Legislative bodies have many times enacted laws which have seemed, on the surface, to be clear and concise. When questions have arisen as to the particular meaning of certain words or phrases used therein, courts have been forced to interpret such terms in a manner designed to give effect to the legislative intent. In so doing, they have often provided definitions which, on the face of such statutes, could scarcely be said to be encompassed within the terms used. By so doing, courts have often laid themselves open to the accusation that they were engaged in the process of legislating no matter how much they concealed their attempts under the cloak of judicial interpretation.

The Illinois Supreme Court, by its action in Classen v. Heath, seems to have likewise so exposed itself when it expanded the phrase “surviving spouse” as used in Section 19 of the Probate Act so as to include a surviving divorced ex-spouse. The facts of that case show that the defendant therein obtained a divorce from her husband in 1937 upon the ground of his desertion. At that time he owned two parcels of real estate but no stipulation was entered into with regard to the property rights of the parties. The ex-husband died in 1942 and his estate, including such realty, was duly probated. In 1944 the plaintiff, as administrator de bonis non with the will annexed, filed a petition to sell the two parcels of real property for the purpose of paying the decedent’s debts. The divorced wife was made a party thereto. She claimed a dower right in the land, but such claim was resisted on the ground that, by her failure to assert her dower in the manner and within the time fixed by Section 19 of the act, she had lost the right thereto. From an adverse decree, the ex-spouse appealed directly to the Illinois Supreme Court as a freehold was involved. That court, affirming the decree of the trial court, held the phrase “surviving spouse” as used in the statute in question was broad enough to apply to an ex-spouse so as to require the latter to act to claim dower within the same time and in the same manner as would be required of a widow or widower.

1 389 Ill. 183, 58 N. E. (2d) 889 (1946).
2 11. Rev. Stat. 1943, Ch. 3, § 171, provides: “The surviving spouse of a decedent who dies after the effective date of this Act is barred of dower unless he perfects his right thereto by filing during his lifetime at the time and place provided for herein a written instrument describing the real estate, signed by the surviving spouse and declaring his intention to take dower therein.”
3 The will made no provision for the ex-spouse. Her failure to renounce would not have been regarded as an acceptance of the provisions of the will in lieu of dower since no choice was provided: Ward v. Ward, 134 Ill. 417, 25 N. E. 1012 (1890). The rule is different today, at least as to the surviving spouse, by reason of Ill. Rev. Stat. 1943, Ch. 3, § 172.
No one can dispute the fact that, if the legislature has employed language capable of two or more constructions, it is the duty of the courts to resolve the ambiguity by ascertaining the legislative intention and applying the construction which renders the statute reasonable rather than to adopt one which leads to absurd results. It is likewise true, though, that in the absence of ambiguity there is no occasion for construction of the statute hence the courts should apply the same as written by the legislature. There is scarcely room for more than one construction for the term "spouse," for that term is universally defined by the lexicographers as meaning a man or woman who is "engaged or joined in wedlock," while the modifying adjective "surviving" connotes a spouse who outlives the other. It is only when the prefix "ex-" is added to the word "spouse," so as to obtain the meaning of a person who was "formerly but not now" a spouse, that the legislative language could possibly be broad enough to apply to the defendant in the Classen case. Despite this, the court concluded that ambiguity was present which required construction.

From that point, the court progressed to the idea that it would be an absurd result to grant the ex-spouse a right of dower in the divorced spouse's property in the absence of compliance with Section 19 while at the same time denying such right to the surviving wife or husband. To adopt such view, the court indicated, would be fraught with mischievous consequences since titles might be clouded by many dower claims in case the property owner, because of his or her fault, was divorced more than once unless such potential clouds could be removed within a reasonable time or were eliminated by suitable adjustment at the time divorce was granted. The enormity of that situation, together with the fact that to hold otherwise would result, in the mind of the court, in giving the divorced spouse greater rights than the surviving wife or husband, dictated a construction that the legislature intended both to be within the comprehension of the statutory provision. Had the legislature meant otherwise, the court said,

4 Moriarty, Inc. v. Murphy, 387 Ill. 119, 55 N. E. (2d) 281 (1944); People ex rel. Shriver v. Frazier, 386 Ill. 615, 55 N. E. (2d) 159 (1944).
5 Moweaqua Coal Corp. v. Industrial Commission, 360 Ill. 194, 195 N. E. 607 (1935).
6 People v. Lund, 382 Ill. 213, 46 N. E. (2d) 929 (1943). To determine whether there is ambiguity, according to Trustees of Schools v. Berryman, 325 Ill. 72 at 76, 155 N. E. 850 at 851 (1927), the language used "should be given its ordinary meaning."

7 Webster's New Int. Dict. See also Ballentine, Law Dict., p. 1225; 58 C. J., Spouse, p. 1307; Oxford Eng. Dict. on Hist. Principles, Vol. IX, p. 674. Cent. Dict. and Encyclo., Vol. IX, p. 5859, gives as a variant: "A married person, husband or wife; either one of a married pair." In Rossell v. State Industrial Accident Commission, 164 Ore. 173, 95 P. (2d) 726 (1939), it was stated that the legal, as well as the ordinary meaning of spouse is "one's wife or husband," hence a "surviving spouse" must be the one, of a married pair, who outlives the other.
it would no doubt have used "appropriate language" to express such intent,\(^8\) hence the conclusion reached appeared inevitable.

The clarification of titles to land is, undoubtedly, a matter of serious concern and one worthy of every attention. The inherent fear indicated by the court that a parcel of land might, for a period of time, be encumbered by a series of dower estates, brought about by the tendency of certain modern humans to engage in "licensed polygamy," is not unwarranted. But there is scarcely justification for such a decision either in precedent\(^9\) or logic and had more thought been given to underlying principles the fallacies inherent therein might have been recognized. The question goes much deeper than one as to the manner of splitting hairs over the meaning of words. It really grows out of the many changes made, in recent years, in an endeavor to provide a suitable substitute for the common-law right of dower.

That common-law right gave to the widow, upon her husband's death, an interest in one-third of the lands and tenements of which he was seized in fee simple or fee tail for the remainder of her life.\(^10\) It was a right of such antiquity that its origin is difficult to trace, but in this country, except where changed by statute, it remains the same or substantially the same as at common law. The husband, on the other hand, obtained no such right in his wife's property although he did receive something comparable thereto. With the enactment of the Married Women's Acts, it was felt that there was no just basis for discriminating between the spouses, so the husband's estate of curtesy

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\(^8\) The courts developed and applied the maxim *expressio unius est exclusio alterius* to fit such situations: People ex rel. Hansen v. Collins, 351 Ill. 551, 184 N. E. 641 (1933). In the light thereof, it is hardly to be expected that the legislature, when using the term "spouse," would be expected to add "and we don't mean 'ex-spouse'!"

\(^9\) In *Wait v. Wait*, 4 N. Y. 95 (1850), a woman who had obtained an absolute divorce on the ground of her husband's adultery was allowed a dower right in his property such as was given to the "widow" by statute on the ground that there was no just basis for denying the same to the innocent spouse although the statute expressly denied such right to a guilty one. The court said, at p. 107, that whether or not a woman divorced from her husband, upon his subsequent death, was to be called his "widow" might "furnish a curious question in philology," but concluded that the language used was sufficient to describe the person intended. In a later case, *People v. Faber*, 92 N. Y. 146, 44 Am. Rep. 357 (1883), the court indicated that the New York legislature sometimes used the terms "husband" and "wife" to refer to persons actually divorced. In Illinois, however, as was noted by the court in the instant case, the phrase "husband or wife surviving," used in Ill. Rev. Stat. 1943, Ch. 52, § 2, dealing with homestead rights, has been held not to apply to divorced persons: *Krusemark v. Stroh*, 385 Ill. 64, 52 N. E. 2d (2d) 156 (1944); *Claussen v. Claussen*, 279 Ill. 99, 116 N. E. 693 (1917); *Stahl v. Stahl*, 114 Ill. 375, 2 N. E. 160 (1885). So, too, in Indiana, the surviving ex-spouse has been denied the right to a statutory share in the estate of the deceased property owner on the ground that she was neither "widow" nor "surviving wife" within the contemplation thereof: *Fletcher v. Monroe*, 145 Ind. 56, 43 N. E. 1663 (1896).

\(^10\) *Stribling v. Ross*, 16 Ill. 121 (1854). See also Tiffany, Real Property, 3d ed., § 487; Kent, Comm., IV, *35; Blackstone, Comm., II, 129.
was abolished\(^{11}\) and each spouse was given a like estate, denominated "dower," in the other's property. That estate, which might be designated as statutory dower, was still only a life estate and of uncertain value until still later statutory modifications resulted in treating the surviving spouse as an heir and entitled to an interest in the fee.\(^{12}\)

The statutory estate thus created, however, was given to the surviving spouse only after the debts of the deceased spouse had been paid so the legislature saw fit to perpetuate the estate of dower, with its freedom from claims of creditors, in case the surviving spouse preferred to receive it in lieu of the statutory estate of inheritance. There being a choice open to the surviving spouse, it was not unreasonable to force an election between the two types of estates. That was the evident purpose of the legislature in enacting Section 19 of the Probate Act for through it the surviving spouse is forced to take the statutory estate of inheritance with its attendant consequences unless he or she takes affirmative action to obtain the common-law interest.

There is a vast difference, however, between compelling an election among two or more beneficial interests on the one hand, as in the case of the surviving spouse, and the situation presented in cases where the parties were once married but were subsequently divorced. As dower originally arose out of the marital relationship and required a legally recognized ceremony for its existence, it naturally disappeared upon an absolute divorce.\(^{13}\) Such would be the rule today but for the fact that the legislature has provided by another section of the Probate Act that a spouse who is divorced for the fault of the other does not forfeit the right of dower which grew out of the marriage which once existed.\(^{14}\) The "dower" there referred to is the ancient common-law estate and is not a privilege to take an interest in the fee. The innocent ex-spouse is not made an heir thereby but, on the other hand, is not entirely penalized because the marriage has failed. True such right is inchoate while the former spouses both live. It is a mere expectation of property and may be changed, modi-

\(^{11}\) R. S. 1874, p. 423, § 1. The same idea is expressed in Ill. Rev. Stat. 1943, Ch. 3, § 170.

\(^{12}\) Ill. Rev. Stat. 1943, Ch. 3, § 162.

\(^{13}\) Co. Litt., Liber II, Ch. XIX, *33b, states: "But if they were divorced \textit{a vinculo matrimonii} in the life of her husband, she loseth her dower." See also Vernier, American Family Laws, Vol. II, p. 215. Provision in lieu of dower is destroyed by divorce \textit{for the fault of the wife} according to Jordan v. Clark, 81 Ill. 465 (1876), but not if the decree is obtained by her: Seuss v. Schukat, 358 Ill. 27, 192 N. E. 668, 95 A. L. R. 1461 (1934). The same rule applied to the husband's estate of courtesy: Howey v. Goings, 13 Ill. 95 (1851).

\(^{14}\) Ill. Rev. Stat. 1943, Ch. 3, § 173. That statute has its origin in R. L. 1827, p. 188.
fied, or abolished by legislative action at any time.\textsuperscript{15} It may be regulated by law, and will be governed by the law in force at the time of the death of the property owner.\textsuperscript{16} The defendant in the instant case had procured her divorce in 1937, but between the date of the decree and the death of the husband, the legislature had enacted Section 19 of the Probate Act. Undoubtedly, if such statute applied to the defendant, she would have to comply with its provisions respecting the filing of a claim for dower within the period allotted. But wherein would lie the sense of compelling the innocent divorced spouse to make a choice such as is contemplated by that section when there are no alternatives to choose between?

If the legislature wished to prevent the ex-spouse, no matter how innocent, from claiming dower at all, then the thing to do was not to enact Section 19 of the Probate Act but rather to repeal Section 21 from which that right stems. If any qualification ought to be placed thereon, it should be done by modifying that section rather than by misappropriating the sense of another provision having no real relation thereto. It well may be that, for the safety of titles, the ex-spouse who is entitled to claim dower should be barred from the same unless the right thereto is asserted in a positive and prompt manner. That, however, as the courts have often said, is an "argument to be addressed to the legislature." That objective could be simply and quickly attained if the legislature felt it was a desirable one. Its accomplishment in the manner laid down by the Illinois Supreme Court in the Classen case, though, is neither sound nor sensible.

H. H. FLENTYE

A YEAR OF S. E. U. A.

The decision in \textit{United States v. South-Eastern Underwriters Association}\textsuperscript{1} has been generally recognized as the most important opinion handed down by the United States Supreme Court during its 1943-4 term.\textsuperscript{2} One can well agree that such decision has far-reaching consequences for it upset a constitutional law doctrine of seventy-five years' standing,\textsuperscript{3} has required legislative attention by every state in the Union, has produced Congressional action, and in

\textsuperscript{15} Sutherland v. Sutherland, 69 Ill. 481 (1873); Kauffman v. Peacock, 115 Ill. 212, 3 N. E. 749 (1885); Virgin v. Virgin, 189 Ill. 144, 59 N. E. 586 (1901); Mettler v. Warner, 243 Ill. 600, 90 N. E. 1099, 134 Am. St. Rep. 388 (1910); Bennett v. Bennett, 318 Ill. 193, 149 N. E. 292 (1925); Kilgore v. Kilgore, 319 Ill. 298, 149 N. E. 754 (1925); Steinhagen v. Trull, 320 Ill. 382, 151 N. E. 250 (1926); Mitchell v. Mitchell, 328 Ill. 136, 159 N. E. 274 (1927).

\textsuperscript{16} Dial v. Dial, 378 Ill. 276, 38 N. E. (2d) 43 (1941).


\textsuperscript{2} "Supreme Court, 1943-4 A Significant Term" (The Bureau of Nat. Affairs, Inc.) p. 18.

\textsuperscript{3} Paul v. Virginia, 75 U. S. 168, 19 L. Ed. 357 (1869).
general has left the insurance business as a whole in an unsettled state of affairs. In the light thereof, a survey of some of the specific effects of the decision, one year after its pronouncement, may be warranted.

So far as the case itself is concerned, the federal grand jury for the Northern District of Georgia indicted the South-Eastern Underwriters Association upon a charge of violating the Sherman Anti-trust Act. That association was composed of two hundred private stock fire insurance companies and twenty-seven officers. The indictment alleged that the association fixed premium rates and agent's commissions, employed various types of coercion to force non-member companies into the conspiracy, and attempted to compel those seeking insurance to buy from the association members only. The government contended that the Sherman Act was violated by such conduct as the same amounted to a restraint of interstate trade and commerce and also created a monopoly in at least six of the states. The association demurred on the ground that the fire insurance business was not, and never had been, commerce. That demurrer was sustained by the district court upon the ground advanced. A writ of error was granted to the prosecution by the United States Supreme Court. Some thirty-five of the states filed briefs as amici curiae seeking affirmance of the lower court decision, but the Supreme Court, by a four-to-three decision, reversed the trial court and held that the business of insurance is a form of commerce and, when conducted across state lines, is the proper subject of federal regulation.

By such decision, the nation's largest business was rendered subject to federal jurisdiction although the regulation thereof had hitherto been handled by the states. The implications of numerous decisions, beginning with Paul v. Virginia, were necessarily over-

4 15 U. S. C. A. § 1 declares: "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." Section 2 thereof states: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be guilty of a misdemeanor."


6 Authority for such action, in criminal cases, is to be found in 18 U. S. C. A. § 682.

7 Justices Roberts and Reed did not participate in the decision of the case.

8 Mr. Justice Black wrote the majority opinion, concurred in by Justices Douglas, Murphy and Rutledge.

ruled although not specifically rejected. In that regard, one factor should be noted and that is that such earlier decisions had all involved the validity of state statutes. The court may have felt that it did not wish to invalidate such statutes inasmuch as Congress had fashioned no regulation for the insurance business. To deny validity to such statutes in retrospect would have given insurance companies, conducting a business inherently affected with a public interest, a free hand to do as they pleased. Such prior opinions, moreover, were based on the doctrine that each state could decide just what qualifications a foreign company must meet in order to do business within the state, for while corporations were "persons" under the due-process clause they were not "citizens" within the privileges and immunities clause of the Fourteenth Amendment. That doctrine, doubtless, the court did not wish to overthrow. The instant case, though, does constitute the first wherein the United States Supreme Court was asked to rule on the insurance business as it might be affected by an act of Congress, and the majority opinion has now made such business subject to federal regulation whereas the states, prior thereto, had regulated it exclusively.

What, then, did the decision do to the insurance business? It was, apparently, placed in a sort of no-man's land subject to attack from both fronts. If it continued to abide by state regulations, it was open to attack for such regulations, in many cases, could be said to tend in the direction of a monopoly of trade so as to burden the free flow of commerce. On the other hand, companies doing business in foreign states might refuse to comply with all forms of state regulation on the ground that they were subject only to federal control. Practical considerations regarding the uncertain status of the insurance business with respect to regulation may have been the basic reason for the strong dissents written by Justices Stone, Frankfurter and Jackson.

Chief Justice Stone, one of the dissenters, although admitting that Congress could regulate many aspects of the insurance business, forecast that the effect of the decision would be to take away from the states and to confer on the federal government the regulation of a business already well-regulated under state laws and subject it to the uncertainties of Congressional action. Justice Jackson, agreeing that the conduct of insurance business across state lines actually amounts to interstate commerce, nevertheless advanced the theory that a fiction had been established to the effect that insurance should

10 See Keehn v. Hi-Grade Coal & Fuel Co., 23 N. J. Misc. 102, 41 A. (2d) 525 (1945), where it was argued that the S. E. U. A. decision had rendered invalid certain provisions of the New Jersey insurance law, but the same were upheld as not amounting to a violation of the commerce clause of the Federal Constitution. Other aspects of the situation are dealt with in Brown v. Utica Mut. Ins. Co., 53 N. Y. S. (2d) 760 (1945), and McCarthy v. American Surety Co., 52 N. Y. S. (2d) 601, 183 Misc. 983 (1944).
not be considered as ordinary commerce. In his desire to maintain that theory so as to avoid the practical consequences of the decision, Mr. Justice Jackson declared: "The states began nearly a century ago to regulate insurance, and state regulation, while no doubt of uneven quality, today is a successful going concern. Several of the states, where the greatest volume of business is transacted, have rigorous and enlightened legislation, with enforcement and supervision in the hands of experienced and competent officials. Such state departments, through trial and error, have accumulated that body of institutional experience and wisdom so indispensable to good administration. The Court's decision at very least will require an extensive overhauling of state legislation relating to taxation and supervision. The whole legal basis will have to be reconsidered. What will be irretrievably lost and what may be salvaged no one now can say, and it will take a generation of litigation to determine. Certainly the states lose very important controls and very considerable revenues." Justice Frankfurter also expressed agreement with his dissenting brethren, for he too did not want to "wipe out elaborate and long-established state systems for regulating and taxing insurance companies."  

As could be anticipated from a reading of the dissenting opinions, the decision was not generally well received either in the insurance field or in the public press. One editorial stated that "Insurance D Day fell just a few hours before Eisenhower's D Day ... the mental commotion of insurance men was pitiable, as their attention was torn between invasion headlines and their efforts to apprehend the consequences of the epochal, adverse U. S. Supreme Court decision ... Decisions upon which the whole system of state supervision of insurance has been founded and under which the business has operated apparently are juridical museum pieces." The Insurance Commissioner for Massachusetts likewise expressed the sentiment of state insurance officials when he commented that "a discussion of the decision ... should be periodically revised as the mischief which flows from [it] manifests itself from time to time ... If Mr. Justice Black and his associates could have seen their way clear to accept Mr. Justice Jackson's view, insurance supervisory officials and insurance executives would have been spared much grief and the public would have been saved the increased cost of insurance which flows from costly litigation." 

11 322 U. S. 533 at 590, 64 S. Ct. 1162 at 1192, 88 L. Ed. 1440 at 1478.  
14 Charles F. J. Harrington, past president (1943-4) of the National Association of Insurance Commissioners and chairman of its Federal Legislation Committee.  
Although such comments came from those primarily interested in the insurance business, many constitutional lawyers of note were of the same frame of mind. Professor Powell, as if speaking for them, attacked the majority opinion with fine astuteness. After deducing that Mr. Justice Black's decision was based on the major premise that most people would hold insurance to be a form of trade and commerce, he pointed out that it was "a little less than shocking to have a Justice of the Supreme Court invoke the mere supposition of common knowledge among lesser breeds without the law as worthy of consideration against the conclusion of a district court which preferred to respect its obligation to be faithful to superior controlling precedents rather than to traduce them by resort to vaguely indicated ancient locutions and to unspecified contemporary supposed common knowledge of supposed most persons."16

There were those, however, who approved. Hugh Evader Willis, long an advocate of the belief that insurance is interstate commerce and a severe critic of Paul v. Virginia, rejoiced in the decision and stated that: "The present United States Supreme Court has overruled another prior Supreme Court decision . . . and in doing so has done a fine piece of work."17

The S. E. U. A. decision brought forth a volley of comments pro and con, mostly con, which indicated the seriousness of the situation created thereby. Meanwhile, what about the subject of all this discussion? What was the insurance business doing to remove itself from the horns of the dilemma? Action was obviously necessary to clarify the status of the business and it was not long before action made its appearance. The general set-up became apparent almost immediately. The fire and casualty companies indicated they would work with the National Association of Insurance Commissioners in an attempt to persuade Congress to take action granting relief from the effects of the decision. A few days after the decision had been handed down, several hundred representatives of the insurance business met in Chicago to discuss the new situation. They recommended that a special committee should consult all interested persons, should hold executive sessions as well as public hearings throughout the country, and should submit specific recommendations to the executive committee of that association before September 1st. Life insurance companies, on the other hand, appeared to remain aloof, probably on the ground that they had nothing to fear from antitrust regulations.

Even before the decision had been announced, duplicate bills had been introduced in the Senate and the House of Representatives on September 20, 1943, designed to exempt insurance from the operation

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16 See Powell, "Insurance as Commerce," 57 Harv. L. Rev. 937 at 988 (1944).
of the Sherman and Clayton Acts. These measures had been discussed in committee and representatives of the various insurance interests had been heard, but the popular impression was that the administration was holding up serious consideration. The S. E. U. A. decision brought action, however, and the Walter-Hancock bill was passed in the House by a vote of 283 to 54. The Senate bill, discussed in committee and before the insurance subcommittee during the same week, was not reported out, no doubt because of the announcement by the Attorney General that neither he nor the Department of Justice were considering action against the insurance business until both the states and Congress had had an opportunity to take appropriate action.

At that time, Congress recessed and it appeared certain that Senate action, either on its own or the House bill, would not be taken until after election.

Beginning in July, 1944, the federal legislation committee of the National Association of Insurance Commissioners conducted meetings with the committees chosen by the varied insurance interests. All interested organizations or persons were invited to make suggestions, and recommendations agreed upon by that committee were to be submitted to the executive committee of the N. A. I. C. for consideration. The programs offered were many and varied. Predominant, however, was the idea that in lieu of pressure for the passage of the Senate Bailey-Van Nuys bill, passage thereof becoming less likely every day, there should be substituted a plan for a moratorium on the application of federal statutes regulating interstate commerce as applied to the insurance business. In particular, the Sherman and Clayton acts, the Federal Trade Commission act, and the Robinson-Patman acts were to be suspended, for the time being, as they might relate to insurance matters. The suggestion particularly appealed to the life insurance interests and was one on which they found a common ground with the others for the president of one of the larger life insurance companies asserted that his company's sole concern was only over the possible application of the Federal Trade Commission Act. Concern over the possibility that that Commission, possessed of a seemingly unlimited power to enter any field and say what is unfair competition and what is a deceptive act or practice, might undertake to test insurance practices can well be understood.

18 S. 1362 is frequently referred to as the Bailey-Van Nuys bill, while H. R. 3270 has been designated the Walter-Hancock bill.
20 As, for example, the Association of Life Insurance Presidents, Insurance Executives Association, Eastern Underwriters Association, Association of Casualty and Surety Executives, National Bureau of Casualty and Surety Underwriters, and others.
Following such meetings, the executive committee of the N. A. I. C. adopted four of the recommendations of its legislation committee. Those recommendations called for (1) a declaration by Congress that the regulation and taxation of the insurance business should continue in the several states; (2) the complete elimination of the insurance business from the scope of the Federal Trade Commission Act; (3) the total elimination thereof from the operation of the Robinson-Patman Act; and (4) the partial elimination of restraints imposed by the Sherman and Clayton Acts. That body also directed its legislation committee to work with representatives of the industry in sponsoring federal legislation.

Shortly thereafter, the Bailey-Van Nuys bill was given favorable recommendation by the Senate judiciary committee and was submitted to the Senate, but as a recess was about due it was uncertain as to just when the bill would receive consideration. A minority report of the judiciary committee contained a motion by Senator O'Mahoney requesting that no action be taken until after the September meeting of the insurance commissioners. Senator O'Mahoney there stressed the fact that the Bailey-Van Nuys bill, while it would exempt the insurance business from the antitrust laws, would not relieve the industry from the operation of other federal statutes which were likewise based on the commerce clause. He urged, instead, that the state commissioners' recommendations be made the basis for legislation.

State officials and insurance concerns, fire and casualty companies in particular, had been hoping that a rehearing in the Supreme Court would prove more favorable to their cause than the original decision. Such hopes were blasted, however, when the United States Supreme Court, on October 9, 1944, denied the petition for rehearing. For a while, some hope was fastened on the idea of a constitutional amendment by which the insurance business might be declared exempt from the effect of the commerce clause. For all practical purposes, though, any solution of the problem would have to come from Congress in whose lap the matter now rested.

Meanwhile, the legislation committee of the N. A. I. C. met again in early November and drafted a proposed statute similar to the one it had recommended earlier but with an additional provision calling for a moratorium, until July 1, 1948, on the Sherman and Clayton anti-trust laws except as the same related to coercion and boycotts. It was planned, thereby, to give the states an opportunity to make whatever changes might be necessary in the light of the S. E. U. A. decision. That draft was drawn with comparatively little opposition.


and was approved at the midyear meeting held on December 4, 1944, between the representative insurance and state associations.\(^{24}\)

The Senate had remained quiescent in the matter from the time when the Bailey-Van Nuys bill had been reported out of the judiciary committee, perhaps for the reason that all insurance interests had not agreed on a legislative proposal by which the industry might be governed.\(^{25}\) The companies and the insurance commissioners realized that a united front was necessary if they were to convince the Senate of the appropriateness of their recommendations and they strove to provide one. By December 13th all insurance interests agreed that the proposed legislation should stand except that a portion of it, exempting application of the Sherman Act after the moratorium, should be deleted. Senators McCarron and Ferguson introduced this amended proposal as a substitute for the Bailey-Van Nuys bill three days later.\(^{26}\) At the same time, Senators O'Mahoney and Hatch submitted a proposal, carrying the endorsement of the N. A. I. C. and the insurance industry with the exception of the stock fire companies, limiting the moratorium from the antitrust laws to March 1, 1946. The following day Congress adjourned, having failed to take action on the several proposals. The 79th Congress was due to convene in January, however, and the ball would start rolling anew.

The new year began with a letter from the President to Senator Radcliffe wherein the policy of the administration was declared to be one not to interfere with state regulation and taxation, but to insist that insurance should not be immune from antitrust legislation. The O'Mahoney-Hatch bill, introduced in the prior Congress, was openly approved.\(^{27}\) On January 6, 1945, Senator O'Mahoney introduced substantially the same bill as he had offered earlier. Shortly thereafter, Senators McCarron and Ferguson introduced S. B. 340 which was similar to their former proposal. Their bill called for a moratorium on the operation of the Sherman Act until June 1, 1947, and a more extended one on the Clayton Act to January 1, 1948. It was submitted more or less as a compromise substitute for the O'Mahoney-Hatch bill, and had the approval of the N. A. I. C. and the insurance industry as a whole. The Senate judiciary committee reported a recommendation that the bill pass and it was passed on January 25th

\(^{24}\) At that meeting the N. A. I. C., the state commissioners, the American Life Convention, the Life Insurance Association of America, the Association of Mutual Casualty Companies and others were represented. See The Nat. Underwriter, Life Ins. Ed., Dec. 8, 1944, p. 6.

\(^{25}\) Stock fire insurance companies had not approved the N. A. I. C. legislative draft.

\(^{26}\) McFall, op. cit., p. 73.

\(^{27}\) See letter from President Roosevelt to Senator Radcliffe, dated Jan. 2, 1945, quoted in full in 264 Ins. L. J. 22 (1945).
with but one change, namely: that the antitrust laws should not be excepted under Section 2(B) of the statute.\textsuperscript{28}

No action of any kind had been taken in the House, perhaps because its membership was waiting to see what took place in the Senate. A few days after the Senate had voted on its bill, the subcommittee of the House judiciary committee recommended the passage thereof without the change made on the Senate floor, and without the declaration of the intent of Congress to provide a moratorium. Such bill was not favorably received by the Senate or the insurance industry. Senator O'Mahoney, in fact, protested that the House amendments would "kill the bill" if attempt was made to exempt insurance completely from the antitrust laws.\textsuperscript{29} Nevertheless, the bill did pass the House on February 14th by a vote of 315 to 57.

Because of the absence of agreement between House and Senate measures, the matter went before a joint conference committee which eventually agreed upon a conference report. That report was different from the House bill chiefly because it included the Federal Trade Commission Act and the Robinson-Patman Acts within the moratorium period, and expressly stipulated that there was to be no exemption for acts of boycott, coercion or intimidation. The report received approval in both branches of Congress and the amended measure was sent to the White House where, on March 9th, it was signed and became law.\textsuperscript{30} It is the only measure thus far which has been enacted into law but it is obviously not a solution to the problems created by the S. E. A. U. decision. It merely postpones the necessity for present affirmative action by Congress for almost three years in order that the states might change existing laws to conform to the decision.

\textsuperscript{28}Before amendment from the Senate floor, that section read: "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such act specifically so provides." The amendment placed the words "except the Act of July 2, 1890, as amended, known as the Clayton Act" after the words "No Act of Congress" at the beginning of the section.

\textsuperscript{29}As quoted in The Nat. Underwriter, Life Ins. Ed., Feb. 9, 1945, pp. 1 and 22.

\textsuperscript{30}59 Stat. 33, 15 U. S. C. A. § 1011 et seq. Section 1 of the statute declares the Congressional purpose that continued regulation and taxation of the business of insurance by the states is in the public interest and Congressional silence is not to be construed to impose barriers on state regulation. Section 2(a) expressly states that existing state laws remain in operation. Section 2(b) indicates that state laws are to continue in effect unless a federal statute is enacted which specifically relates to the insurance business. It, and Section 3(a), contain moratorium provisions. The moratorium on the Sherman Act, the Clayton Act, the Robinson-Patman Act and the Federal Trade Commission Act, extends to January 1, 1948, except that there is no moratorium on the provisions of the Sherman Act relating to boycotts, coercion or intimidation. Section 4 states that existing federal legislation on labor matters has full application to the insurance business. A definition of the term "state" is furnished in Section 5, and Section 6 contains the customary separability clause.
The burden, therefore, is now on the states. The bill granted the premise that regulation by the states is in the public interest. The states, however, are to retain control only if they can prove their ability to control before January 1, 1948. Before that date, it is expected that state action of all kinds will occur. Hasty legislation, radical changes, refusal to change, good measures and bad will likely appear. It appears too much to hope that forty-eight states will pass legislation adequate, in Congressional judgment, to free the insurance industry from imminent federal control. Test cases of various state measures will undoubtedly arise, but the present prospect seems to be that lack of uniformity of action will eventually give Congress sufficient excuse to take over all-out regulation of the insurance business. State failure to provide adequate regulation for transportation led to the Interstate Commerce Commission. A federal Insurance Commission appears looming on the horizon.

R. K. Powers

CIVIL PRACTICE ACT CASES

Appeal and Error—Requisites and Proceedings for Transfer of Cause—Whether or Not Filing of Motion in Trial Court to Vacate Judgment or Decree Operates to Stay Running of Time for Filing of Notice of Appeal—A motion was made, in Corwin v. Rheims,\(^1\) to dismiss an appeal on the ground that the same had not been taken in apt time. The original decree from which relief was sought had been entered on February 2, 1944. Six days later, the unsuccessful plaintiff moved to vacate such decree which motion was continued generally and was not passed upon until May 19, 1944, when it was overruled. Three days after the order overruling the motion to vacate the decree, notice of appeal was filed in the trial court. It was urged that since such notice was not filed within ninety days next following the date of the original decree, as provided in Section 76 of the Civil Practice Act,\(^2\) the appeal was taken too late to warrant consideration thereof. Held: motion to dismiss the appeal denied.

The intimation contained in Deibler v. Bernard Brothers, Incorporated,\(^3\) to the effect that a motion to vacate a judgment does not operate to stay the running of time within which to file notice of appeal, was clarified in the instant case when it was pointed out that the rule therein announced was proper in view of the fact that, subsequent to the filing of such motion and before the same had been determined, the appellant had filed a notice of appeal. Such action

\(^1\) 390 Ill. 205, 61 N. E. (2d) 40 (1945). Gunn, J., dissented over questions not involved herein.
\(^3\) 385 Ill. 610, 53 N. E. (2d) 450 (1944), affirming 319 Ill. App. 504, 48 N. E. (2d) 422 (1943).