

1650.

APPROVAL, LEASES TO OHIO CANAL, HOCKING CANAL, MIAMI & ERIE CANAL, BUCKEYE LAKE AND LAKE ST. MARYS LANDS.

COLUMBUS, OHIO, February 1, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter dated January 24, 1928, in which you enclose the following leases, in triplicate, for my approval:

<i>OHIO CANAL</i>	<i>Valuation</i>
C. S. Cameron, gas and oil lease—Bonus— $\frac{1}{8}$ Royalty-----	\$175.00
Sam C. Elsea, land lease-----	233.34
The Ohio Power Co., pole line lease-----	200.00
The Ohio Power Co., pole line lease-----	666.67

<i>HOCKING CANAL</i>	<i>Valuation</i>
'Sidney R. Hankison, land lease-----	\$150.00

<i>MIAMI & ERIE CANAL</i>	<i>Valuation</i>
Delco Light Company, land lease-----	\$5916.67
Geo. W. and Loretta Miller, land lease-----	350.00
Loren Watson, land lease-----	300.00

<i>BUCKEYE LAKE</i>	<i>Valuation</i>
Floyd Smith, dock landing, etc.-----	\$100.00

<i>LAKE ST. MARYS</i>	<i>Valuation</i>
Sophia Martens, land lease-----	\$1000.00

I have carefully examined said leases, find them correct as to legality and form, and am therefore returning same with my approval endorsed thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1651.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF WILLIAM H. BRUCE, 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 recent date 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 deed covering a parcel of real estate situate in the Village of Oxford, Butler County, Ohio, more particularly described as follows:

Tract 3—All that lot or tract of land designated on the subdivision of land made by Joshua Davis, Sr., of Outlot number twenty-nine (29) in the Village of Oxford, Butler County, Ohio, by lot number four (4), being one-half ($\frac{1}{2}$) acre taken off the south side of the north half of said Outlot number twenty-nine (29), subject to the payment of an annual ground rent to the Treasurer of the Miami University of \$1.00 on the 22nd day of May of each and every year.

An examination of the abstract for 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 six per cent per annum, for said tract of land, the instrument 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 would also be entitled, so often as the lease should 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 Outlot No. 29, conveyed this land, and by successive conveyances it has reached William H. Bruce, the present claimant.

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 William H. Bruce 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 William H. Bruce as a tenant.

However, information furnished subsequent to the certification of this abstract discloses the facts 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 his 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 the property. 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, in fee simple, to the property in William H. Bruce, he has such an equitable interest therein that it would support a contract looking to the purchase of that interest.

2. On March 15, 1875, Maria Baylor acquired the interest of Joel Dedenbaugh and wife in Tract 3. On April 28, 1891, a deed was executed for the same land by Maria Stewart (nee Baylor) and James Stewart, her husband, to Ellen

Boyd. An affidavit or other evidence should be furnished to establish the identity of Maria Stewart as Maria Baylor.

3. At page 33 of the abstract an affidavit of inheritance is noted as having been executed July 29, 1914, and recorded in Vol. 194, page 63, of the Butler County Deed Records, by the terms of which Nancy Graves inherited this land as a cousin and as the sole heir at law of Ellen Boyd. The affidavit further discloses that the decedent left no personal estate. An affidavit or other proof should be furnished respecting the payment of the debts of Ellen Boyd, and that there are no suits pending in respect to the settlement of the Ellen Boyd estate. The abstractor notes on this page that an administrator was appointed. Sufficient data from the administration docket should be noted to disclose whether the estate has been settled.

The encumbrance estimate is numbered 2651, and is made to William H. Bruce of Hamilton, Ohio, for the sum of \$1,200.00. It has been properly drawn and approved by the required officials and is by me approved as to form and sufficiency.

The deed for this tract has been executed by William H. Bruce under date of December 2, 1927, and by him acknowledged before a Notary Public on the same date. The deed is in proper form and will, when delivered, transfer such title as William Bruce has in the property under consideration to the President and Trustees of Miami University, subject to the payment of taxes and assessments, payable June 20, 1928, and thereafter, which, by the terms of the deed, the grantee assumes and agrees to pay as part of the consideration for the conveyance.

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

Respectfully,
EDWARD C. TURNER,
Attorney General.

1652.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF DAVID M. AND
PHOEBE J. SHEARD, 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 recent date a request for my opinion, accompanied by an abstract of title prepared and certified under date of December 2, 1927, by Paul Scudder, abstractor 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 2—Being a part of Outlot number twenty-nine (29) in the Village of Oxford, Butler County, Ohio, and more particularly described as follows:—Beginning at a point in the east line of said Outlot distant eighty (80) links south from the northeast corner of said Outlot and running thence west parallel with the north line of said Outlot a distance of two hundred (200) feet, thence south parallel with the east line of said Outlot a distance of one hundred and five and sixty-five hundredths (105.65)