

113.

APPROVAL, BONDS OF CITY OF SHELBY, RICHLAND COUNTY, \$2,800.00.

COLUMBUS, OHIO, February 28, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

114.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND BELONGING TO J. O. HOVER, IN SHAWNEE TOWNSHIP, ALLEN COUNTY, OHIO, TO BE USED AS ARMORY SITE.

COLUMBUS, OHIO, February 28, 1927.

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

DEAR SIR:—In re: Abstract of Title of Property of J. O. Hover et al. in Allen County, Ohio.

Examination of an abstract and warranty deed submitted for my examination and approval discloses the following:

The abstract submitted was prepared by Atmur & Atmur, Abstracters, Lima, Ohio, is dated February 21, 1927, and pertains to a tract of land located in the north-west quarter, Section No. One (1), Township Four (4) south, Range Six (6) east, Shawnee township, Allen county, Ohio; being a tract 400 feet by 400 feet lying along the Shawnee Road (also known as Amanda Road), said tract lying 130 feet north of Oxford Avenue, which is contemplated being transferred to the state of Ohio to be used as an armory site, and which real estate is more particularly and fully described in the deed and abstract.

(1) No. 3, page 4, contains the abstract of a deed from John H. Porter to Joseph Hoover. This deed was executed May 15, 1834, by John H. Porter and does not recite that he was an unmarried man. The title to the property was in said John H. Porter and, if he were married, his wife would only have had a dower interest therein, and since the deed was executed in the year 1834, it is certain that the wife is no longer living and her dower interest would be terminated and this irregularity does not affect the title to the land.

(2) On page 6 of the abstract we find the last will and testament of Joseph Hoover which was admitted to probate on the tenth day of September, 1844. In connection with the terms of said will a proceeding to partition the real estate of the said Joseph Hoover was instituted in the Common Pleas Court of Allen county on the eighteenth day of January, 1848. This partition proceeding was for the purpose of dividing property of which the tract in question is a part. It is noted that there is a discrepancy in the grantee in the transfer from John H. Porter to Joseph Hoover hereinabove referred to, and Joseph Hoover who made the will which was the basis of the suit in question. There is nothing in the abstract to show that Joseph Hoover and Joseph Hoover were one and the same person. If it be true, evidence of this fact should be supplied.

(3) On page 10 of the abstract I find in a court proceeding to partition lands,

that the quarter section in question "except 12.50 acres theretofore sold by the said Joseph Hover to Nathan Daniels" was set off to William U. Hover through whom the present grantors obtain title to the real estate in question. There is no instrument set forth in the abstract to disclose the exact location of the 12.50 acres excepted from the property thereby set off. I do find, however, that on page 12 of the abstract, in the affidavit of William E. Hover, it is stated that said tract is out of the northwest corner of said quarter section and refers to the Allen county deed records, volume 98, page 304. An affidavit is not the best evidence when the record of the deed is available and the abstract therefore should contain the deed of Joseph Hover to Nathan Daniels to show the location of the property so conveyed, in order to determine whether or not the property contemplated being transferred to the state is outside of said tract.

(4) Instrument No. 4, page 20, is a quit-claim deed by George D. Byron to Robert Stockton Byron, which was executed for the purpose of releasing the dower interest of the grantor to the grantee. This deed is defective inasmuch as it does not show the venue of the officer before whom the acknowledgement was taken. The instrument recites that it was acknowledged on October 4, 1915, before "W. R. Hare, Notary Public, _____ county, Ohio," and is signed "W. R. Hare, Notary Public." The abstract does not disclose that any further identification of the venue of the notary public is contained in the instrument.

Waverly on Abstracts, page 258, says :

"A certificate defective in venue is insufficient for failing to show the locality in which the act is done."

In the case of Johnson vs. Haynes, 2 Ohio, 55, the court held that a record of a deed which did not show the authority of the officer acknowledging the same could not be introduced in court to evidence title for the reason that it had not been duly recorded as provided by law, and that parole evidence could not be introduced to show the jurisdiction of the officer in order to make the record competent.

I also find the case of Beckel vs. Petticrew, 6 Ohio St., 247 to the effect that when the acknowledging clause recites that the acknowledgment was taken by "a justice of the peace within and for *said county*" and the body of the instrument recites that the parties are residents of a certain county, that such acknowledgment is good for the reason that "said county" would refer to the only county mentioned in the instrument as the residence of the grantors.

This abstract does not disclose that we have such an instrument before us. In discussing the case the court says :

"If we wholly reject the caption of the certificate (*and being without meaning, by reason of the blank, it can only be rejected*) yet we think that in describing the officer taking the acknowledgment," as hereinbefore set forth, "it may be fairly understood as referring to the county named in the body of the mortgage."

The court therefore clearly indicated that if, by referring to the instrument, there was no means of identifying the locality or the venue of the officer before whom the acknowledgment was taken, the instrument would not be valid.

As stated above, the abstract does not disclose that there is any such means of identifying the venue of the acknowledging officer. This therefore should be corrected by one of the following methods :

(a) If the notary is available so that the defect can be supplied in the original instrument, it could then be corrected on the recorder's records to conform thereto.

(b) By having the grantor execute another quit-claim deed to the grantee, or to the state of Ohio.

Referring to the deed submitted :

(1) The description in the deed is such that the location of the property transferred is identified by commencing at a point or station "130 feet northeast of the northeast corner of Oxford avenue and Amanda road." There is no plat or anything else in the abstract which enables me to determine in what part of the quarter section in question said point or station is located. This is material because of the 12.50 acre tract located within said quarter section owned by others than the grantors. (See paragraph 3 above.)

It is therefore suggested that, if possible, a proper plat be supplied, sufficient to show in what part of the quarter section the said point or station is located.

(2) The granting clause of the deed contains the names of all of the owners and the wives of those who are married, as grantors, but no release of dower is contained in the deed. The fact that those entitled to dower are joined as grantors is, however, sufficient to transfer any dower rights they have in said premises and the title is not affected thereby.

(3) The habendum clause recites that the state is to have and to hold said property "for the purpose of an armory site." This would constitute a limitation on the use of the estate for the purpose of an armory site only. It is for you to determine whether or not you wish to receive said property with such restriction.

I am informed that this land is being given to the state, notwithstanding the fact that the deed recites that a consideration is to be paid by the state of Ohio, and I therefore assume that whatever consideration passes is being paid by some one other than the state and therefore an encumbrance certificate is not necessary.

I find the deed and chain of title otherwise correct, and am returning the same to you for correction as hereinabove set forth. When this has been done I will give the matter my further consideration.

Respectfully,
EDWARD C. TURNER.
Attorney General.

115

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN GOSHEN TOWNSHIP, TUSCARAWAS COUNTY, OHIO, BEING A PART OF THE SCHOENBRUN TRACT.

COLUMBUS, OHIO, February 28, 1927.

The Ohio Archeological and Historical Society, Ohio State University, Columbus, Ohio.

GENTLEMEN:—Examination of an abstract, deed and encumbrance estimate submitted for my examination and approval, discloses the following:

The abstract under consideration was prepared by Mrs. Jessie B. Axx, under date of December 14, 1926, and pertains to the following premises, situated in the township of Goshen, county of Tuscarawas and State of Ohio, in the Fourth Quarter of township Eight, Range Two, and being a part of Lot No. 8 of the Schoenbrun Tract:

Beginning on the south line of said lot No. 8, south 86°, east 660 feet from the south west corner thereof, said beginning point being also the southeast corner of a tract of 13.57 acres conveyed from Samuel Stempfly to Eben S. Martin by deed recorded in Volume 187, page 425 of the Tuscarawas