

David Sheard and Phoebe Sheard have title to the land in consideration, the deed will be sufficient, when delivered, to pass that title.

I herewith return the abstract, the deed, encumbrance estimate and other papers submitted therewith.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1653.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF MARIA S. JOYNER,  
IN THE VILLAGE OF OXFORD, BUTLER COUNTY, OHIO.

COLUMBUS, OHIO, February 1, 1928.

HON. W. P. ROUDEBUSH, *Secretary, Board of Trustees, Miami University, Oxford, Ohio.*

DEAR SIR:—You have submitted under date of December 5, 1927, a request for my opinion, accompanied by an abstract of title prepared and certified under date of December 2, 1927, by Paul Scudder, abstracter of Hamilton, Ohio, an encumbrance estimate and a deed covering a parcel of real estate situate in the Village of Oxford, Butler County, Ohio, more particularly described as follows:

TRACT 1. Being part of Outlot number twenty-nine (29) in the Village of Oxford, Butler County, Ohio, and more particularly described as follows: Beginning at the northeast corner of said Outlot and running thence west along the north line of said Outlot a distance of two hundred and fifty-five (255) feet, thence southwardly at right angles and parallel with the east line of said Outlot a distance of fifty-two and eighty hundredths (52.80) feet, thence east parallel with the north line of said lot a distance of two hundred and fifty-five (255) feet to the east line of said Outlot and thence north along the east line of said Outlot fifty-two and eighty hundredths (52.80) feet to the place of beginning, being the east two hundred and fifty-five (255) feet of that part of said Outlot number twenty-nine (29) conveyed to said grantor by Karl H. Zwick by deed dated June 13, 1923 and recorded in Deed Records 262, page 268 of the Records of Butler County, Ohio, subject to the payment of an annual ground rent of \$1.00 to the Treasurer of Miami University on the 22nd day of May of each and every year.

An examination of this tract discloses the following:

1. The President and Trustees of Miami University by a writing dated September 7, 1810, and filed for record November 2, 1819, leased to Merrikin Bond, Outlot No. 29 in the Village of Oxford, containing four acres, by the terms of which writing, Merrikin Bond or his representatives agreed to well and truly pay on the 22nd day of May, every year after the date thereof to the Treasurer of Miami University the sum of \$1.32, being the amount of interest on the purchase money, at the rate of 6% per annum, for said tract of land, the lease further providing that if said Merrikin Bond, or his representatives, should so pay, then he or his assigns or representatives would be entitled to hold said lot for the term

of ninety-nine years, and should also be entitled so often as the lease shall expire to have the same renewed on the same conditions forever.

This land passed by successive conveyances to Joshua Davis, who some time before 1871 subdivided said Outlot No. 29 and transferred the tract here involved to Edward Sloat.

From Edward Sloat, this tract passed in regular succession to Maria S. Bishop, who acquired an interest therein by deed of June 30, 1923, and filed for record June 6, 1925.

The abstract does not disclose that this lease was renewed upon the expiration thereof in 1909; and in the absence of a renewal of said lease, upon the authority of *B. & O. Railroad Co. vs. West*, 57 O. S. 161, and *Gladwell vs. Holcomb*, 60 O. S. 427, it is my opinion that Maria S. Bishop is only a tenant from year to year, and has no estate in this land beyond September 7, 1928; and not any estate after September 7, 1927, unless the President and Trustees of Miami University elected on that date to treat Maria Bishop as a tenant.

However, information furnished subsequent to the certification of this abstract discloses the fact that this property has been continuously occupied by the assignees of the original lessee to the present time by and with the consent of the lessor; that the ground rent has been paid at the times stipulated since the expiration of the term of the lease; and that the lessor has continuously treated the present claimant as a tenant. In fact, the lessor has so far recognized the lessees' right to a renewal of the lease, that it has accepted and recorded transfers of title since the expiration of the ninety-nine year lease, and has entered into an agreement with the present claimant for the purchase of his interest. Under these circumstances, the present claimant would undoubtedly have a claim upon the land, which a court of equity would recognize, and will, under the circumstances obtaining at present, constitute a cloud upon your title which would be worth something to remove. The value of that advantage is for the Trustees of the University to determine.

Therefore, while I am of the opinion that the abstract does not disclose a good and merchantable title to the property in Maria Joyner, she has such an equitable interest therein that it would support a contract looking to the purchase of that interest.

2. As above noted, Maria S. Bishop is the last assignee in the chain of title for this tract, yet I notice in the deed for this tract, which accompanies the abstract, the name of the grantor is Maria S. Joyner. An affidavit or a notation from the marriage records should be furnished to establish the marriage of Maria S. Joyner, if in fact she is the same person as Maria S. Bishop.

The encumbrance estimate is numbered 2653, and is made to Maria S. Joyner and S. Willis Joyner of Battle Creek, Michigan, for the sum of \$600.00. It has been properly drawn and approved by the required officials and is by me approved as to form and sufficiency.

The deed has been executed by Maria S. Joyner and S. W. Joyner, her husband, under date of December 2, 1927, and by them acknowledged on the same day before a Notary Public of Calhoun County, State of Michigan, by the terms of which they convey to the President and Trustees of the Miami University the land above described as Lot No. 29, free and clear of encumbrances, except taxes and assessments due and payable June 20, 1928 and thereafter, which it is recited the grantee assumes and agrees to pay as part of the consideration for the conveyance. If it

is established that Maria S. Joyner has title to the land in consideration, the deed will be sufficient, when delivered, to pass that title.

I herewith return the abstract, the deed, encumbrance estimate and other papers submitted therewith.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1654.

APPROVAL, ABSTRACT OF TITLE TO LAND OF CHARLES M. LOTT,  
FOR SCIOTO TRAIL FOREST, ROSS COUNTY.

COLUMBUS, OHIO, February 1, 1928.

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

DEAR SIR:—You have submitted for my examination and opinion an abstract of title to certain real estate which it is proposed to purchase from Charles M. Lott for an addition to the Scioto Trail State Forest in Ross County. The abstract submitted was prepared by Lyle S. Evans, abstracter, of Chillicothe, Ohio, bears his certificate as of October 13, 1927, and covers the following real estate, situated in the Township of Franklin, County of Ross and State of Ohio, to-wit:

FIRST TRACT: Being parts of Surveys Nos. 15056 and 3151, being in Franklin Township, Ross County, Ohio, beginning at a red oak S. 5 degrees W. 24 poles from the southwest corner of a tract of 100 acres belonging to Godfried Linburger; thence S. 5 degrees W. 100 poles to a white oak and small hickory; thence S. 85 degrees E. 160 poles to 2 white oaks and 2 black oaks; thence N. 5 degrees E. 100 poles to a black oak and 3 chestnut oaks; thence N. 85 degrees W. 160 poles to the beginning, containing 100 acres, more or less, deducting a small piece of Joseph Hans if included being the same land purchased of Dunham.

SECOND TRACT: Beginning at a white oak near a well northwest corner to a lot 40 acres sold to John Scott; thence N. 202 poles to 2 white oaks and 2 black oaks southeast corner to Dunham's 100 acre lot; thence with Dunham's line N. 85 degrees W. 160 poles to a white oak and a small hickory; thence with his line N. 5 degrees E. 100 poles to a red oak; thence S. 85 degrees E. 160 poles to a black oak and 3 chestnut oaks northeast corner to Dunham's; thence N. 55 degrees E. 29 poles to a white oak corner Survey No. 12573; thence N. 6 degrees E. 27 poles to 3 small hickories southeast corner to Godfried Linburger; thence with his line S. 87 degrees W. 184 poles to a white oak, black oak and chestnut oak corner to said Linburger's; thence N. 5 degrees E. 23 poles to 5 small chestnut oaks, southeast corner to John Banks; thence W. 80 poles to 4 small black oaks and hickory corner to Banks; thence S. 148 poles to a stake; thence W. 2 poles to 3 small chestnut oaks corner to A. Stinson; thence with Stinson's line and top of ridge S. 14 degrees E. 15 poles to 2 hickories and a white oak, S. 4 degrees E. 27 poles to 2 chestnut oaks; thence S. 16 degrees E. 35½ poles to a chestnut oak; thence S. 26½ degrees E. 13 poles to 2