4759.

FORECLOSURE SALE—DELINQUENT TAXES—PURCHASER LATER DIVESTED BY ONE HAVING PARAMOUNT TITLE MAY NOT RECOVER VALUE OF IMPROVEMENTS FROM COUNTY.

SYLLABUS:

1. *Where a purchaser at a sale in a proceeding for the foreclosure of alleged delinquent lands, pays in the purchase price of the property, enters into possession. and makes lasting improvements thereon, and later is divested of such title by reason of a court decree in a subseqeuent action brought by one having a superior title to the property, he cannot recover the value of the improvements so made from the county in which such land is located.*

2. *The rule of* caveat emptor *is applicable to purchasers at foreclosure sales of delinquent lands.*

COLUMBUS, OHIO, November 19, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

> "A piece of real estate located in this county, namely Seneca, was sold at public sale by the Sheriff for delinquent taxes. The owner of an adjoining piece of real estate previously had claimed that the lands declared delinquent were a part of his property, and that he had been paying taxes upon them. He was made a party to the foreclosure proceeding, but failed to answer, or set up his claim. After the sale by the Sheriff, the claimant filed an action in which the Common Pleas Court held that he had lost his rights, if any he had. The case was taken to the Court of Appeals, which reversed the Common Pleas Court, and held that he was entitled to the property.
>
> In the meantime, the purchaser at the public sale had improved the real estate by fencing and other means. After the decision by the Court of Appeals, the County Auditor returned the money paid by the purchaser, but refused to allow a claim for the improvements made. The question now arises whether or not the purchaser at the judicial sale is entitled to be reimbursed for his expenditures in connection with the sale of the property."

From the facts stated in your inquiry it appears that the party who ostensibly became the owner of the real estate entered into possession and made improvements thereon; that he became the owner by purchase through a foreclosure sale. There is an old and well established rule of law that in all judicial sales the rule of *caveat emptor* applies, that is, the purchaser through such sale obtains only the title represented by the interests of all the parties to the suit. *Arnold* vs. *Donaldson,* 46 O. S. 73; *Brickell* vs. *Milds,* 2 O. N. P. (N. S.) 153; *Vattier* vs. *Lytle,* 6 O. L. 477; *McLouth* vs. *Rathbone,* 19 O. L. 21; *Corwin's Lessee* vs. *Benham,* 2 O. S. 36.

The title of the purchaser at a foreclosure sale is subject to whatever equities therein as may belong to persons not a party to the action out of which the title arose.

I presume, from the facts stated in your inquiry that the sale in foreclosure was regularly confirmed since you state that the court of appeals has adjudicated in a separate action that a third party had superior claim to that of the purchaser. Such being the fact, the only question submitted is whether a purchaser in foreclosure of delinquent lands, who has made improvements upon lands so purchased, after entering into possession before his title and right to possession was divested by a superior or paramount title, may recover from the county the value of such improvements in addition to a refunder of the purchase money.

I must assume that the court of appeals found that the claim of the paramount claimant was valid, i. e. he had regularly paid the taxes on the property and the certification was in error and that by reason thereof, the foreclosure sale was void. If such be the fact the county auditor had no legal right to certify the taxes as delinquent, and there was no legal authority to bring the foreclosure suit. The collection having been made through a clerical error, it could be corrected and a refunder made. *State* vs. *Lewis,* 15 O. C. C. 279; *Lewis* vs. *State,* 59 O. S. 37.

A clerical error is a mistake or error caused by inadvertence. See *Lewis* vs. *State, supra.*

An examination of the statutes discloses that the legislature has made no statutory liability for such improvements so made. Since no statutory liability exists for such amount it is difficult to perceive how any legal liability of any nature could exist, since the claimant's only right to the property was obtained through the foreclosure suit. If he should take the position that the foreclosure action gave him no right to the property he would by such argument prove himself to be in possession of the property without right, and a trespasser. It is elemental that where a person enters upon property as a trespasser, or without color of title, and erects improvements thereon, he cannot recover the value of such improvements from the owner when ejected from possession. *Waldron* vs. *Woodcock,* 15 Ohio 14, *Vincent* vs. *Goddard's Lessee,* 7 Ohio Pt. II, 189; *Sellers' Lessee* vs. *Corwin,* 5 Ohio 398.

It is therefore evident that the rule of *caveat emptor* applies to the rights of a purchaser in a foreclosure sale for delinquent taxes; that the only title he obtains is whatever title or interest the parties before the court had; if such parties had none, he obtains none by his purchase, or if they had only a colorable title, he obtains only such title.

The claimant's relief, if any, is under the provisions of the so-called "Occupying Claimant's Law" (Sections 11908 et seq. General Code.) It has been held that a purchaser at an execution or judicial sale obtains such title as to bring him within the protection granted by such sections. *Seller's Lessee* vs. *Corwin,* 5 O. 398; *Henry* vs. *Doctor,* 9 O. 49; *Longworth* vs. *Wolfington,* 6 O., 9.

You do not state facts concerning the action in the court of appeals with sufficient detail for me to determine whether the claimant has waived his rights under this statute. I therefore express no opinion thereon.

Specifically answering your inquiry it is my opinion that:

1. Where a purchaser at a sale in a proceeding for the foreclosure of alleged delinquent lands, pays in the purchase price of the property, enters into possession and makes lasting improvements thereon, and later is divested of such title by reason of a court decree in a subsequent action brought by one having a superior title to the property, he cannot recover the value of the improvements so made from the county in which such land is located.

2. The rule of *caveat emptor* is applicable to purchasers at foreclosure sales of delinquent lands.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4760.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES AS RESIDENT DIVISION DEPUTY DIRECTORS—H. C. MILLER—D. E. ROUSH—C. C. LATTIMER.

COLUMBUS, OHIO, November 21, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Enclosed herewith find bonds for the following officials in the Department of Highways upon which I have endorsed my approval:

H. C. Miller—Resident Division Deputy Director—Division No. 7.

D. R. Roush—Resident District Deputy Director—Highland County.

C. C. Lattimer—Resident District Deputy Director—Franklin County.

May I call your attention to a minor correction on the bond of H. C. Miller, namely, that the oath was apparently administered in Franklin County, Ohio, and sworn to and subscribed to before a Notary Public of Highland County. Evidently the word Highland should be substituted for Franklin at the head of the oath.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4761.

APPROVAL, FOUR GAME REFUGE LEASES TO LAND IN WARREN, HIGHLAND, TUSCARAWAS AND WASHINGTON COUNTIES, OHIO.

COLUMBUS, OHIO, November 22, 1932.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination, in duplicate, the following State Game Refuge leases made to the State of Ohio, namely:

1. Lease No. 2179, made by The Ohio State Archaeological and Historical Society, for the property known as Fort Ancient State Park, recorded in Washington Township, Warren County, Ohio, in Deed Book No. 90, page 111.

2. Lease No. 2180, made by The Ohio State Archaeological and Historical Society, for the property known as Fort Hill State Park, recorded in Brush Creek Township, Highland County, Ohio, in Vol. 78, page 178, Deed Records, and Deed Book No. 80, page 146.