

"Beginning at a Chestnut Oak and White Oak, original corner to William Lawrence's Survey No. 16019; thence N. 65 deg. E. 53 1/5 poles to a stone, Beech and White Oak; thence N. 17 deg. E. 153 poles to a stone and White Walnut, on the E. bank of Slate Fork at the foot of the hill; thence W. 69 poles to a stone in the North line of 16019, Lantz's corner; thence S. 66 deg. W. 93 poles to a stone (originally two Chestnut Oaks); thence N. 74 1/2 deg. W. 18 poles to a stake in the West line of said Survey, near a Hickory; thence S. 9 deg. W. 60 1/2 poles to a large Poplar and Hickory; thence S. 36 deg. W. 22, 4 poles to a stake in a line of original Survey No. 16019; thence with Gregg's lines reversed, S. 52 deg. E. 9.7 poles to a Black Oak; thence S. 55 1/2 deg. E. 8.7 poles to a Black Oak; thence S. 64 1/2 deg. E. 8 poles to a large White Oak; thence S. 59 deg. E. 56 poles to the beginning, containing One Hundred Twelve Acres, more or less, being part of Survey No. 16019, saving and excepting Two acres, sold to Rilla Evans, leaving a total of One Hundred Ten Acres of land."

Upon examination of the abstract of title submitted, I find that said J. H. Fite has a good and indefeasible fee simple title to the above described real property, free and clear of all encumbrances except the undetermined taxes on said property for the year 1931.

An examination of the warranty deed tendered to the State by said J. H. Fite, shows that the same has been properly executed and acknowledged by him; and that said deed, by its terms and provisions conveys the above described property to the state by fee simple title, with a warranty contained therein that said property is free and clear of all encumbrances whatsoever.

Encumbrance estimate No. 805, which has likewise been submitted to me and which is a part of the files relating to the purchase of the above described property has been properly executed and acknowledged and the same shows an unencumbered balance in the appropriation account sufficient in amount to pay the purchase price of said property, which purchase price is the sum of \$550.00.

It is likewise noted, from the certificate of the Board of Control submitted to me that the purchase of the property here under investigation, has been approved by the Board of Control, and that the amount of money necessary to pay the purchase price of this property has been released by said board.

I am herewith returning to you with my approval, said abstract of title, warranty deed, encumbrance estimate No. 805, certificate of the Board of Control and other submitted files relating to the purchase of the above described property.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3393.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN TOWNSEND
TOWNSHIP, SANDUSKY COUNTY, OHIO.

COLUMBUS, OHIO, July 2, 1931.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication from your department over the signature of the conservation commissioner submitting

for my examination and approval an abstract of title, warranty deed, contract encumbrance estimate No. 1 and a certificate of the board of control relating to the proposed purchase by the state of Ohio of a tract of 12.97 acres of land in Townsend Township, Sandusky County, Ohio, the same being located in the east half of the southwest quarter of section 9, township 5 north, range 17 east and being more particularly described as follows:

“Beginning in the north and south one-half of section line at a stake 881.8 feet south of the center of said section, it being the south-east corner of a certain twenty-three (23) acre tract of land conveyed by J. H. Miller, et al., to Caroline Miller, by deed dated March 31, 1900, and recorded in Sandusky County Record of Deeds, Volume 68, Page 501, and running thence south along the one-half section line 477.5 feet to an iron stake set in the north east corner of lands of Joseph Warner; thence west along the north line of lands of said Joseph Warner and lands of Jacob Warner, eleven hundred and seventy-nine (1179) feet to stone heretofore set in the north line of said Jacob Warner’s land and twenty (20) feet east of his north-west corner; thence north along the east line of a 20-foot lane, 479.3 feet to stone heretofore set in the south-west corner of said 23-acre tract; thence east along the south line of said 23-acre tract, eleven hundred and eighty-three (1183) feet to the place of beginning and containing twelve and ninety-seven hundredths (12.97) acres of land according to survey of John Laylin, Assistant Engineer, Division of Conservation, made on November 7th, 1930.”

As noted in the above description, the property here under investigation lies in the east half of the southwest quarter of section 9 of township 5 north, range 17 east of the survey of which said property is a part, which tract of land containing 80 acres was entered for patent by one F. A. Chapman in 1829. In 1831 said F. A. Chapman, his wife joining with him in the deed, conveyed an undivided one-half interest in this 80 acre tract of land to one Thomas G. Amsden. After this conveyance it seems that said F. A. Chapman and Thomas G. Amsden between them owned the whole of the south half of said section 9 in the township and range above noted; and that some time after the year 1831 and prior to the year 1839 F. A. Chapman and Thomas G. Amsden, in consideration of a certain purchase price therefor fully paid by one Henry Miller, contracted and agreed to convey the south half of said section 9 and other property to said Henry Miller. It further appears that no conveyance of this property was made to Henry Miller in his life time, but that in the year 1839, some time after the death of Henry Miller, a deed was executed by Chapman and Amsden attempting to make a conveyance of this property in pursuance of said contract. It appears, however, that there was a mistake in the description of the property conveyed by said deed and some time thereafter an action was commenced by three of the seven children of Henry Miller against said F. A. Chapman, Thomas G. Amsden and the remaining children and heirs of Henry Miller to obtain an order of court correcting said deed with respect to the description of the property thereby conveyed, and for an order of said court partitioning the property conveyed by the deed, as corrected, among the heirs of Henry Miller according to their several interests therein. The proceedings in said case in the Common Pleas Court of Sandusky County are not abstracted. It appears, however, that thereafter said cause was appealed to the Supreme Court as a court of record in said county and that such proceedings were had therein that on June 16, 1851, an order was made correcting said deed as prayed for by the complainants; and thereafter on July 14, 1851, a decree was entered directing

a partition of said property. During the pendency of said proceedings, William Miller, one of the children and heirs of said Henry Miller, died; and the court in said decree found that Joseph Miller, one of the children and heirs of Henry Miller, by purchase of the interests of two of the other children and heirs of Henry Miller, in addition to his own interest, was entitled to three-sixths of said land, and that Jacob Miller, Michael Miller and Mary Hamilton, other children and heirs of Henry Miller, were each entitled to a one-sixth part of said lands. The court directed that a writ of partition be issued to the sheriff of said county commanding him to make partition of said lands by the oaths of certain commissioners named in said decree.

There is nothing in the abstract of title submitted to show that this order of partition was ever carried out either by a sale of the property, or by a division thereof by metes and bounds between the heirs of Henry Miller entitled to such partition.

The property here under investigation is a part of the lands involved in said partition proceedings; and Henry Miller, Burton Miller, Anna Pocock and Adda Worman, the present owners of record of the property here in question have and hold their rights and interests in this property through the last will and testament of said Joseph Miller, above mentioned, who died some time shortly prior to the 21st day of March, 1881.

There is nothing in the abstract relating to the property here under investigation or to the title thereto, between the time said partition proceedings were concluded, about the year 1852, and the probate of the will of Joseph Miller on March 21, 1881. More specifically to the point, there is nothing in the abstract to show how said Joseph Miller succeeded to the interests of Jacob Miller, Michael Miller and Mary Hamilton, referred to in the court decree under date of July 14, 1851; and inasmuch as the present owners of record of this property apparently have no record title to the property here in question other than that which came to them through the last will and testament of their father, Joseph Miller, it is apparent that their record title to this property is defective for the reasons above stated.

It is probable that a fuller abstract of the proceedings in said partition case, or of deeds of conveyance subsequent thereto, would show a full record title to this property in Joseph Miller at the time of his death in 1881. Further, independent of the question whether Joseph Miller had a complete record title to this property at the time of his death, it is quite probable that the present owners of record of this property, above named, have by open and adverse possession of the property in question acquired a good legal title to the same.

However, upon the state of the title to this property exhibited by the abstract of title submitted to me, I do not believe that I can do otherwise than to disapprove the title to this property, and to return the abstract of title to you in the hope that the same may be corrected so as to obviate the objections above noted.

I am accordingly herewith returning to you said abstract of title without approval of the same, and I likewise herewith enclose said warranty deed, encumbrance record No 1 and the certificate of the board of control, above referred to.

Respectfully,
GILBERT BETTMAN,
Attorney General.