

that the Probate Court under Sections 13441, et seq., has jurisdiction to hear such criminal cases as are within its jurisdiction upon filing of an information by the prosecuting attorney, and I concur in that view.

Coming now to your second question, I believe that it being the duty of the Probate Court, specifically enjoined by law, to hear criminal cases within its jurisdiction upon the filing of an information by the prosecuting attorney, the Probate Court may be compelled by mandamus to hear such cases.

Section 12283, General Code, reads:

“Mandamus is a writ issued, in the name of the state, to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.”

Any doubt expressed as to the application of this writ to require a court to assume jurisdiction is resolved by Section 12285, General Code, which reads:

“The writ may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, but it cannot control judicial discretion.”

Courts may accordingly be compelled by mandamus to do that justice which the law enjoins upon them to administer. *In re Turner*, 5 Ohio 542.

Based upon the foregoing citations and discussion, you are specifically advised that:

1. The Probate Court under the provisions of Section 13425-15, General Code, must hear such criminal cases as it has jurisdiction to try upon the filing of an information by the prosecuting attorney.

2. It being the duty of the Probate Court, specifically enjoined by law, to hear such cases, mandamus will lie to require such court to perform its duty.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1118.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF CARL W. AND LONA ENGLE IN THE TOWN OF FORT JEFFERSON, DARKE COUNTY.

COLUMBUS, OHIO, October 29, 1929.

HON. HARRY D. SILVER, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval an abstract of title relating to Lot No. 16 of the plat of the town of Fort Jefferson, Darke County, Ohio, now owned of record by Carl W. Engle and Lona Engle, the acquisition of which property is sought by the Greenville Historical Society under authority of House Bill No. 143, passed by the 88th General Assembly, (113 O. L. 593).

An examination of the abstract of title submitted shows a number of defects in the early history of the title to this property. Thus it appears that in 1833 this lot

was conveyed by Hezekiah Viets, the original proprietor of the land in the town of Fort Jefferson, and Huldah, his wife, to one Robert Taylor. The next deed in the chain of title, as disclosed by the abstract, is one by Thomas A. Thorn and Susannah, his wife, to one John Smith. There is nothing in the abstract to show how the title to this lot came to said Thomas A. Thorn or to Susannah Thorn, and the abstract of title is defective in this respect.

It appears, however, that later—in the year 1850—this lot was conveyed by the auditor of Darke County to John W. Smith by a tax title deed as the result of the sale of said property for delinquent taxes. Thereafter, in 1852, said John W. Smith and Sarah Smith, his wife, conveyed said lot to one Benjamin Young. The next conveyance in the chain of title, as disclosed by said abstract, is one by Allen North and Mary Ann, his wife, to one Nancy Gotshall. There is nothing in the abstract to show how said Allen North and wife obtained title to the property and the abstract is likewise defective in this respect.

In the year 1880 it appears that the property here in question was conveyed by Mollie Lawson, John Lawson, Susannah Steinmetz, Adam B. Steinmetz, Sally A. Vetz, Jacob Gotshall and John Gotshall to one John W. Viets. Presumably the grantors in the deed above referred to were heirs of Nancy Gotshall, but there is nothing in the abstract to show the facts with respect to this matter. The deed is, in this respect, defective and should be corrected to show the interest of said grantors in and to said Lot No. 16 at the time of their conveyance of the same to said John W. Viets.

Carl W. Engle and Lona Engle obtained title to this lot on September 17th, 1928, by deed of conveyance from the heirs of Elzina Fitzgerald, deceased, who obtained title to the property from John W. Viets and wife in the year 1881. Notwithstanding the defects in the early history of the title of this lot, it appears that the title to the same has been held without question by John W. Viets and his successors in title for a period of forty-nine (49) years, and I am inclined to the view that said Carl W. Engle and Lona Engle have now a good and merchantable fee simple title to said lot subject to the mortgages on said property hereinafter noted and subject to the undetermined taxes on said lot for the year 1929.

Before any deed for the conveyance of this property is accepted by the Greenville Historical Society, however, it is suggested that so far as possible the abstract be corrected with respect to the defects above noted.

It appears from the abstract that there are two mortgages executed by said Carl W. Engle and Lona Engle, his wife, which are unsatisfied and are liens upon said lot. The first of said mortgages is one executed September 17th, 1928, to the Peoples' Savings Bank in the sum of \$300.00, and the other is a mortgage executed the same day to the Greenville Building Company in the sum of \$500.00. As above noted, both of these mortgages are liens upon said lot and some adjustment of the same should be made before this property is purchased.

No deed has been tendered by said Carl W. Engle and Lona Engle to the Greenville Historical Society, and when the corrected abstract of title with respect to said Lot No. 16 is again submitted to this department, it should be accompanied by a deed properly executed by said Carl W. Engle and Lona Engle, his wife, as well as by the proper encumbrance estimate and Controlling Board certificate.

Respectfully,

GILBERT BETTMAN,

Attorney General.