

Such proceedings may be brought in the case of lands forfeited to the state for nonpayment of taxes."

And in the opinion, after quoting Section 2671, *supra*, this language is used at page 376:

"Here is express provision for the rendition of a separate or several decree in a case where several lots of lands are authorized to be joined in one action to foreclose."

Your attention is also directed to the case of *Gibson, Treasurer vs. Miller et al.* 7 O. C. C. (N. S.) 96, in which the court in holding Section 2671, *supra*, to be a remedial statute and therefore applicable to pending litigation, also held that a petition making a number of lot owners parties defendant, in the same action to collect assessments by foreclosure proceedings would not be subject to demurrer for misjoinder of parties, after the enactment of Section 1104, Revised Statutes, (General Code, Section 2671) in its present form (95 v. 93).

For the reasons given and following the authorities cited, I am of the opinion that in actions to enforce the lien of assessments charged against lands or lots or parcels thereof (Section 2667, General Code), the county treasurer may, under the provisions of General Code, Section 2671, join in one action all or any number of lots or lands, and that a petition making the owners of such lots or lands defendant in the same action would not be demurrable for misjoinder of causes of action or parties defendant.

Respectfully,
EDWARD C. TURNER,
Attorney General.

141.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN CITY OF MANSFIELD FOR STATE ARMORY.

COLUMBUS, OHIO, March 3, 1927.

HON. FRANK B. HENDERSON, *Adjutant General, Columbus, Ohio.*

In re: Examination of Deed and Abstract of Title to lands in Mansfield for Armory purposes.

DEAR SIR:—I have examined the deed from the city of Mansfield to the state of Ohio, by which it is proposed to convey the lands therein described, consisting of 5.64 acres more or less, together with the abstract of title submitted by you with such deed.

My examination of the deed discloses that:

(1) The granting clause thereof conveys the property therein described to "The State of Ohio," words of succession, "its successors and assigns" being omitted after the name of the grantee. While the better practice would be specifically to state to "The State of Ohio, its successors and assigns," in view of the provisions of General Code, 8510-1 (111 v. 18) the pertinent part of which reads:

"The use of terms of inheritance or succession shall not be necessary to

create a fee simple estate, and every grant or conveyance * * * of lands, tenements or hereditaments shall convey * * * the fee simple or the whole estate or interest which the grantor could lawfully grant * * * , unless it clearly appears by the deed, * * * or instrument that the grantor intended to convey * * * a less estate”,

it is my opinion that the granting clause in the deed is sufficient to convey the title in fee simple.

(2) The habendum clause of said deed reads :

“For the purpose of the erection by the State of Ohio * * * of an armory for the use and benefit of said State of Ohio.”

These words limit the use to which the land to be conveyed is to be put by the state to the erection of an armory for the use and benefit of the state, and in case it became necessary for the state to sell this property at some future date the limitation in question would probably be a cloud upon the title. It is for you to determine whether you wish to receive said property with such a restriction.

Except as noted, I find the deed to be in proper form, and to have been duly and legally executed by the proper officials of the city of Mansfield, for and in behalf of that city, and I am of the opinion that unless there be timely intervention by a taxpayer (State ex rel. Clemmer & Johnson, v. Turner, Attorney General, 93 Ohio St.,379), upon acceptance of the deed by the state, the title of the grantor to the property in question will be in the state of Ohio for the purpose named in said deed.

Examination should be made, however, to determine if the necessary legislation was in fact enacted, as recited in the deed, authorizing this conveyance to the state and directing the mayor and director of public service to execute the deed necessary therefor.

Examination of the abstract discloses the following :

The abstract as submitted was prepared by the Guarantee Title Company and is certified by such company by Wilber O. Weis, President, under date of January 4, 1927, and pertains to the following described premises, situated in the state of Ohio, county of Richland and in the city of Mansfield, bounded and described as follows :

“Being a part of the South-east quarter of Section 22, township 21, range 18, commencing at the intersection of the center line of Lincoln Highway, or Ashland road, and the center line of Ritters Run, where the same crosses the said highway; thence east along the center line of Ritters run, three hundred fifty and three-tenths (350.3) feet; thence east along the center of said creek, following a curved line two hundred thirteen and nineteen hundredths (213.19) feet, (the extreme angle of said curve being 25 degrees 35 minutes) thence east on a straight line six hundred five (605) feet along the center line of said creek; thence following a curved line south and east along the center of said creek one hundred fifty-six (156) feet; (the extreme angle of said curve being 25 degrees and 35 minutes) thence east one hundred (100) feet to the center line of the Rocky Fork; thence north and west along the center line of the Rocky Fork as now constructed nine hundred eighteen and nine-tenths (918.9) feet to the center line of Lincoln Highway, or Ashland road: thence south and west along the center line of said highway thirteen hundred seven (1307) feet to the place of beginning, containing on center lines ten and thirty-five hundredths (10.35) acres of land.”

(1) The deed from James R. Wells and others to Ellzey Hedges, dated June 23, 1855 (Abstract, page 8) is signed by Martha Ann Hedges and Elizabeth Hedges, neither of whom appears in the granting clause or elsewhere in the body of the deed *as abstracted*. This deed contains the signatures of ten persons, and an abstractor's note on page 9 of the abstract states as follows:

"Acknowledgment recites they are husband and wives."

From this I think it is safe to assume that Martha Ann Hedges is the wife of Charles Hedges named in the granting clause, and that Elizabeth Hedges is the wife of Samuel Hedges, also named in the granting clause, and in view of the provisions of section 8516 of the General Code providing:

"When any deed * * * conveying real estate, shall have been * * * of record in the office of the recorder of the county within the state in which such real estate is situated for more than twenty-one years, and the record thereof shows that there is a defect in such deed * * * because the name of the husband or wife does not appear in the body of the deed or in all of the clauses thereof, but both sign and acknowledge such deed * * * , such deed and the record thereof shall be cured of such defects, and be as effective in all respects as if such deed had been legally made, executed and acknowledged * * * ,"

this defect, in my opinion, is not material.

However, since the abstract is being returned for additional information this, and all other defects noted, should be investigated, and corrections made where possible.

(2) The deed from Charles Hedges and others to Ellzey Hedges, dated February 15, 1855 (abstract, page 13) contains the signatures of seven persons, including Mary Hedges, whose name does not appear in the granting clause or the body of the deed *as abstracted*. An abstractor's note on the same page reads:

"All are given in the acknowledgment as married, except Otho Hedges nothing is given."

The abstract should definitely show that Mary Hedges was the wife of Charles Hedges, if that be a fact, in which case the section of the Code last above mentioned will be applicable.

(3) The deed from Samuel H. Hedges and others to Ellzey Hedges, dated June 1, 1855 (abstract, page 15), contains thirteen signatures, including the name of Sarah Ann Hedges following that of Samuel H. Hedges, the name of Mary Hedges following that of William C. Hedges, and the name of James W. Ellis and Catherine Ann Ellis, none of these four being mentioned in the granting clause or any place in the body of the deed *as abstracted*. If it be a fact that Sarah Ann Hedges was the wife of Samuel H. Hedges and that Mary Hedges was the wife of William C. Hedges the abstract should so show. It is possible that the acknowledgment to this deed will contain a statement to this effect.

As to James W. Ellis and Catherine Ellis, an examination should be made to determine if they are named in the granting clause or elsewhere in the deed. While there is some conflict as to whether a person signing a deed, in which he is not described as a grantor, is bound thereby, the rule, supported by the weight of authority, is that he is not. 18 C. J. 173.

In *Lessee of Carr v. Lehugh*, 1 Ohio Dec. Reprint, 84, it was held that an omission

of the names of the grantors before the operative words of the granting clause did not invalidate the deed, the names of such grantors in the deed in question appearing after the description as follows, "and all the estate, right, title, etc., of this the said Joseph T. Williams and Mary, his wife", and also in the covenant of warranty.

An examination should be made to determine if the names of James W. Ellis and Catherine Ann Ellis appear in any part of the deed in question, especially the granting clause thereof, and if so, the abstract should be corrected so as to show this fact.

(4) The deed by James Smart and others to Ellzey Hedges, dated February 26, 1857, (abstract, page 18) is signed by *George Mundy*, the granting clause containing the name of *John Mundy*. An abstracter's note states that:

"Deed recites Mary Ann Mundy and George Mundy as husband and wife."

If this be a typographical error in copying the deed, it should be corrected.

So also as to the name Isaac *W.* Smart one of the signers of the deed, the name in the granting clause being Isaac S. Smart.

(5) The deed from Reuben Hedges and others to Ellzey Hedges, dated February 15, 1855 (abstract, page 23) contains the name of Thornton Hedges in the granting clause, his signature not appearing on the deed. The deed is signed by C. T. Hedges, who is not named in the granting clause, and it is probable that Thornton and C. T. Hedges are one and the same person. If this be a fact, the abstract should so show, if possible.

The signatures of B. C. Hedges and Mary G. Hedges appear on this deed, although they are not named in the granting clause. As suggested above, in a similar case, an investigation should be made to determine if the names of B. C. Hedges and Mary G. Hedges appear at any place within the body of the conveyance in question, especially the granting clause. At the same time it should be ascertained if this deed has been incorrectly copied, the names of *Catherine Jane Wolfe* and *John D. Wolfe* appearing in the body of the deed while the deed is signed by *Caroline J. Wolfe* and *John B. Wolfe*.

(6) The will of James Hedges (abstract, page 3, et seq.) devises certain shares of his property to each of his brothers and sisters, and to each of the children of each of his deceased brothers and sisters. There is nothing in the abstract (pages 3 to 26) to show of whom all said devisees consisted and that *all* of the devisees of said James Hedges conveyed to Ellzey. This information should be obtained from the records, by affidavits, or otherwise, if possible.

(7) In the partition suit of Ellzey Houston, Plaintiff, v. Henry C. Hedges, et al. (abstract, pages 29 to 35) the abstract shows on page 32, the following:

"Said amended petition was filed and noted this as asked for and the said Joseph S. Hedges waived issue of summons as per the following:

I hereby waive the issue and service of summons and voluntarily enter our appearance herein, as guardian of Ellzey Hedges.

Joseph S. Hedges, Guardian of Ellzey Hedges, an insane person."

The abstract does not show that any service of summons was made upon the said Ellzey Hedges, or that his guardian filed any answer or cross-petition in said suit.

In the case of *Feddy v. Miller*, et al., 10 O. N. P. (N. S.) 76, it was held as follows:

"1. A defective appearance in a partition suit will be deemed to have

been waived, where objection thereto was not made for three years, although the defect was of a character that would have warranted the setting aside of the appearance had objection thereto been made at the time.

2. The filing of an amended answer and cross-petition by the guardian of an imbecile is a legal and sufficient entry of appearance for such imbecile in a partition proceeding."

Further examination should be made to ascertain if any summons was served upon Ellzey Hedges or if an answer and cross-petition or other pleading were filed in his behalf by his guardian.

(8) It is impossible to trace on the plat submitted with the abstract the description contained in the deed from B. Flannery, Sheriff, to Joseph S. Hedges, (abstract, page 36).

(9) In the deed from Joseph S. Hedges to Henry C. Hedges, dated March 15, 1901, (abstract, page 37) it is not shown that Joseph S. Hedges is unmarried, nor does any wife join in the execution of the deed. It should be shown from the records, by affidavit, or otherwise that Joseph S. Hedges was unmarried at the time of the execution of this deed, if that be the fact.

(10) On page forty-four of the abstract a deed from C. A. Hines, Receiver, to Roderick Loan Company of Illinois, Incorporated, is set forth. No abstract of any of the proceedings of the suit in which this receiver was appointed is contained in the abstract, consequently it cannot be determined whether or not the court had jurisdiction, whether process was had and whether the proceedings authorizing the sale were regular.

(11) The proceedings in the case of the *Union Trust Company, a Corporation, v. Roderick Loan Manufacturing Company, a Corporation*, (abstract, page 48) are not abstracted and it cannot be determined from the abstract in its present form whether or not this suit in any way affects the title in question.

(12) On page fifty-four of the abstract appears a release from the operation of a certain mortgage given by the Roderick Loan Company of Indiana, Incorporated, to the Union Trust Company, Trustee, of the property described in said abstract. This mortgage, which is recorded in Record 93, page 242, of the Richland County Records is not set forth and no showing is made as to the authority of the trustee in question to release the mortgage premises from the operation of the mortgage. The mortgage should be sufficiently set forth in the abstract and such showing should be made as will enable this office to determine the authority of the trustee in the premises.

(13) On page fifty-seven, it appears that the Roderick Loan Company of Indiana, Incorporated, deeded the property in question to the city of Mansfield. This deed was signed by said Roderick Loan Company of Indiana, Incorporated, by R. Rosencrans, President, A. Volderauer, Secretary. The proceedings of the board of directors authorizing this transfer and the execution of this conveyance are not contained in the abstract. The authority of the corporate officers in question to execute this deed should be shown.

I am herewith returning the deed, abstract of title and the plat submitted therewith for correction and additional information as indicated. When the same shall have been returned, I will make such additional examination as may be necessary.

Respectfully,
EDWARD C. TURNER.
Attorney General.

142.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN GREENFIELD,
HIGHLAND COUNTY, FOR STATE ARMORY.

COLUMBUS, OHIO, March 3, 1927.

HON. FRANK D. HENDERSON, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—Examination of the abstracts of title and warranty deeds covering the premises, which it is proposed that the State of Ohio purchase for armory purposes in Greenfield, Ohio, discloses the following:

The abstracts under consideration have been prepared by Wilson and Morrow, abstracters of Highland county, the first being certified under date of November 13, 1926, and pertains to the following real estate in Greenfield, Highland county, Ohio, described as follows:

“The whole of Inlot No. 44, and 10' off the west side of Inlot No. 37, extending back from Jefferson street the same width with the east line of Inlot 44, to the alley;”

and the second abstract, being certified under date of December 9, 1926, pertains to real estate adjacent to the last described parcel on the east, situate in Greenfield, Highland county, Ohio, described as:

“The middle part of Inlot No. 37, being 53' fronting on Jefferson street, and running back the same width to the alley.”

1. Upon examination of the abstract pertaining to Inlot 44, and ten feet off the west side of Inlot 37, I find that there is an uncancelled mortgage executed on January 7, 1925, by T. H. Nevil and wife, and James E. Nevil and wife to The Home Building & Loan Company, to secure the payment of \$2,000.00.

2. I also find that the 1926 taxes are unpaid and a lien on the property, although the abstract does not state the amount thereof.

3. Accompanying the abstract and deed for this parcel, there is the original deed of Edward J. Norton and others, by which they attempt to convey the property first above described to Mary E. McConnaughey. All of the grantors execute the deed on the same sheet of paper on which the deed is written, the witnesses sign on the same sheet, and the certificate of acknowledgment of one of the grantors is also on the same sheet; but the certificate of acknowledgement of the other grantors has been written on a separate sheet of paper, which is attached to the first sheet by means of glue; so that the question for determination is whether Mary E. McConnaughey has ever obtained a clear and unencumbered title to the premises, which she could transfer to T. H. Nevil and James E. Nevil, who are proposing to sell this parcel to the State of Ohio.

Section 8510 of the General Code of Ohio prescribes the method by which a deed shall be executed and acknowledged. In respect to the acknowledgement, the statute says:

“Such signing also must be acknowledged by the grantor * * * before a judge of a court of record in this state, or a clerk thereof, a county auditor, county surveyor, notary public, mayor or justice of the peace, who shall certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name thereto.”