

# Legislative Suggestions: Actual vs. Mythical Notice in Real Estate Titles

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### Repository Citation

John F. Woodmansee, *Legislative Suggestions: Actual vs. Mythical Notice in Real Estate Titles*, 1 Marq. L. Rev. (1917).  
Available at: <http://scholarship.law.marquette.edu/mulr/vol1/iss2/4>

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## LEGISLATIVE SUGGESTIONS.

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*The editorial board solicits contributions to this section. We also invite comment or criticism of any suggestion appearing herein.*

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### ACTUAL vs. MYTHICAL NOTICE IN REAL ESTATE TITLES.

A SIMPLE, INEXPENSIVE, INDEX SYSTEM WILL PROVIDE A  
REMEDY FOR OUR COMPLEX HIDE AND SEEK METHODS.

By JOHN F. WOODMANSEE, of the Milwaukee Bar.

To acquire, hold and dispose of real property, and to make contracts relating thereto, is, in this country, a sacred constitutional right.

Titles are constructed and proven by the History of Voluntary and Involuntary transactions.

The State is supposed to provide methods of making record and notice of such History. The Record should therefore be in historical order as it presents itself to the examiner thereof.

Having had an unusual opportunity to observe during a period of active study for 14 years the short-comings of our title record system, and having examined it and proposed remedies from the point of view of the lawyer, both as an examiner of titles, and as a builder thereof through voluntary and involuntary transactions, from the point of view of the abstracter, from the point of view of the public as a user of the public records, from the point of view of the public as tax payers, and from the point of view of the business public, including real estate men, credit men, bankers and other men interested in a business way, I find an urgent demand for a system which will give relief from the antiquated, unscientific recording system now in use, and I am now ready to propose a remedial system which will comply with the demand in detail, as I have received it from the declarations of judges,

lawyers, abstracters, conveyancers and business men, which may be summarized as follows:

1. The system must be simple, and usable by the person of ordinary intelligence.
2. It must be inexpensive to the tax payer.
3. It should serve institutions, like the abstract companies who are useful agents.
4. It should aid the Torrens system where in use.

There is a demand:

A. For the abolishment of the irrational and futile method of copying and recopying, again and again, instruments in cumbersome books, and indexing them in other cumbersome and impracticable books, and for a substitution therefor of a method which will take advantage of modern business conveniences and devices for duplicating instruments and for indexing names and other matters.

B. For a centralization of records.

C. For abolishment of automatic liens against persons and property where they and it are not really involved, but which require affirmative action by innocent persons to remove the cloud thereof.

D. For a rational grantor's index by name.

E. For a rational grantee's index by name.

F. For a tract index which shall contain postings of all transactions, voluntary and involuntary, in historical order, instead of only a few voluntary transactions haphazardly, without regard to historical order.

G. For a tract index leading to an abstract record by serial number, instead of by volumes and pages of books.

H. The remedy should supplement the old system without confusion, and gradually supplant the present system without any impairment of service.

With express intention of satisfying such demands I present a proposed remedy for the evils of the prehistoric, cumbersome, inefficient system now in use.

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In order to determine the value of a system, it is well to consider the *original purpose intended to be served*, and, in the light of present conditions and applying the measure of modern needs, determine whether that purpose is really attained or served.

It is undisputed that a condition now exists which unjustly *charges citizens with knowledge of vital facts of which they have no reasonable method of knowing* or learning, even after diligent, expert search for those facts.

My purpose is to show that the purely technical term, "Constructive Notice," can be relieved of its mysterious terrors, and can be converted into ACTUAL NOTICE for those who seek for the facts by the application of simple modern methods, which have already been tested and proven in modern business.

The *agency* of Constructive Notice, in relation to real estate titles, as originally designed, and properly so, was the office of Register of Deeds. Its *function* was not, and is not governmental in any sense. It performs a purely business service in behalf of private transactions. Let us then apply business methods in place of the haphazard and political patronage plan now in use.

The service rendered being in relation to a private business transaction between certain persons interested, it needs no argument from the standpoint of the tax payer, to establish the proposition that the fees should practically cover the cost of the service. If Jones & Smith have a private enterprise, they have no right to expect Brown et al to pay, through their tax bill, one-half of the cost of completing their arrangements. In no place do the recording fees cover the cost of books, salaries, etc., or any portion of the cost of custody, storage, light, heat, or other expense. The remedy herein proposed can be applied so that the present schedule of fees will be sufficient to cover all elements of cost and leave a handsome profit.

The recording system was adopted in Massachusetts about 260 years ago, and while its original purpose is as es-

sential now as then, the complication of transactions other than mere deeds and mortgages, both in the office and outside of it, which have made the office a mere link in a chain of places giving purely mythical notice, together with the neglect to improve upon the antiquated system of conducting that office has caused us to wander far from such original purpose.

No one defends the present system, (except certain influences in control of or subservient to political patronage). There is no defense. In 1891 Governor Russell of Massachusetts, in a message to the Legislature, set forth the conditions in his state when he said:

“The need of some new system of land transfer is shown by the growing public dissatisfaction caused by the delays and expense attending our present system of registration of deeds. That system has existed in this commonwealth for a little more than 240 years. \* \* \* We are already met by the serious difficulty that the present mass of records is so great that much time and labor must be spent in searches, in order to ascertain the transactions which affect the title to any piece of land. \* \* \* The delay and expense attending the present system form a serious tax upon purchasers and mortgagors of land, which bears with especial weight upon owners of small estates. \* \* \* Under our system, title to land depends not only upon instruments recorded in the Registry of Deeds, but also upon facts and proceedings *which lie outside of those records*. There is a constant increase in the mass of records of deeds and of proceedings affecting titles to land, which makes the work of examination a constantly growing burden.”

Governor Davidson of Wisconsin, in his inaugural address in 1909, said:

“In my message to the Legislature in 1907 I called attention briefly to the importance of taking some action to simplify our complex system of transferring titles to land. Our system is cumbersome and *burdensome in requiring all conveyances to be recorded in books of record*, in the ever

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increasing cost of abstracts of titles and lawyers' fees for examining them, in the delay in passing title on account of those laborious examinations made necessary as conveyances multiply, and in the insecurity felt by sellers and purchasers, largely due to the fact that upon each transfer the title must be searched back to the government patent, with the attendant liability to error in making such examination. This burden *constantly grows* as the mass of records accumulate, while it is often, after the most painstaking research, found that there lies *beyond and outside the records* some fact which affects the title of land. The law says to the purchaser, 'You take this title at your peril,' and at the same time makes means of knowledge very difficult to obtain, if not at times *almost impossible.*"

It is only fair to state that each of the above quotations are from a declaration of a demand for something like the so-called Torrens system. As I present my remedy, I wish to call attention to the fact that the Torrens system, wherever installed, will be greatly aided by my plan.

I propose to eliminate for the abstract company much of the tiresome, expensive search through separate and poorly designed name indices in so many different offices and other places, requiring subsequent re-arrangement to show proper historical order.

I also propose to save them the expense of keeping abstract record of suits, judgments and other matters widely scattered, of which only a few are to become a part of any title, and which are so difficult to apply or classify in the abstract work.

By the proposed system with abstract index of all transactions in one place an abstract company can furnish an abstract in much shorter time, at less expense, with more safety to itself and more accurately and can also furnish the examiner, record of title, not two weeks old, but to the minute, when the transaction is culminated.

I undertake also to render a public service in providing a public index, *so simple that the title can be read from the in-*

*dex*, and from one index in one place, instead of many indices in many places.

I propose also to provide this great public service at a great saving in cost to the tax payer over present methods. It will cost *less to install* than to continue the present method, and will *save two-thirds of the expense of maintenance*.

In order to form a basis for an index system which will indicate all proceedings affecting titles, we must classify them under two heads:

1. VOLUNTARY GRANTS.

(We now post on the tract index a few of the voluntary grants, but no involuntary grants.)

2. INVOLUNTARY GRANTS.

(A judgment is nothing more than an involuntary grant. So a mechanic's lien is an involuntary grant. A notice of lis pendens is an involuntary grant. In this class are found also executions, sheriff's certificates, etc.)

The Register of Deeds' office is *the proper place* to provide notice, Constructive and Actual, both of *voluntary* and *involuntary* proceedings. Let us then *marshall all proceedings* affecting title there. It is very simple.

Change filing of mechanics lien with assignments and satisfactions thereof from the Circuit Court, where they have no tract index, to the office of Register of Deeds, *where they can be posted as an involuntary grant on a tract index*. The present index in the Circuit Court is misleading in that it contains a classification by wards which are often changed pending filing of claims, and there is no provision to care for variation in names and contested claims of title involving indexing under different names.

Provide stronger lis pendens statute, so that any party to any action, including voluntary assignment for benefit of creditors and all actions of every nature in which any person shall claim any interest in any land, in order to bind the purchaser of land, or any interest therein, shall file notice of lis

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pendens in the office of Register of Deeds. Include *like notice in favor of any claimant* or any form of claim or lien of any nature whatsoever, so that a purchaser for value *may know* that no claim or interest will affect his rights, which cannot be found readily in the same place where he finds other matters affecting the title.

Abolish the automatic lien of judgment by mere entry and docketing, and substitute either:

A. Notice of entry to be filed in the office of Register of Deeds, or

B. Require levy on a particular tract after judgment. (This rule is the rule of some states. Its objection here is the absence of a grantee and grantor's index, indicating the holdings of persons who may be judgment debtors. Inasmuch as I propose to furnish these indices I favor the ultimate adoption of this rule.)

After having marshalled all instruments, voluntary and involuntary, in the office of the Register of Deeds, let us

1. Abolish the distinction between filed and recorded instruments.

(Modern typewriters, duplicating methods and other business systems render the copying laboriously in handwriting in great and cumbersome books, of printed and typewritten forms, both silly and unnecessary. Any person wishing certified copies or duplicate originals of instruments filed, have the matter within their own control at the time of drawing the instruments.)

2. File originals of all voluntary instruments, (except plats, which shall receive same serial number application, but shall be recorded as at present) in continuous serial order with involuntary proceedings without distinction as to their nature.

(Or certified copy where it appears the original has been filed in some other Register of Deeds' office, giving Register of Deeds power to require extra copy of poorly written or poorly preserved instruments and translations of instruments in foreign language.)

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3. File involuntary proceedings by certified copy of court records and notices, in the same manner as they are now filed, together with the voluntary proceedings, in continuous serial order without regard to their nature,—deeds, mortgages, assignments, releases, liens, lis pendens, survivorships, executions, sheriff certificates, changes of name, incorporations, etc.

(The construction of the index, as will hereafter appear, will automatically classify and indicate them by name and property in a simple, understandable method.)

4. Enter the serial number of all instruments describing the property, voluntary or involuntary, including assignments and releases, on the tract index, together with a letter indicating the nature of the instrument, as "D" for Deed, "M" for Mortgage, "A" for Assignment, "ML" for Mechanics Lien, "LP" for Lis Pendens, etc., the purpose of the letter being to indicate at the first glance over the index the general run of the instruments posted, for convenience. An example of a tract index with serial numbers, as here described, follows:

MAHNS SUBDIVISION, part of S E 1/4 of Section 9, Town 6 North of Range 22 E in the 17th Ward of the city of Milwaukee

K 7									
1	2	3	4	5	6	7	8	9	10
								786333 D	
								797705 M	
								758101 A	
								758426 FR	
								758654 R	
								758752 M	
								758954 LP	
								799675 ML	
								799876 LP	
								759920 ML	
								810322 J	
								810567 D	
								810580 Ex	
								811354 SC	

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The above section of proposed index simply contemplates the entry in historical order, the serial number of original instruments as filed, which serial number is also the key to the serial number abstract index. It contains postings of all instruments describing property, Voluntary or Involuntary. It indicates the complete chain of transactions forming title.

CONTRAST IT with the following irrational Vol. and page plan now in use, leading to cumbersome volumes, many out of place, with postings not entered for from 10 days to two weeks after they would be under the proposed improved plan, and containing only a few of the Voluntary transactions, and no Involuntary transactions. A tract index which does not index all tract transactions is no tract index at all.

(Here follows a demonstration of the old prehistoric tract index, showing the deed side of the book; the mortgage side usually appears on adjoining page):

D E E D S

' S S U B D I V I S I O N Part of S E 1/4 of Section 9, Town 6 North of Range 22 East in the 17th Ward of the city of Milwaukee

Vol	page																			
324	560	254	123	564	10	365	111	424	365	365	118	423	324	354	178	569	342	354		
453	365	367	478	465	376	365	423	462	244	563	197	324	677	453	278	478	119	387		
387	98	601	367	487	476															
324	560	254	123	466	422	311	275	424	387	498	214	487	522	416	327	487	76	544		
467	19	319	400	400	560	317	600	368	186	523	167	257	301	465	376	346	325			
324	560	254	123	567	19	389	411	410	326	412	214	124	432	561	376	367	354	389		
376	564	342	218	276	199	387	410	411	236	487	412	389	124	488	322	476	387	388		
560	563	433	281	387	239	378	311	487	326	678	398									
324	560	254	123	566	138	358	367	463	333	671	422	387	111	522	254	452	389	388		
644	443	387	284	475	233															
324	560	254	123	576	190	352	111	175	19	174	333	375	439	378	307	475	301	304		
475	387	398	427	247	180	354	113	542	190	376	354	357	349	377	385					
324	560	254	123	560	17	377	365	356	375	376	175	438	542	385	635	354	111	104		
356	566	352	118																	

(The General plan of this index does not permit entry of filed instruments although the law requires filing of some of the most important transactions which properly belong on a tract index. It contains no reference to any involuntary instruments or transactions, and not even all Voluntary instruments. Even under a recording system this form of index is very unsatisfactory.)

Provide a triplicate abstract index in form designed to give the serial number corresponding to the serial number of the original instrument, as filed, at each upper corner, so that by following the lead from the tract index by the serial number posted thereon, as shown above.

A. The first copy of the abstract index constitutes a full abstract of the original instrument with the corresponding number. Inasmuch as an examiner of the original instrument, or of a copy of it in a book, would have to abstract it, he, having been provided with an abstract index, will proceed directly from the tract index to the serial number abstract index, instead of to the original instrument, except when he desires to examine signatures or possible alteration of instruments (which, by the way, cannot be done under the recording system; in fact, the recording system permits one to record a forged signature or an altered instrument, and then adds to the stupid proceeding by delivering it after recording such instrument, *to the very person who will be most interested in destroying it*, so that the rule which makes the record evidence of a lost instrument, with all its contents and incidents, becomes the servant of the fraudulent transaction.) By the use of the abstract index the original instrument will be seldom consulted.

In designing this triplicate index I have kept in mind that the same shall be admissible as evidence, and it is so formed that the same, in regard to any instrument is in exactly proper form if read directly into the evidence, for admission and proof in any court.

B. The second copy being a duplicate of the first copy, with appropriate change of color of type for convenience,

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may be filed under grantor's name, which appears at the upper left-hand corner, convenient for reference, (with suitable side cards for extra names with reference thereon to the full index name) and thus we obtain a grantor's name index by the same operation which produces the serial number abstract index.

C. The third copy being a carbon copy of the first and second copies, with appropriate change of color of type to distinguish it for convenience, shall be filed under the name of grantee, which appears at the upper right-hand corner, convenient for reference, with like side cards as aforesaid, thus forming a grantee index by name by the same operation by which the serial number index and grantor index is formed.

All three, whether you consult them by lead from the tract index, or from grantor's name, or grantee's name, give you, without further search or reference, the complete abstract of the original instruments of corresponding numbers.

We can then trace a transaction by tract index to an abstract index, or by grantor's name index, or grantee's name index, *each being a full abstract* of the original instrument. The instruments are posted and abstracted, forming through the indices themselves, *a record title in proper historical order.*

Having marshalled proceedings at the proper place for notice;

Having supplied evidence of all important features, including signatures and possible alteration after execution and delivery of instruments through filing the original instrument (which are now lost through the recording system);

Having discarded the *imitation tract index* with its irrational and inconvenient volume and page plan, containing reference in an unscientific way to a very few of the transactions properly belonging there;

Having supplied in place thereof a tract index containing reference to all transactions of every nature, voluntary and involuntary belonging thereto, leading to the original and to a corresponding serial number abstract index;

Having provided a serial number abstract index, a grantor's name index and a grantee's name index (in place of the large number of helter-skelter book indices in many different places leading nowhere), all with a *simple, single and inexpensive operation*;

Having, in so doing, simplified the operation in producing the record, and consequently greatly reducing the cost to tax payers;

Having provided a simple, workable, efficient, ready reference system of indices located in one place, the tract index covering all transactions properly belonging there, and the name index covering all name leads to all transactions now partially covered by so many book indices, a complete abstract meeting you at every place, a system understandable and usable by a person of ordinary intelligence, aiding abstracters, Törrens officers, real estate men, credit men, lawyers and the general public by furnishing information in complete and ready reference form, *up to the minute* instead of some two weeks back, so that by the use of simple bookkeeping methods, a demonstration of which is here furnished, a net title can be determined by simply crediting on the grantee's side and debiting on the grantor's side. (In order to demonstrate this, let us copy from a tract index the list of serial numbers which we posted in the example on page 80:

786333—D  
797705—M  
798101—A  
798426—PR  
798654—R  
798752—M  
798954—LP  
799675—ML

We then turn to the serial number abstract index and copy from there the abstract record, corresponding to the serial numbers as above taken from the tract index, as follows:

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(The abstract index in triplicate is indicated here on continuous sheet, which is ruled to indicate cutting line for machine by the use of the continuous sheet the indices are produced with greater economy. After cutting the indices merely require sorting—the 1st copy running in serial order, the 2nd sorted and placed under grantor's name, the 3rd under grantee's name. The name indices to be fastened in place. The serial No. index may be bound in proper order if desired by any size of page by simply omitting cutting except where desired, or it may run as a continuous series by separate cards or slips.)

The net title, as you will notice, can be struck at any stage, right on the abstract index. If Harrington foreclosed his lien, his attorneys, who have no abstract to the adverse party's property, by reading the index can determine quickly, the wife's name, proper description of property as actually held by defendants, his true interest therein, the interests of other persons including other claimants, necessary or convenient parties defendant and other information convenient in the bringing of the action, much of which under the old system must be supplied by amendments. His *lis pendens* will put each party on the right side of the index, the judgment and subsequent proceedings which finally determine the several rights will automatically clear the books leaving the true balance or net title where it can be quickly and accurately ascertained from an examination of the index. The plan of the index not only places the information in proper order to be read in evidence, the names where they can be readily filed under name of grantor or grantee, but each paragraph stands out separately so that you can see at a glance the information desired and the transaction as a whole. Only a few sample transactions are presented because of lack of space, but a person of very ordinary abstract ability can readily index any transaction, voluntary or involuntary, without the danger of mistake in entry involved by the old style, complicated sets of indices now in use.

If you are a lawyer, test the plan of any series of proceedings, voluntary and involuntary of which you have had

charge. You will be surprised how easily the proper entries are made and how quickly you can determine the state of the title at any stage of the proceedings, by consulting any of the indices so simply produced. If you are not a lawyer, notice the fact that the matters which have heretofore appeared to be and actually were so hidden as to be beyond hope of practical use to you, stand out clearly, ready for your use in an understanding, orderly way.

Notice that the indexer does not need to remember to make entries in certain other places, but that the abstracting of the instrument in triplicate automatically produces the three indices. The abstracter can make his search quickly and accurately in one place. The Torrens officer can make extensions on certificates while you wait instead of taking several weeks chasing over the county for necessary information.

Notice also that the second copy can be readily filed under grantor's name at upper left hand corner, and that the third copy will, by use of upper right hand corner, form automatically a grantee's name index under which all property rights or interests acquired either by voluntary or involuntary transactions by any person is brought together under his name. That by checking off the same name in grantor's index, the true interest of a person is easily found.

By the combined experience of the bench and bar, real estate men, credit men, abstracters and business men, we have been able to determine what is wrong with the present method which is the ghost of bygone centuries, and by applying thoroughly tested, modern methods, can disclose the matters heretofore secreted. It costs much less to produce. It gives real service where none was given.

The functional purpose of providing through the office of Register of Deeds, a source of actual as well as constructive notice *is accomplished*, where it has been heretofore frustrated, and we will no longer charge a citizen with legal liability because of the existence of facts, theoretically of record for his information, but actually not even ascertainable after in-

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telligent search therefor, but on the contrary, by a simple process marshal the facts in one place, and index them with full information, so that any person of ordinary intelligence can quickly and safely obtain full knowledge of the facts which we say as a matter of law he is bound to know. Thus *Constructive Notice* is converted from a vicious cruel theory into a just and fair system of *Actual Notice*. Let us apply common sense to this very important subject.

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NOTE:—Milwaukee County Register of Deeds office employs 15 men who copy instruments into books, about 80 per cent of which copy is form matter, repetition after repetition, in poor hand-writing generally, from instruments printed or typewritten, which could easily have been duplicated when drawn without expense, the original filed and a duplicate or original, or copy, duly certified, returned to the person entitled thereto, if such copy were desired. This crazy copying system alone, in salaries and books, cost Milwaukee County about \$20,000 a year more than a filing system, or nearly two-thirds of the total expense of the office. By its use, the records most likely to be required are continually out of their place, are not posted on tract index for a period of ten days to two weeks after they should be and would be under a filing system, which period is often the most important time when they ought to be thus posted. By its use the tract index leads you to cumbersome books for each transaction, which are difficult to find and handle, requiring the displacing of hundreds of records not needed in your examination, and when you have finished your laborious and unsatisfactory task of hoisting heavy books, reading pages of hand-writing and abstracting the same, you have yet to search through endless name indices in different offices for many names, requiring expert knowledge of the name to search for and where and how to search, and, in the end, leaving you in doubt whether or not something has occurred behind you in your search.

The examiner of a title must either examine the record out of its proper order or must hop, skip and jump about the county. The system confuses rather than enlightens a person's searching the history of a title.

The general index in Milwaukee County consists of books. There are 290 volumes of general index, 280 of which are stored in a remote quarter of the vault and seldom consulted. If the recording system and indices now in use were of any value to the public, and the same were used to any extent, the confusion from its use would be unbearable and would practically prevent their use by the clerks. The only thing that saves us from such confusion is the well-known fact that few people, skilled or unskilled, make any demand for or make use of them.

The proceeding in the office attending entry in the general index operates as a legal deception. Constructive notice does not begin in the order in which instruments are received for record or in the serial order indicated either by the serial number or by the hour endorsed on the instruments. Accumulated instruments are distributed under a post-office plan and entered in alphabetical order, so that a grantee from a grantor whose name begins with a letter appearing late in the alphabet is at a disadvantage.

"An instrument is not recorded until proper entries thereof are made in the general index; until then an endorsement does not operate as constructive notice; nor in case of a tax deed does the statute of limitations begin to run."

Lombard vs. Culbertson, 59 Wis. 433.

"All information necessary to constructive notice should be entered in the index immediately upon reception."

Oconto Co. vs. Jerrard, 46 Wis. 317.

The post-office method, which appears to be necessary under the irrational and inconvenient general index plan now in use, destroys the order of preference which should be governed by the act of the person leaving the instrument for record instead of the convenience of entry clerks.

The proposed remedy would index instrument by serial abstract index, by names of grantors and grantees in the same serial order as received, at once, completing the act of recording and indexing quickly instead of after a long period of delay.

NOTE:—Patents Pending.

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## AMENDMENTS OF CORPORATE LAWS IN WISCONSIN.

BY CARL B. RIX.

For years there has been a hue and cry about "watered stock" and the evils supposed to flow therefrom. Indeed one would suppose, from the importance given to the subject, that practically all evils of corporate finance flow from that source. The sympathy seems to be all for the poor creditor of the corporation and the purchaser of its stock, neither of whom is obliged to trade with or buy the stock of such corporation. But looking at the proposition from the angle of the organizer of an industrial or mercantile organization in Wisconsin, how can such organizer, who may be highly skilled in his line of work with years of experience back of him, get what he deserves from the earnings of the business which he may build up, without jeopardizing the interests of the creditors and purchasers of stock of such corporation? A group of men with money may desire to put their money against the other man's experience and skill and take preferred stock of the corporation for their investment. Under the statutes of Wisconsin there is no method by which the man of experience, but without money, may secure the fruits of his labors and retain a substantial interest in the corporation which he may proceed to build up. Section 1753 of the Revised Statutes of Wisconsin provides as follows:

"No corporation shall issue any stock or certificate of stock except in consideration of money or of labor or