

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.”

The Supreme Court of Ohio in *Winkler vs. Higgins*, 9 O. S. 599, holds :

"A certificate of acknowledgment of a deed, made upon a separate strip of paper attached to the deed by a wafer, with the officer's signature upon the same, * * * is not in compliance with the statute requiring the officer taking an acknowledgement to certify such acknowledgment on the same sheet on which such deed is printed or written."

In the opinion of the court in that case, it is said by Judge Sutliff on page 603 :

"If it was not so executed, it was, of course, inoperative to convey a legal title."

For these reasons, I am of the opinion that T. H. Nevil and James E. Nevil do not have a clear and unencumbered title to the premises, although the title is approved down to August, 1919, when the Nortons attempted to convey to Mary E. McConnaughey.

The defect in the Nevils' title may be cured by the execution, proper acknowledgment and delivery of a new deed by the heirs of Cephas C. Norton, deceased, to Mary E. McConnaughey and by a new deed from her to the Nevils, or by the heirs of Cephas C. Norton, deceased, direct to the Nevils, who would then have, with the exceptions above noted, a good and unencumbered title to the premises.

After the Nevils obtain an unencumbered title to the premises, they should execute a new deed to the State of Ohio following the language of the one which they executed on the 13th of November, 1926, to the State of Ohio, the form of which is hereby approved.

Or the defect in question might be cured by having the heirs above mentioned execute a new deed direct to the State of Ohio. In this connection while the deed in question is not sufficient to pass legal title, it is good as a contract to convey, enforceable in the courts.

An examination of the abstract pertaining to the 53 feet in Lot No. 37, shows a good and merchantable title to said premises in Scott Rooks, with the following exception :

1. The 1926 taxes are unpaid and a lien on said premises.

The warranty deed submitted with the abstract has been executed by Scott Rooks, and his wife Veda Rooks, and recorded. It is in proper form, and conveys to the state only a part of said fifty-three feet, described as follows :

"Commencing at a point in the north line of Inlot No. thirty-seven (37), in said village, ten feet (10') east of the northwest corner of said lot; thence in an easterly direction along the line of Jefferson street, seven feet and six inches (7' 6") to a point in said line; thence in a southerly direction and parallel with Second street, one hundred and sixty-five (165') to the alley in the rear of said lot; thence in a westerly direction with the line of said alley seven feet and six inches (7' 6"); thence in a northerly direction, and parallel with Second street one hundred and sixty-five feet (165') to the place of beginning, making a plat of ground seven and one-half feet in width fronting on said Jefferson street, and running back the same width to the alley in the rear, and being a fractional part of said Inlot No. 37."

I am herewith returning to you the two abstracts, the two warranty deeds, and the deed from Edward J. Norton and others to Mary E. McConnaughey.

Respectfully,

EDWARD C. TURNER.

Attorney General.