

2967.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF MARY PILES, IN
BRUSH CREEK TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, December 5, 1928.

HON. CARL E. STEED, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date enclosing abstract of title and warranty deed signed by one Mary Piles, covering certain property in Brush Creek Township, Scioto County, Ohio, the purported description of which is more particularly set out in said deed as follows:

“Beginning at two (2) white oaks, northeast corner of Survey No. 15197; thence S. $53\frac{1}{2}^{\circ}$ E. 106 poles to a stake in the east line of the original survey of which this is a part; thence S. 20° W. 16 poles to a white oak and black oak; thence S. 47° W. 54 poles to a white oak, chestnut oak and hickory; thence N. 12° E. 106 poles to the beginning containing fifty (50) acres, more or less.

Being the second tract of land described in a deed from the Board of Trustees of The Ohio State University to Mary Piles dated February 21st, 1917, and recorded in Volume Eight (8) pages 86 and 87, Record of Deeds, Virginia Military Lands Ohio State University.”

The property intended to be conveyed by said warranty deed is a part of Survey No. 15860 in Virginia Military Lands made and entered by one Nathaniel Massie on a Virginia Military Warrant December 15, 1849. Said Mary Piles obtained her first record title to said lands by devise under the last will and testament of her father, Mathew Burriss, which will was admitted to probate in the Probate Court of Scioto County, Ohio, on February 4, 1884. It appears that said Mathew Burriss obtained record title to said lands by deed of conveyance from Samuel Branham and wife. However, there is nothing in the abstract to show how Samuel Branham or his wife ever obtained title to said lands; and the abstract is in this respect defective.

Aside from this and other manifest defects in the record title to said lands from Nathaniel Massie down to Mary Piles, the present owner of record of said lands, I am quite clearly of the view that no validity can be ascribed to the survey made and entered by Nathaniel Massie or to the chain of title through him. By referring to the map of the original survey set out in said abstract, it appears that said original survey although entered as and for fifty (50) acres, as a matter of fact included twice this amount of land. This manifest fraud, together with the additional fact that said survey was never returned to the Commissioner of the General Land Office for patent made this survey and entry null and void and extinguished all right, title and estate acquired thereby. See *Coan vs. Flagg*, 38 O. S. 156; affirmed Supreme Court of the United States, 123 U. S. 117; *Fussel vs. Gregg*, 113 U. S. 550.

Such survey and entry being void, the lands here in question passed to the State of Ohio under the act of Congress approved February 18, 1871, and thereafter by act of the Legislature of the State of Ohio, the title to said lands passed to Ohio State University under its former name of Ohio Agricultural and Mechanical College.

It thus appears that whatever title said Mary Piles has to the lands intended to be conveyed by her by the warranty deed above referred to came to her by the deed executed and delivered to her by the Board of Trustees of Ohio State University under date of February 21, 1917.

Referring to the map of said lands set out in the abstract, and to the calls in the description of the original survey made for Nathaniel Massie, it is apparent that in the purported description of said premises contained in the deed from Ohio State University to Mary Piles, one intended call in the description of said lands was omitted. This intended call was one which should have followed the third call in the description given, and which should have immediately preceded the last call so given. Reference to the original survey shows that said omitted call should have been in the following words and figures, to-wit: "thence N. 51° W. 42 poles to a red oak, chestnut oak and hickory, southeast corner of said Survey No. 15197." In other words, the purported description in the deed from Ohio State University to said Mary Piles and in the warranty deed which said Mary Piles now tenders to the State of Ohio does not enclose a tract of land of any quantity. By referring to the map of said lands it is quite clear that if, giving effect to the rule that monuments in calls made in the description of property are to be preferred over courses and distances in such calls, the last call in the description given should be so extended that it, together with the other calls given, would enclose a tract of land, such tract of land so enclosed would be considerably less than that intended to be conveyed.

Some suggestion is made in certain correspondence attached to the abstract that said Mary Piles has title to the lands here intended to be conveyed, by adverse possession for fifty years or more. As to this, it is sufficient to observe that title to said lands passed to the State of Ohio by the act of Congress under date of February 18, 1871, and said Mary Piles could not, as I see it, gain any rights by adverse possession against the State of Ohio or Ohio State University, which is but an institution and agency of the State.

For the reason above stated, the title of said Mary Piles to the lands here in question is disapproved. It is suggested that she obtain from the Board of Trustees of Ohio State University a quit claim deed containing a correct description of the lands which said board intended to convey to her.

I am herewith returning to you said abstract of title, warranty deed, encumbrance estimate and certificate of the Controlling Board.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2968.

APPROVAL, RE-EXECUTION OF LEASES TO CANAL LANDS IN THE
CITY OF SIDNEY.

COLUMBUS, OHIO, December 5, 1928.

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

DEAR SIR:—I have received your letter of December 4th, 1928, transmitting for my approval, triplicate copies of a lease granted to the City of Sidney, Shelby County, Ohio, pursuant to the terms of the Act of the General Assembly, found in Vol. 111 v. 208-214, bearing date of November 21st, 1928.

This lease was formerly approved by me as to form, and is now submitted for approval of a re-execution, the only change being the omission of two leases appearing on page nine of the lease, through error, in the first instance.

I have examined the lease as re-executed and finding the same in proper form I am accordingly returning the lease herewith with my approval noted thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.