

232. What is the "Davies Rule?"

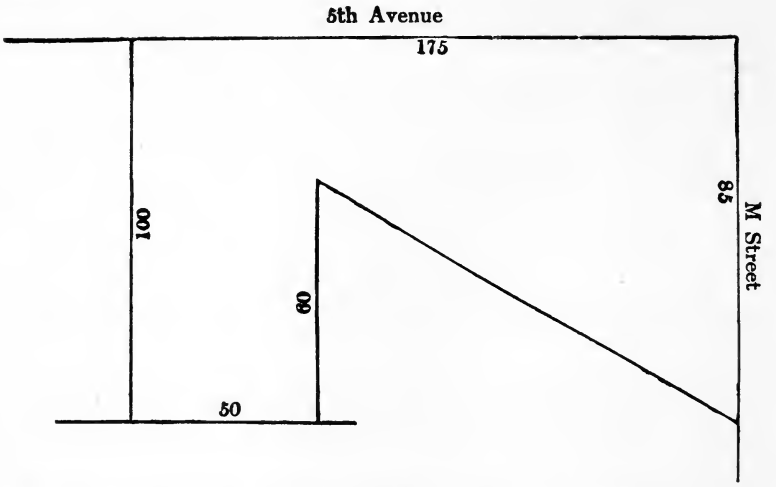
233. How does the value of a narrow lot compare with that of a typical lot?

234. What is plottage in fixing valuations?

235. What is usually added to typical lot values by reason of being corner lots?

PROBLEM 7. (*Sections 230-235.*)

Compute the value of the plot shown on following diagram.



using as a basis a value of $10,000 per typical lot of 25 x 100 fronting on 5th Avenue.

236. How should the land value and the value of the building be treated in valuing improved property?

237. How is cost of buildings estimated? How can you check back an appraisement of improved property?

238. When may property be condemned under the power of eminent domain? What property may be taken?

239. What is expert appraising?

240. What general preparation for his work should the expert appraiser have?

241. How does an expert appraiser prove his valuation?

242. How does an expert appraiser value irregular or short lots?

243. From what point of view should an expert appraiser fix values? In what manner should he testify?

244. What should an expert appraiser know about building as a business?

245. What is consequential damage? How is dam-

age by reason of taking property in condemnation to be computed where part only of a plot is taken? How, when an easement only is taken?

CHAPTER XV

SURVEYS

246. Why are surveys necessary to real estate transactions?

247. What is shown on surveyor's map or diagram?

248. How do encroachments affect the marketability of title to land?

249. How does a beam right affect marketability of title? What is a party wall? What are the ordinary incidents attached to a party wall?

250. What is the effect of encroachment by neighboring structures upon the marketability of title?

251. What should a survey show regarding the relation of structures to the lines of streets?

252. What should be shown on a sub-division survey?

253. What should be shown on a builder's survey?

CHAPTER XVI

WORK OF THE ARCHITECT

254. Do architects control the kind of buildings to be put on premises?

255. What are rough sketches? How are they used?

256. With what accuracy can an architect estimate the cost of a projected building?

257. What are architects' working drawings? What do they show?

258. State some of the circumstances of the property

which an architect should ascertain before preparing plans?

259. What information does the architect require from the survey?

260. What must the architect ascertain about abutting walls?

261. What services does the architect render in a building construction? How is he usually paid?

262. In what manner does the architect superintend the construction of a building?

263. What are architects' charges on small jobs and alterations?

264. What are architects' specifications?

265. What preparations for proceeding with the work does the architect make after the plans and specifications are approved?

266. What are detail plans?

267. How are expert services of others than architects utilized in planning buildings?

268. What is a cost plus profit contract? What is the usual profit? How are builders paid under such contracts?

269. How are smaller constructions contracted for?

270. How are plans and specifications identified in contracts?

271. What are extras? How are they contracted for?

272. What is the usual method of payment under a construction contract?

273. What is the attitude of the architect as between owner and contractors?

274. What certificates are usually required in cities after buildings are completed?

275. State some of the requirements when planning an apartment dwelling.

276. State some in planning a warehouse or business building.

CHAPTER XVII

MANAGEMENT

277. What are the divisions of the work of management?

278. What regulates the amount of rents?

279. What are the duties of rent collectors?

280. How are purchases and expenditures of supplies to be treated?

281. Describe the method of keeping a rent account. Describe the account rendered by an agent to his landlord.

282. To what two objects is the physical care of property to be directed? Detail some of the janitor's duties. What is the agent's duty with regard to violations of law or ordinances in a building? Who is liable for injuries to persons caused by defective conditions in buildings? Who is liable for damages when a tenant has hired entire premises? How far is a landlord liable in such a case, if he has agreed to make repairs? What is the liability toward members of the public of the owner of a place of public resort? Describe a liability policy.

CHAPTER XVIII

UNSETTLED PROBLEMS

283. What is the utility of organizations devoted to real estate interests?

284. What are the arguments for and against requiring conveyances to disclose consideration?

285. What is the result upon real estate transactions of taxation of mortgages.

286. What is the single tax? What are your views on it?

287. How are confidence and good will to be sustained in real estate business?

INDEX

B

C

D

E

F

G

H

I

M

N

O

P