

Said deed of easement and release is correct as to form and I am accordingly returning the same to you herewith, together with all the papers attached, with my approval noted thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

79.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF G. F. THOMAS,
JEFFERSON TOWNSHIP, ADAMS COUNTY.

COLUMBUS, OHIO, February 9, 1929.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication again submitting for examination and opinion Abstract of Title, Warranty Deed, Encumbrance Estimate, Number 4767, and Controlling Board Certificate relating to a tract of two hundred ninety-nine (299) acres of land in Jefferson Township, Adams County, Ohio, of which one G. F. Thomas, trustee in trust for the Bank of Peebles, Peebles, Ohio, is the owner of record, and which property is more particularly described in Opinion No. 3123 of this department, directed to you under date of January 10, 1929.

In the former opinion of this department here referred to, the title of G. F. Thomas as trustee in trust for the Bank of Peebles was disapproved on account of certain substantial and jurisdictional defects in the proceedings in the Court of Common Pleas of Adams County whereby the said G. F. Thomas, as trustee aforesaid, obtained record title to the lands here in question.

As noted in said former opinion, said court proceedings were instituted by Anna E. Best as Administratrix of the estate of A. J. Best, deceased, to sell these lands for the purpose of administering the estate of the said A. J. Best, who formerly owned these lands, it being the claim of the Administratrix, as plaintiff in said case, that the deed formerly executed by the said A. J. Best and Anna E. Best, his wife, to G. F. Thomas, trustee in trust for the Bank of Peebles, was not a deed which had the effect of conveying absolute title to said land but was only a mortgage.

It was further pointed out in said opinion that certain parties defendant in said action, to-wit: Anna E. Best, Olive Myers, Charles Best, Lillian Sheeley, and William Best, who were next of kin of said A. J. Best, deceased, and who had the next estate of inheritance from him in and to said lands, were not served with summons in said action, nor was their appearance otherwise entered therein. Inasmuch as the Court in said proceedings found that the deed formerly executed by A. J. Best and Anna E. Best, his wife, to G. F. Thomas, trustee in trust for the Bank of Peebles, was a mortgage, it follows that the individuals above named were necessary parties in said action whose rights could not be cut off unless they were served with summons in said action or their appearance was otherwise entered therein. It was for this defect in the proceedings, as shown by the abstract, that the title of said G. F. Thomas, trustee, was disapproved.

Upon return of said abstract to the abstracter, after the opinion of this department on the title to these lands was directed to you, said abstracter prepared and made a

part of said abstract an additional certificate in which, after stating that said abstract is a correct abstract of title of said lands shown by the records of Adams County, Ohio, he says:

"I was not certifying or passing on the title to said land, and did not think it my duty to point out the defects in the suit in the Common Pleas Court wherein said land in Caption was sold to G. F. Thomas, Trustee in Trust for the Bank of Peebles, Peebles, Ohio.

"Since the receipt of the said opinion, I have again examined the proceedings in said case and have also examined all the papers in file in said case, and in no place in said proceedings, is it shown that the defendants other than Dwight Best, Maurice Best, G. F. Thomas and the Bank of Peebles, either waived service of summons or were served with same.

"In the only summons issued, the sheriff is only ordered to notify Maurice Best and Dwight Best, minors under the age of fourteen years, and G. F. Thomas, Trustee in Trust for the Bank of Peebles, and The Bank of Peebles, Peebles, Ohio, and the praecipe for said summons only asks that said last named defendants be served with summons."

It is apparent that there is nothing in the additional certificate of the abstracter which corrects the defect in said court proceedings pointed out in the former opinion of this department. On the contrary, the statements made by the abstracter in this certificate confirms the fact that no service of summons was made upon the above mentioned individuals, the next of kin and heirs-at-law of A. J. Best, deceased, and that their appearance was not otherwise entered in said action.

In this situation there is nothing for me to do but to disapprove the title of G. F. Thomas, trustee in trust for the Bank of Peebles, in and to these land, and to advise you not to purchase the same unless proceedings are taken by the said G. F. Thomas, Trustee, to clear his title to these lands as against the objections referred to in this opinion and in the former opinion of this department above mentioned.

I am herewith returning to you said Abstract of Title, Warranty Deed, Encumbrance Estimate, and Controlling Board Certificate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

80.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS TREASURER OF STATE—H. ROSS AKE.

COLUMBUS, OHIO, February 9, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—You have submitted three bonds executed by H. Ross Ake, Treasurer of State, for my approval.

One of said bonds is for the sum of \$600,000, conditioned for the faithful discharge of the duties of H. Ross Ake, as Treasurer of the State of Ohio, for "the unexpired term of Bert B. Buckley and until his successor is elected and qualified," and given under the provisions of Section 297 of the General Code of Ohio, upon which The Detroit Fidelity and Surety Company appears as surety.