been introduced on the subject.[81] None have emerged from the committees to which they were referred.

The Court's adoption of the rule of apportionment now assumes a more favorable light.[82] The administrative problem is admittedly formidable, and even partial solution requires working cooperation between tax administrators who devise and apply apportionment schemes, and the courts who declare and enforce the basic standard. That Congress retains its power to enter this field is undoubted, but until and unless it does, the responsibility for a workable solution rests with the Court. Its most recent pronouncements indicate that it has accepted that responsibility.

PROTECTION ACCORDED A PURCHASER OF LAND FROM A DEFAULT JUDGMENT PLAINTIFF

Whenever rights in real property are being litigated, the land may be privately sold or mortgaged to a stranger to the suit.[1] Such transaction may occur before final judgment, after final judgment but preceding appeal,[2] during appeal, or subsequent to the time allowed for appeal. Legislative and judicial stagnation necessitates an inquiry into the protection afforded to purchaser *after* the time for appeal has run. This investigation is thus limited in scope because a person buying property through private sale *during* the time when an appeal may be taken, is generally on constructive notice that an action relating to the land is pending.[3] The fundamental limitations upon which the buyer's rights are contingent are the operation of lis pendens after the time

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81. H.R. 3446, 79th Cong., 1st Sess. (1945); H.R. 1241, 80th Cong., 1st Sess. (1947); S. 2453, 80th Cong., 2d Sess. (1948); S. 420, 81st Cong., 1st Sess. (1949).

82. Application of that rule is justified wherever the use of the vehicle in question is such that there is a substantial connection with more than one state, without regard for the fact that the vehicle is a railroad car, a water vessel, or an airplane. In this connection, the limitation of the *Ott* and *Peck* holdings to vessels moving on inland waters, see note 15 *supra*, hardly seems *a* priori justified for all cases of taxes on ocean-going ships.

1. A private sale must be distinguished from a judicial sale with reference to the rights of purchasers. The purpose of protecting a purchaser at a judicial sale is not merely to keep land alienable, but primarily to promote bidding at public sales. Lord v. Hawkins, 39 Minn. 73, 38 N.W. 689 (1888); Mach v. Blanchard, 15 S.D. 432, 90 N.W. 1042 (1902).

2. See the discussion of the rights of a purchaser where judgment is set aside before time for appeal has run in Tainter, *Restitution of Property Transferred Under Void or Later Reversed Judgments*, 9 Miss. L.J. 157, 179 and n.133 (1936).

3. *E.g.*, Maedel v. Wies, 309 Mich. 424, 15 N.W.2d 692 (1944); Stuart v. Coleman, 78 Okla. 81, 188 Pac. 1063 (1920).

for appeal has run, so that a purchaser is not protected, and the common law theory that a vendee took only the interest that his vendor had. Often, in situations where real estate is involved, a defendant, served personally or by publication, will fail to appear, resulting in a default judgment in the plaintiff's favor. This is especially true where the action is one to quiet title and unknown defendants are served by publication.[4] Most states have provided, by statute or case law, a means by which a default judgment may be set aside, thus allowing the defaulting party to come in and defend.[5]

A default judgment, a purchaser of real property after the time for appeal, and the setting aside of the judgment all result in the problem at hand. The following example illustrates how the problem may arise. P sues to quiet title to Blackacre. D, served either by process or publication, fails to appear. The court finds that title belongs in P, and no appeal being taken, P sells Blackacre to T. Within the statutory period the judgment is set aside on a motion by D, who proves a claim superior to P. Who is entitled to Blackacre, T or D? Which party will be relegated to a suit against P for the loss sustained?[6]

The courts have not articulated the interests which have influenced their decisions in this situation. The innocence of a purchaser probably would not carry much weight on these facts. If a rule were adopted which did not protect a purchaser, he would know that he could not safely rely on a default judgment for the period during which it may be set aside. This fact, coupled with the court's probable inclination to aid a defaulting party who establishes his interest in the real estate,

4. *E.g.*, State *ex rel.* Karsch v. Eby, 218 Ind. 431, 33 N.E.2d 336 (1941); Tawney v. Blankenship, 150 Kan. 41, 90 P.2d 1111 (1939).

5. Most statutes provide that a defendant may, by showing "mistake, inadvertence, or excusable neglect" have a default judgment set aside. *E.g.*, IND. ANN. STAT. § 2-1068 (Burns Repl. 1946); MONT. REV. CODE ANN. § 93-3905 (1947). Some states word their statutes to grant relief "for unavoidable casualty or misfortune preventing the party from prosecuting or defending." *E.g.*, OHIO GEN. CODE ANN. § 11631 (1938); OKLA. STAT. tit. 12, § 1031 (1951). Still another type statute allows a person who has been served by publication to come in for a specified number of months or years, and have default set aside. *E.g.*, IND. ANN. STAT. § 2-2601 (Burns Repl. 1946); S.D. CODE § 33.0815 (1939). Many states have both "excusable neglect" and "publication" statutes. Where a publication statute does not exist, the defendant presumably must obtain relief under the excusable neglect statute. For additional citations to the various statutes, see Appendix, p. 238 *infra*.

6. This discussion deals with a situation where a judgment is not void, for it is within the court's power to render the judgment. The judgment can only be attacked directly, and the excusable neglect and publication statutes provide a means for such attack. Only where the court renders a judgment improper on its face or without jurisdiction, is the judgment void and incapable of passing any rights to a purchaser. Such judgment does not affect the defendant's claim of title. Kavanagh v. Hamilton, 53 Colo. 157, 125 Pac. 512 (1912); Clark v. Carolina Homes, 189 N.C. 703, 128 S.E. 20 (1925).

encourages adoption of a rule allowing the defendant to recover the land from the purchaser.

Such a rule, however, will impair the alienability of real property. If a person desiring to buy realty knows his title will be defeasible, he will not purchase unless he can do so at a reduced price. To forestall sale of land at its full value for several years is unfair to the plaintiff, who may be the rightful owner. Preventing a successful party from enjoying the benefit of his judgment and impairing the alienability of land for an inordinate length of time would be forcible reasons persuading the judiciary to protect a purchaser.

As indicated, the courts have based their decisions upon technical grounds with no reference to the interests of the parties affected. The opinions of several supreme courts give evidence of three approaches to the problem. The language in *Mach v. Blanchard*[7] indicates that because a judgment may be set aside and the suit reopened, the suit is still pending;[8] consequently, the purchaser is on constructive notice of defendant's rights and buys the land subject to those rights. The same result was reached in *Lord v. Hawkins*, which case adopted the rule that the vendee takes only what his plaintiff-vendor had; since the vendor merely had defeasible title, which could fall with the setting aside of a default judgment and a new trial, the vendee received the same limited rights.[9] At variance with the preceding cases, *Van Noy v.*

7. 15 S.D. 432, 90 N.W. 1042 (1902). The default judgment plaintiff mortgaged land before the time for appeal had run. By statute an action in South Dakota was deemed pending for that length of time. S.D. CODE § 33.0104 (1939). The defendant then succeeded in getting the default set aside for excusable neglect and brought an action to cut off the mortgagee's interest. The mortgagee was clearly on constructive notice since the action was still pending.

The legislature may have interpreted this case to mean that the purchaser is never to be protected, for it has subsequently enacted statutes expressly protecting a purchaser where a default judgment is set aside for excusable neglect or because defendant was served by publication. S.D. CODE §§ 37.1514, 33.0815 (1939). There is language in the case to support this interpretation. The court said that "[o]ne who purchases a judgment takes it at the peril of having it vacated or reversed. Why should the defendant in this action [a mortgagee of land] stand in any better position than the assignee of a money judgment?" Mach v. Blanchard, *supra* at 441, 90 N.W. at 1044. This is the common law view that a vendee takes what the vendor has. On its facts, however, the case is limited to the rights of a purchaser or mortgagee before the time for appeal has run.

8. When an action is originally brought, and notice is filed as a state statute may require, any purchaser is on constructive notice of the action and takes subject to its outcome. The question then becomes, how long is the action deemed pending? According to the language in the *Mach* case the action may pend as long as the judgment may be set aside under an excusable neglect or publication statute.

9. 39 Minn. 73, 38 N.W. 689 (1888). The doctrine of *Lord v. Hawkins* in so far as it affects the purchaser, still governs in Minnesota. Carl v. DeToffal, 223 Minn. 24, 25 N.W.2d 479 (1946). The rule has been modified by statute so that a purchaser in good faith is protected after judgment has been undisturbed for three years. MINN. STAT. ANN. § 544.32 (1946).

Jackson states that when the time for appeal has run, the action is no longer pending; a subsequent purchaser with no actual notice of defendant's rights is in good faith and is protected if the judgment is set aside and the defendant wins on new trial.[10]

In most states today the time for appeal varies from twenty to ninety days.[11] During this period, according to the *Van Noy* case, a purchasing party cannot safely rely upon a default judgment; the defendant may, if the judgment is set aside and he is victorious on new trial, have restitution in specie. When the time for appeal has run, the purchaser knows that if he buys in good faith, he will be protected; he is no longer on constructive notice of defendant's rights because the action is no longer pending. The defendant must then obtain restitution of the money-equivalent of the property value from the original plaintiff.

This solution appears to be sound with regard to all parties concerned; in Indiana and a few other states, however, statutes provide that an infant or disabled person shall have the right to appeal after such disability is removed.[12] In a recent Indiana case, *Attica Building and Loan Association v. Colvert,* this statute was held to keep a suit pending so that a purchaser (mortgagee) would not be protected when the infant had the judgment set aside; the purchaser was deemed to be on a constructive notice of the infant's interest.[13]

The wisdom of statutes allowing an infant to appeal upon reaching majority is not now in issue. A decision, however, that the statute keeps the suit pending beyond the normal time for appeal, which would usually terminate pendency, appears to be unfair. Title to land is thus rendered uncertain for an unreasonable and indefinite period of time. For example, if a minor is five years old when a judgment adversely

10. 68 Okla. 44, 171 Pac. 462 (1918). In this case the judgment was set aside for fraud under OKLA. STAT. tit. 12, § 1031 (1951). This statute also contains a provision for setting a judgment aside for defendant for "unavoidable casualty or misfortune preventing a party from prosecuting or defending"; undoubtedly, this case would also be authority for protection of a purchaser where a judgment was vacated under the "unavoidable casualty" provision. This is similar to "excusable neglect." The publication statute in Oklahoma gives express protection to the purchaser. OKLA. STAT. tit. 12, § 176 (1951). Identical to these two Oklahoma statutes are enactments in Kansas, Nebraska, Ohio, Washington, and Wyoming, except that Ohio and Wyoming expressly protect the purchaser where judgment is set aside for "unavoidable casualty" as well as where the judgment is vacated under publication statute. See Appendix, p. 238 *infra*.

11. *E.g.,* CAL. CODE CIV. PROC. RULE 2 (Rules on Appeal) (1949); IND. SUP. CT. RULE 2-2; OHIO GEN. CODE ANN. § 12223-7 (Supp. 1951).

12. IND. ANN. STAT. § 2-3202 (Burns Repl. 1946); KY. CODES CIV. PRAC. § 391; NEB. REV. STAT. § 25-1931 (Supp. 1951). No cases are found in Kentucky and Nebraska as to whether or not minor's right to appeal keeps the action pending.

13. 216 Ind. 192, 23 N.E.2d 483 (1939).

affecting him is entered, the action will be pending until he is twenty-two years old—one year after the cessation of the disability. Any purchaser during the seventeen year period is on constructive notice of the infant's rights; if default judgment is set aside during this period, the purchaser is not protected if the minor can prove he has a valid interest.

It is noteworthy that the *Attica* case was based upon a statute allowing a defendant to set aside a judgment for error.[14] Logically, where a judgment is set aside under an excusable neglect statute, the same rule should apply.[15] The Supreme Court of Indiana could, however, distinguish the two situations by saying either that pendency only applies in an action brought under a statute to set aside judgment for error since review for error is similar to review on appeal, or that the Indiana excusable neglect statute provides that an action to set aside be brought by complaint rather than motion.[16] It is, therefore, a new proceeding unaffected by the pendency of the original suit, and the purchaser is protected.

Since few judicial decisions are in point on the question of whether a purchaser is to be protected or not, a clearer picture of how the problem is handled must be obtained from legislative enactments. Federal Rule 60(b) provides for relief against a judgment for "mistake, inadvertence, and excusable neglect";[17] the rule further states that "a motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation." Although no cases have interpreted this clause, its purpose is probably to protect all bona fide interests obtained in reliance on the validity of the judgment; this interpretation, of course, would leave a purchaser's rights in property unaffected by the vacation of a judgment through the operation of which his title is derived. Also, Section 1655 of the Judicial Code allows a defaulting party served by publication to have a judgment set aside within one year of rendition,[18] but contains no statement concerning treatment of a purchaser.[19]

As demonstrated by the Appendix, many state legislatures have

14. IND. ANN. STAT. § 2-2604 (Burns Repl. 1946).

15. *Id.* § 2-1068.

16. In many states action to set aside is brought on a motion. *E.g.*, ARIZ. CODE ANN. § 21-1502 (1939); GA. CODE ANN. § 110-404 (Supp. 1951).

17. FED. R. CIV. P. 60(b).

18. 28 U.S.C. § 1655 (Supp. 1952).

19. Where the federal court sits in a diversity of citizenship case deciding rights in land, there may be a conflict under federal and state law as to whether a purchaser of such land is to be protected if the judgment is set aside. Under Erie R.R. v. Tompkins, 304 U.S. 64 (1938), there is a question whether this is a substantive or procedural matter.

expressly protected a bona fide purchaser. More states have done so when a judgment is set aside for a defendant served by publication than when a defendant requests relief because of excusable neglect.[20] Undoubtedly, this result arises out of a legislature's ability to readily perceive the likelihood that the rights of a purchaser of land may be affected when a defendant served by publication has a judgment vacated, for such service is most often used in actions concerning title to land. Excusable neglect statutes, however, allow a defaulting defendant to seek relief in any type of action. In states having both publication and excusable neglect statutes, no reason is apparent for not treating a vendee the same regardless of the statute used to set aside the judgment.

Some states, without expressly protecting the purchaser under either statute, have provided, by legislative enactment, that an action is pending only until the suit is determined on appeal or the time for appeal has run.[21] Following the reasoning of *Van Noy v. Jackson*,[22] the purchaser would be protected because the suit is not pending after the time for appeal and the person buying property is not on constructive notice. This interpretation was probably intended by these statutes.

A few states not only provide that pendency ceases when time for appeal has run, but also provide that the purchaser in good faith will be protected. In these states the vendee's rights obviously are unharmed.[23] But where a state has only one of the two provisions, there is room for judicial undermining of the intent to protect the purchaser. A court could find, where the purchaser in good faith is expressly protected, some ground to keep the suit pending;[24] a purchaser would then be on constructive notice and not "in good faith." And, even if a suit is pending only until time for appeal has run, a court may adopt the reasoning in *Lord v. Hawkins*,[25] that a vendee only receives the property rights of his vendor. Though no cases are

20. These states expressly protect a purchaser when judgment is set aside under publication statute: Colorado, Indiana, Iowa, Kansas, Mississippi, Nebraska, North Carolina, and Oklahoma. The following states' statutes expressly protect a purchaser whether judgment is set aside under publication statute or for excusable neglect: Montana, New York, Ohio, South Dakota, Utah, and Wyoming. The following states have protected the purchaser where judgment was set aside for excusable neglect: Illinois, Kentucky, and Oklahoma. See Appendix, p. 238 *infra*.

21. California, Florida, Idaho, North Dakota, and Virginia. See Appendix, p. 238 *infra*.

22. 68 Okla. 44, 171 Pac. 462 (1918); see note 10 *supra*, and accompanying text.

23. Montana, New York, Ohio, Oklahoma, South Dakota, and Utah. See Appendix, p. 238 *infra*.

24. A court may find a suit pending where an infant has the right to appeal or because the judgment may be set aside for excusable neglect on a motion by the defendant.

25. 39 Minn. 73, 38 N.W. 689 (1888).

found which adopt these positions in contravention to a clear legislative intent to protect the purchaser, a court which feels strongly about protecting a defaulting defendant who subsequently attempts to set aside judgment, may use legalistic doctrine to accord him restitution in specie. Thus, complete legislative protection is required.

The growing number of states which have expressly protected the purchaser have undoubtedly been motivated by a desire to enable a judgment plaintiff to readily sell the land, not only for his benefit, but also to promote the productivity of land. To prevent the sale of property for a short period—the time allowed for appeal, for instance—would not place an unreasonable burden upon the land or the plaintiff. In recommended legislation, therefore, it would be wise, first, to provide defendant a brief interim during which he could come in and obtain restitution in specie; second, to protect an innocent purchaser who buys the property after the lapse of a specified time, so that he can ascertain when he may safely buy; third, to leave the rights of the purchaser unaffected when judgment is set aside thereafter under either an excusable neglect or publication statute.

States having statutes identical to Ohio and Oklahoma need do no more than parallel the case law in those states to reach this result, for their legislative and judicial design is harmonious with this view.[26] Where no cases or statutes expressly protect the purchaser, the following recommendations are submitted for legislative enactments or supreme court rules, whichever is adaptable to the state practice;

> An action is deemed to be pending from the time of its commencement until its final determination on appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.[27]

If a state's period for appeal lasts an unreasonably long time,[28] or the state has no definite period within which to appeal, the following legislation is recommended:

> An action is deemed to be pending for thirty (or up to ninety) days after final judgment is entered.[29]

The above proposals have as their purpose the limitation of the pendency of action and, thus, constructive notice to the purchaser of

26. Kansas, Nebraska, Washington, and Wyoming. See Appendix, p. 238 *infra*.

27. The following states have similar statutes: California, Idaho, Montana, New York, North Dakota, Ohio, Oklahoma, South Dakota, Utah, and Virginia. See Appendix, p. 238 *infra*.

28. This would include states allowing an infant to appeal after disability is raised, for such provision may keep a suit pending for as long as twenty-two years.

29. IOWA CODE ANN., c. 617, § 15 (1950).

land; the defendant is still given a reasonable time in which to appeal or have a default set aside and procure complete restitution. If a defendant takes no action, a purchaser knows when he can safely buy land.

Also in accord with provisions of the usual excusable neglect and publication statutes, the following protection is recommended for the purchaser:

1. The court may relieve a defendant from a default judgment taken against him through his mistake, inadvertence, surprise, or excusable neglect for a period of ---- years after rendition of judgment. Relief shall be a new trial. (typical excusable neglect statute)
2. Parties against whom judgment is rendered without other notice than by publication, except in cases of divorce, may, at any time within ---- years after date of rendition of judgment, have same opened, and be allowed to defend. (typical publication statute)
3. If the title to real property, which is the subject of the judgment sought to be opened under the two preceding sections, has passed to a purchaser in good faith, the purchaser shall remain unaffected by the results of the proceeding. For the purposes of this statute, a purchaser in good faith shall be one who buys property for value after pendency of the original action has ended and who has no actual notice of the rights of a defendant when the purchaser buys the real property relying on default judgment.[30]

Without doubt, forcible policy reasons prompt the preservation of the rights of a stranger to an action who purchases the real estate in litigation. A defendant who fails to come in and defend, though his action is justified, should not be able to impair the alienability of land for a long period of time. If a default judgment plaintiff can only pass disputed title to a purchasing party, the consequence must be to force the plaintiff to sell at a reduced price or to hold the land until the judgment can no longer be contested, either result being unreasonable. Thus, to maintain the alienability of land, the purchaser must be protected. Actions concerning real estate are, of course, subject to lis pendens notice; and during that time a purchaser buys subject to the outcome of the action; but when the parties' rights are litigated and an appeal can no longer be taken, there is no sound reason why pendency should not cease. States which have not already done so should take action to give their courts a clear mandate to protect an innocent vendee in this situation.

30. This proposal is derived from statutes of Indiana, Ohio, and South Dakota. See Appendix, p. 238 *infra*.

APPENDIX

This chart is intended to provide the reader with a broad picture of the states' disposition of the question of whether a purchaser is to be protected when a judgment is set aside after time for appeal has elapsed. Where *no* statute or case is noted, there is an obvious need for statutory protection.

	Do the following states set aside default judgment for:		Lis pendens operates after time for appeal has run.	Is a purchaser in good faith protected where judgment is set aside for:	
	Excusable neglect, inadvertence, mistake or surprise?	Defendant served by publication?		Excusable neglect, etc. after time for appeal has run?	Service by publication after time for appeal has run?
Alabama	Yes ALA. CODE tit. 7, Rule 11, Cir. & Inf. Cts. (1940)	Yes ALA. CODE tit. 7, §§ 1128, 1130, 1131 (1940)		Yes ALA. CODE tit. 7, § 1130 (1940)	Yes ALA. CODE tit. 7, § 1130 (1940)
Arizona	Yes ARIZ. CODE ANN. § 21-1502 (1939)	Yes ARIZ. CODE ANN. § 21-1309 (1939)		Probably not[a]	Probably not[a]
Arkansas	Yes ARK. STAT. § 29-506 (1947)	Yes ARK. STAT. § 34-1910 (1947)			
California[h]	Yes CAL. CODE CIV. PROC. § 473 (1949)		b CAL. CODE CIV. PROC. § 1049 (1949)	Probably[b]	
Colorado[h]	Yes COLO. CIV. CODE § 81	Yes COLO. STAT. ANN. c. 40, § 199 (1935)			Yes COLO. STAT. ANN. c. 40, § 199 (1935)
Connecticut	Yes CONN. GEN. STAT. § 7963 (1949)				
Delaware					
Florida	Yes FLA. STAT. § 50.10 (1951)	Yes FLA. STAT. § 50.10 (1951)	f FLA. STAT. § 59.13 (1951)	Yes[f]	Yes[f]

Georgia[h]	Yes GA. CODE ANN. §§ 110-404, 110-710 (1935)			Probably not[a]	
Idaho	Yes IDAHO CODE ANN. § 5-905 (1948)	Yes IDAHO CODE ANN. § 5-905 (1948)	b IDAHO CODE ANN. § 12-606 (1948)	Probably[b]	Probably[b]
Illinois[h]	Yes 337 Ill. 141, 168 N.E. 647 (1930)			Yes 323 Ill. 585, 154 N.E. 414 (1926)	
Indiana	Yes IND. ANN. STAT. § 2-1068 (Burns 1933)	Yes IND. ANN. STAT. § 2-2601 (Burns 1933)	c IND. SUP. CT. RULE 2-2[i]	Probably[j]	Yes IND. ANN. STAT. § 2-2603 (Burns 1933)
Iowa	Yes IOWA RULES CIV. PROC. §§ 236, 252 (1951)	Yes IOWA RULES CIV. PROC. § 251 (1951)	e IOWA CODE ANN. c. 617, § 15 (1950)	Probably[e]	Yes IOWA RULES CIV. PROC. § 254 (1951)
Kansas	Yes KAN. GEN. STAT. § 60-3007 (1949)	Yes KAN. GEN. STAT. § 60-2530 (1949)		Probably[k] 68 Okla. 44, 171 Pac. 462 (1918)	Yes KAN. GEN. STAT. § 60-2530 (1949)
Kentucky	Yes KY. CODES, CIV. PRAC. §§ 340, 518	Yes KY. CODES, CIV. PRAC. §§ 340, 518	c KY. CODES, CIV. PRAC. § 391	Yes 203 Ky. 415, 262 S.W. 596 (1924)	Yes 203 Ky. 415, 262 S.W. 596 (1924)
Louisiana					
Maine	Yes ME. REV. STAT. c. 110, § 1 (1944)	Yes ME. REV. STAT. c. 157, § 51 (1944)			
Maryland	Yes 171 Md. 695, 188 Atl. 215 (1936)				

APPENDIX—(Continued)

	Do the following states set aside default judgment for:		Lis pendens operates after time for appeal has run.	Is a purchaser in good faith protected where judgment is set aside for:	
	Excusable neglect, inadvertence, mistake or surprise?	Defendant served by publication?		Excusable neglect, etc. after time for appeal has run?	Service by publication after time for appeal has run?
Massachusetts[h]					
Michigan	Probably not MICH. COMP. LAWS § 616.5 (1948)	Yes MICH. COMP. LAWS § 612.25 (1948)	b 309 Mich. 424, 15 N.W.2d 692 (1944)		Probably 309 Mich. 424, 15 N.W.2d 692 (1944)
Minnesota	Yes MINN. STAT. ANN. § 544.32 (1946)	Yes MINN. STAT. ANN. § 548.25 (1946)		No[l] MINN. STAT. ANN. § 544.32 (1946)	No 39 Minn. 73, 38 N.W. 689 (1888)
Mississippi		Yes MISS. CODE ANN. § 1391 (1942)			Yes MISS. CODE ANN. § 1391 (1942)
Missouri	Yes 61 S.W.2d 420 (Mo. App. 1939)	Yes 298 Mo. 101, 250 S.W. 403 (1923)			
Montana	Yes MONT. REV. CODES ANN. § 93-3905 (1947)	Yes MONT. REV. CODES ANN. § 93-3905 (1947)	b 123 Mont. 555, 217 P.2d 1076 (1950)	Yes MONT. REV. CODES ANN. § 93-3905 (1950)	Yes MONT. REV. CODES ANN. § 93-3905 (1950)
Nebraska	Yes NEB. REV. STAT. § 25-200 (1943)	Yes NEB. REV. STAT. § 25-525 (1943)	c NEB. REV. STAT. §25-1931 (1943)	Probably[k] 68 Okla. 44, 171 Pac. 462 (1918)	Yes NEB. REV. STAT. § 25-525 (1943)
Nevada	Yes NEV. COMP. LAWS § 8640 (1929)	Yes NEV. COMP. LAWS § 8640 (1929)	g NEV. COMP. LAWS § 9411 (1929)		
New Hampshire	n N.H. REV. LAWS c. 1656, § 2 (1942)	n N.H. REV. LAWS c. 1657, §§ 6, 7 (1942)			

New Jersey	Yes N.J. Rules Civ. Prac. 3:60-2; 121 N.J.E. 148, 187 Atl. 739 (1936)	Yes 10 N.J.M. 352, 159 Atl. 310 (1932)		a	a
New Mexico	Yes N.M. Stat. Ann. § 19-101(60) (1941)		a		
New York[h]	Yes N.Y. Civ. Prac. Act § 108	Yes N.Y. Civ. Prac. Act § 217	b N.Y. Civ. Prac. Act § 123	Yes[m] N.Y. Civ. Prac. Act §§ 529, 587, 123	Yes N.Y. Civ. Prac. Act § 217
North Carolina[h]	Yes N.C. Gen. Stat. § 1-220 (1943)	Yes N.C. Gen. Stat. § 1-108 (1943)			Yes N.C. Gen. Stat. § 1-108 (1943)
North Dakota	Yes N.D Rev. Code § 28-2901 (1943)		b N.D Rev. Code § 28-0510 (1943)	Probably[b]	
Ohio	Yes Ohio Gen. Code Ann. § 11631 (1938)	Yes Ohio Gen. Code Ann. § 11632 (1938)	b 104 Ohio 347, 135 N.E. 608 (1922)	Yes Ohio Gen. Code Ann. § 11633 (1938)	Yes Ohio Gen. Code Ann. § 11633 (1938)
Oklahoma	Yes Okla. Stat. tit. 12, § 1031 (1951)	Yes Okla. Stat. tit. 12, § 176 (1951)	b 78 Okla. 81, 188 Pac. 1063 (1920)	Yes 68 Okla. 44, 171 Pac. 462 (1918)	Yes Okla. Stat. tit. 12, § 176 (1951)
Oregon[h]	Yes Ore. Comp. Laws Ann. § 1-1007 (1940)	Yes Ore. Comp. Laws Ann. § 1-613 (1940)			
Pennsylvania	Yes 106 Pa. Super. 520, 163 Atl. 327 (1932)				
Rhode Island	Yes R.I. Gen. Laws c. 535, §§ 2, 4 (1938)				

APPENDIX—(Continued)

	Do the following states set aside default judgment for:		Lis pendens operates after time for appeal has run.	Is a purchaser in good faith protected where judgment is set aside for:	
	Excusable neglect, inadvertence, mistake or surprise?	Defendant served by publication?		Excusable neglect, etc. after time for appeal has run?	Service by publication after time for appeal has run?
South Carolina	Yes S.C. CODE § 495 (1942)	Yes S.C. CODE § 436(3) (1942)			
South Dakota	Yes S.D. CODE § 37.1514 (1939)	Yes S.D. CODE § 33.0815 (1939)	b S.D. CODE § 33.0104 (1939)	Yes S.D. CODE § 37.1514 (1939)	Yes S.D. CODE § 33.0815 (1939)
Tennessee		Yes TENN. CODE ANN. § 9481 (Williams 1934)			
Texas	Yes 134 Tex. 388, 133 S.W.2d 124 (1939)	Yes TEX. RULE CIV. PROC. § 329			
Utah	Yes UTAH CODE ANN. § 104-14-4 (1943)	Yes UTAH CODE ANN. § 104-14-4 (1943)	b UTAH CODE ANN. § 104-54-13 (1943)	Yes UTAH CODE ANN. § 104-14-4 (1943)	Yes UTAH CODE ANN. § 104-14-4 (1943)
Vermont	Yes VT. REV. STAT. § 2157 (1947)				
Virginia[h]	Yes VA. CODE § 8-348 (1950)	Yes VA. CODE § 8-78 (1950)	b VA. CODE § 8-143 (1950)	b	b
Washington	Yes WASH. REV. CODE § 4.72.010 (1951)	Yes WASH. REV. CODE § 4.28.200 (1951)			
West Virginia	Yes W. VA. CODE § 56-4-52 (1931)	Yes W. VA. CODE § 38-7-43 (1931)			

Wisconsin	Yes Wis. Stat. § 269.46 (1947)	Yes Wis. Stat. § 269.47 (1947)			Yes Wis. Stat. § 269.47 (1947)
Wyoming	Yes Wyo. Comp. Stat. Ann. § 3-3801 (1945)	Yes Wyo. Comp. Stat. Ann. § 3-3802 (1945)		Yes Wyo. Comp. Stat. Ann. §3-3803 (1945)	Yes Wyo. Comp. Stat. Ann. § 3-3803 (1945)

FOOTNOTES

a. The defendant is granted relief by way of motion and new trial. Logically, the court could hold that setting aside default judgment by motion was part of the original action and suit was still pending. (see n.d)

b. Lis pendens notice in this state ends when time for appeal has run or action is decided on appeal. It would seem that after this time a purchaser in good faith is protected since he is not on constructive notice.

c. Pendency is or may be continued in this state for infants and others under disability because they are given a right to appeal after disability is removed.

d. Action here is kept pending by the fact that default judgment may be set aside for a defendant served by publication or for excusable neglect. The statute is said to keep the suit pending.

e. Unless suit is dismissed, lis pendens operates for three months after final judgment. After this time a purchaser is *probably* protected.

f. Time for appeal and time to set aside judgment are the same; after that time has run the default judgment would stand safe from attack and a purchaser would be protected.

g. Lis pendens may operate as notice in this state for over five years.

h. This state has adopted the Torrens system. Under this Act when the court finds land belongs to a plaintiff and title is registered, a good faith purchaser is protected. Sterling Nat. Bank v. Fischer, 75 Colo. 371, 226 Pac. 146 (1917); Eliason v. Wilborn, 335 Ill. 352, 167 N.E. 101 (1929). Also the courts have generally found, in absence of fraud, that a judgment registering land cannot be set aside after a certain time (usually thirty to sixty days). Harrington v. Linkert, 203 Minn. 575, 282 N.W. 461 (1938); Floral Park Mut. Fuel Co. v. Fiske, 128 Misc. 349, N.Y.S. 128, 218 (1926). Therefore in states adopting the Torrens system the problem of protecting purchasers in the situation under discussion will not arise.

i. See Attica Building & Loan Ass'n v. Colbert, *supra* note 13.

j. See page 234 *supra*

k. This state statute is the same as the Oklahoma statute. Under the Oklahoma statute a purchaser is protected after time for appeal has run. See case cited.

l. Purchaser is protected in Minnesota for three years after final judgment.

m. Reading N.Y. Civ. Prac. Act §§ 529 and 587 together it seems that a purchaser in good faith is protected if judgment is set aside. Lis pendens notice ends when time for appeal runs, so that a purchaser would not be on constructive notice after that time.

n. Statute allows a court in its discretion to set aside a default judgment. If defendant has not been personally served, a plaintiff must give a bond before acting on his default judgment in order to protect the defendant if judgment be set aside. No view as to purchasers is expressed.