

tained in said acceptance receipt and each subsequent one thereof so executed and delivered hereunder.

At the end of the first paragraph on page 4, being next to the last paragraph in the contract, I suggest that the following time limit be added in the following manner: That a comma be placed after the word "possible," followed by the words "but not later than the first day of _____, 1927," and that a definite time limit be fixed.

I have taken this matter up with both the Governor and Auditor of State in the course of my investigation of the propriety of the arrangement. Of course, much depends upon your inspectors.

Respectfully,
EDWARD C. TURNER,
Attorney General.

108.

DISAPPROVAL, ABSTRACT OF TITLE TO 71.94 ACRES OF LAND, KNOWN AS EYMAN FARM, IN EAST UNION TOWNSHIP, WAYNE COUNTY, OHIO, TO BE USED AS PART OF SITE FOR ADDITIONAL INSTITUTION FOR FEEBLE MINDED IN NORTHERN OHIO.

COLUMBUS, OHIO, February 26, 1927.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

In re: Abstract of Title of Charles B. Eyman, et al.

DEAR SIR:—Examination of an abstract, warranty deed and other data submitted for my examination and approval, discloses the following:

The abstract as submitted was prepared by The Wayne County Abstract Company of Wooster, Ohio, and is certified under date of January 23, 1927, and pertains to 71.94 acres situated in the township of East Union, Wayne county, Ohio, to be used as a part of the site for an additional Institution for the Feeble Minded in Northern Ohio, and which real estate is more particularly described in the deeds submitted with said abstract.

(1) At the outset it appears that there is a discrepancy between the abstracter's description and the grantors' description. In describing by metes and bounds an expected tract containing 4.8 acres, the abstracter says on page 3:

"Thence North 89°45', West 457.5 feet to a stake on the *North* line of the property heretofore conveyed to the Village of Apple Creek; thence 11° 15' West along said *North* line 100 feet to an iron pin;"

whereas the deeds designate said italicized lines as "east" lines. By reference to the plat of the property found at Item 59 of the abstract, the description in the deed correctly states the description in question.

(2) Item 13 discloses that an administrator was appointed in 1843 for the estate of John W. Bever. Neither the abstract nor, as the abstracter reports, the records of Wayne county disclose any further administration of his estate. The abstract does not disclose any transfer by John W. Bever or of his property to his heirs. The names

of his heirs are not disclosed except by reference to Item 14 where it appears that Suzanna Bever was appointed guardian for Suzanna Jane Bever, Mertilla Bever and James B. Bever. From the fact that they were mere infants it may be assumed that there were no children who had attained their majority and that the children named were the only children. However, the abstract does not disclose that either the estate of Suzanna Jane Bever was administered by the guardian, or that the estates of James B. Bever and Mertilla Bever were ever settled.

(3) In Item 15, Mertilla Bever Wilhelm, supposedly Mertilla Bever, and her husband Owen A. Wilhelm, quit-claimed to Thomas Smith their interest in a part of Section 28, not definitely described, but stated as containing fifty acres more or less. Thomas Smith and his wife shortly afterward quit-claimed their interest in said tract to Susan Bever.

Item 17 discloses that Mertilla Wilhelm and Owen A. Wilhelm later by warranty deed transferred to Susan Bever apparently the same tract of fifty acres more or less.

Item 20 discloses that in 1869, four years after, Susan Bever and James B. Bever, signed by Jesse Smith, by warranty deed transferred to John M. Merriman the entire tract which John W. Bever had obtained from the Grahams, with but one or two small exceptions. The abstract does not disclose any power of attorney from James B. Bever to Jesse Smith, nor does it account either for the interest of Suzanna Jane Bever or the remainder of the interest of Mertilla. These facts, together with the not otherwise insurmountable difficulty confronting us in administration of the estate of the deceased James W. Bever and the estate of the feeble minded James B. Bever, create too important a situation to pass over lightly. Further evidence should be obtained in respect to the disposition of Suzanna Jane Bever and the remainder of Mertilla Wilhelm's interests.

(4) In Item 42 it appears that Emerillas Numbers and her husband in 1904 granted a lease of said premises to the The Interstate Oil Company for the purpose of drilling oil and gaswells, the lease to continue in force as long as oil or gas was found in paying quantities. The lease, however, stipulated that a well should be drilled within five years or the Lessee pay on the 77 acres ten cents per acre. *This lease is not cancelled of record.*

(5) Item 43 discloses an oil and gas lease in 1912 by Emerillas Numbers to R. O. Murphy, which lease was assigned by R. O. Murphy to John B. Murphy, who in turn assigned back to R. O. Murphy an undivided one eighth interest in the leasehold estate.

Item 46 discloses a release by John Murphy & Company to Emerillas Numbers and M. W. Numbers of the lease which was given by her to R. O. Murphy. However, there is nothing in the record pertaining to the release of R. O. Murphy's undivided one eighth interest or whether he was a member of the firm referred to as John Murphy & Company.

It is my opinion that the release of R. O. Murphy's interest should be proved.

(6) Item 48 discloses another uncancelled oil and gas lease which was given by S. B. Eyman and Isabelle Eyman to The East Ohio Gas Company in October, 1920. *This lease is not cancelled of record.*

(7) In Item 49 it appears that S. B. Eyman died intestate in October, 1925, leaving as two of his heirs Clare Eyman, a minor, who inherited a one twentieth interest in the property and Janet C. Eyman, a minor, who inherited a one-fifth interest in the property. The Probate Court of Wayne county appointed Olive Eyman guardian of Janet C. Eyman; and the Probate Court of Stark County appointed Jennie Eyman as guardian of Clare Eyman.

In Item 52 it appears that Olive Eyman as guardian of Janet C. Eyman filed a suit against her ward Janet C. Eyman for the sale of the minor's interest in said real estate. From the abstracter's notes it does not appear that the petition sets forth the requirements of section 10946 of the General Code.

The abstract also fails to show compliance with section 10947 of the General Code, which directs that upon filing of a petition, verified by the oath of the guardian,

“ * * * the court shall order the petitioner to give notice to his ward, to the husband or wife of such ward, and to all persons entitled to the next estate of inheritance in such real estate, who also shall be defendants to the petition, of the filing and demand thereof, * * * ”

as stated in Rockel's Complete Ohio Probate Practice, Sec. 1415.

Section 10948 of the General Code provides that if at the time appointed for the hearing of the petition, if satisfied that the proper notice was given and that the real estate ought to be sold, the court shall appoint three freeholders of the county in which the real estate is situated, who were not of kin to the petitioner, to appraise it. The abstract does not show that this statute was complied with in respect to the appointment of the appraisers.

Section 10949 of the General Code provides for an oath for the appraisers which should be endorsed on the certificate of their appraisal of such real estate, signed by the appraisers. Section 10950 provides that upon filing of such appraisalment the court shall require the guardian to execute a bond with sufficient freehold sureties, at least two in number, payable to the state in double the appraiser's value of such real estate conditioned for the faithful discharge of his duties and the payment of and accounting for all moneys given by the guardian at the time of his appointment. The statute further says:

“No court shall waive the giving of such additional bond, nor have jurisdiction to order the sale of such real estate until it is given.”

The abstract does not show that this statute has been complied with.

By its terms, compliance with section 10950, General Code, is plainly jurisdictional and failure to give bond renders any attempted sale void.

See Section 1424 Rockel's Complete Ohio Probate Practice, where the writer says as follows:

“ * * * whatever the law may have been under the former statute there can be no doubt but what, under the present statute, the fact of giving such additional bond is jurisdictional, and without such bond being given the court has no right or power to grant an order of sale. * * * ”

Section 10951 of the General Code provides for the sale of the property. If it is made to appear that it will be more for the interest of the ward to sell such real estate at private sale, it may authorize the guardian so to sell it, either in whole or in parcels; but in no case shall the real estate be sold at private sale for less than its appraised value. The abstract shows that the court ordered a private sale in two separate tracts. The appraisalment was made of the whole tract prior to the order for sale in two tracts but the record of sale shows a sale of only one tract and that for a sum less than the total appraisalment.

In Item 55 of the abstract it appears that Jennie Eyman, as guardian of Clare, filed a petition in the court of Stark county for the sale of Clare Eyman's estate in the real estate under investigation. The abstract discloses only such details as are set out respecting the sale of the Janet C. Eyman estate, so that what has been said concerning the defects in the Janet Eyman estate applies with equal force to the sale of the Clare Eyman estate, except that the record of the sale shows the sale of the two parcels, for sums in excess of his interest in the entire property.

The abstracter should set out these proceedings in sufficient detail to inform an

examiner of abstracts whether these proceedings have in fact been sufficient to authorize the guardians to execute the tendered deeds.

(8) The abstract shows that the 1926 taxes, amounting to \$81.72 are unpaid and a lien. No special assessments are shown by abstract.

(9) The Eyman heirs inherited from S. B. Eyman, and they together with the widow of S. B. Eyman are selling to the state. The Eymans obtained the land from Emerillas Numbers as noted in Item 47. This item says that the property transferred is the same as shown in Item 33.

Item 33 refers to the quit-claim deed of the widow and heirs of J. P. Emerson to Emerillas Numbers, and says that the description of the property transferred is the same as that shown in Item 30.

Item 30 refers to the transfer by warranty deed from John M. Merriman and Harriett Merriman, his wife, to John P. Emerson, said deed being executed in December, 1884, and recorded in September, 1885. The description set forth by the abstracter is the same description of the land detailed in the deeds from the Eymans to the State, without the exceptions. The deed from the Merrimans to the Emersons is the first deed in the abstract from which a definite description can be obtained which coincides with that now offered by the Eymans to the State. However, it seems clear that the property transferred by the Merrimans to Emerson is included within the 152.57 acre tract obtained by Merriman from Susan Bever and James B. Bever by warranty deed in March, 1869, recorded March, 1875; and is included within that tract which the Bevers obtained from the Grahams in October, 1842, and so on back through the record of deeds pertaining to the transfer of title.

The deed offered by the Eymans describes a 92.37 acre tract, the property obtained from the Emersons, and then contains three exceptions, two of which are described by metes and bounds while the third is not so described, but merely referred to as a fifteen acre tract "heretofore sold and conveyed by John P. Emerson, now deceased, to Margaret Bott, wife of Jacob Bott." I believe that the deed should be re-drawn and describe by metes and bounds this excepted tract.

(10) The abstract contains no reference to the payment or the assessment of the inheritance tax in the S. B. Eyman estate. This tax should be paid or the proper bond given by the heirs in order to relieve the Eyman real estate from the burden of that tax.

I also note the following, which may be disregarded because of lapse of time:

(11) Item 2 of the abstract indicates that there is no Government patent for the northeast quarter of Section 28, although the acting Assistant Commissioner of the General Land Office writes under date of November 6, 1926, that this quarter section was entered at the Canton Land Office shortly after the beginning of the last century under the credit system; and apparently it was the intention of that office on May 18, 1813, to issue a patent for this land based upon final certificate 307 in the name of John Knight, because the patent is referred to on page 351 of Miscellaneous Vol. 18, although imperfect. However, it is my opinion there is enough evidence on this patent to justify the conclusion that John Knight became the owner of the quarter section.

Item 4 discloses that the patent for the northwest quarter was issued by the President to John Knight, assignee of Joseph Wilson. There is no evidence concerning the nature of the assignment from Wilson to Knight and the Commissioner of the Land Office does not sign his name to the patent deed. It is my opinion, however, that there is other evidence sufficient to establish the title to this land in the name of those claiming under John Knight.

(12) In Item 12 it appears that Richard Graham and two others by the same name, with their wives, executed a deed to John W. Bever. The marital status of Richard Graham is not disclosed any place in the abstract. The deed was, however,

given in 1842, so that I am of the opinion that the dower rights, or other rights of a possible wife have been foreclosed by lapse of time.

(13) Item 21 discloses a mortgage by John M. Merriman and wife to Susan Bever and James B. Bever.

Item 22 discloses that Thomas Smith, executor of the will of Susan Bever, released the mortgage so far as her estate is concerned. However, the abstract does not disclose any administration of her estate, or any reference as to the appointment of Thomas Smith as executor.

Item 23 of the abstract discloses that the guardian of James Bowman Bever released the mortgage so far as the interest of James B. Bever was concerned. The imperfections in the release of this mortgage are cured by lapse of time.

(14) In Item 30 it appears that Merriman and wife deeded 71.37 acres of ground in the northeast quarter and 21 acres in the northwest quarter, exclusive of the land in the railroad right of way, to John P. Emerson, who in 1898 with his wife deeded approximately 15 acres on the east side of the tract, and east of the railroad right of way, to Margaret A. Bott.

Item 32 of the abstract discloses that there is no other deed by John P. Emerson on record covering the land obtained from Merriman, no administration of John P. Emerson's estate in the Probate Court of Wayne county, and nothing to show who his heirs were, except as shown in Items 33 and 35 hereafter noted.

(15) In Item 33 it appears that Sarah Emerson, widow of John P. Emerson, Harriett N. Emerson, J. W. Emerson, L. M. Emerson and wife, Mary J. Emerson, by quit-claim deed transferred their interest in said John P. Emerson tract to Emerillas Numbers. It appears by a statement inserted in the abstract by Daniel C. Funk an attorney of Wooster, that John P. Emerson died intestate, that Harriet M. Emerson never married, and that Emerillas Numbers was a daughter of John P. Emerson, and that the persons named in the foregoing deed were his only heirs at law.

This being true, I am of the opinion that the defects described in paragraphs numbered 11 to 15, both inclusive, are not sufficient at this time to constitute any cloud on the title.

The approval of the Controlling Board should be obtained, and a regularly certified encumbrance estimate should accompany this abstract.

The abstract, warranty deed and other data submitted are herewith returned.

Respectfully,
EDWARD C. TURNER.
Attorney General.

109.

INSPECTION OF BOILERS—DUTY OF DEPARTMENT OF INDUSTRIAL
RELATIONS TO INSPECT BOILERS OWNED BY BOARDS OF EDU-
CATION—FEES.

SYLLABUS:

1. *That it is the duty of the Department of Industrial Relations to inspect boilers owned by boards of education, except such boilers as are exempted from said inspection by Section 1058-7 of the General Code.*