3167.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF LAFAYETTE TAYLOR AND VOLNEY S. TAYLOR IN SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, April 20, 1931.

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

DEAR SIR:—I am in receipt of your letter submitting for my examination and approval an abstract of title, copy of real estate option, authority of controlling board, encumbrance estimate No. 811 and two warranty deeds, covering the proposed purchase of 637 acres of land, more or less, in Scioto County, from Lafayette Taylor and Volney S. Taylor, said land (also known as the Gregg tract) comprising two parcels, the first of which, located in survey No. 15901, contains 595 acres, more or less, and the second of which, located in survey No. 14896, contains 50 acres, more or less.

I shall consider first the title to the first parcel of this land consisting of approximately 595 acres, more or less. Tracing down the title to this first parcel, from the time of the grant of a patent from the United States government, I find that by a deed dated February 7, 1913 (p. 20, Abstract), one E. J. Gregg became the owner thereof in fee simple. Then, by a deed dated February 29, 1924 (p. 22, Abstract), E. J. Gregg conveyed said land in fee simple to Lafayette Taylor and Volney S. Taylor, but said deed contained the following clause of reservation:

> "Reserving however from the terms of this conveyance the oil, gas and other minerals in and under the said above described land, with the right to go upon the premises for the purpose of removing the same with all full and necessary mining rights incident thereto with no liability for surface damages of any kind except such damage as may actually result by reason of hauling or placing materials thereon. This reservation is limited for a period of ten years and within that time first party or her assigns may develop the land for oil, gas or other minerals, having the exclusive ownership of the same. But after ten years, all the oil, gas, or other minerals not taken out and removed from the premises shall belong to said second parties. First party or assigns shall have three months after the expiration of the time above mentioned, for removing any and all materials placed upon the premises by reasons of operations thereon."

Thus, at the present time, Lafayette Taylor and Volney S. Taylor own said 595 acre tract of land in fee simple with the exception of the reservations just quoted.

The proposed deed of Lafayette Taylor and Volney S. Taylor conveying said 595 acre parcel of land to the state of Ohio is executed in proper form for the conveyance of a fee simple title with the release of the dower interests. I call your attention to a slight error in the description in this deed. The fourteenth call in said deed reads:

> "thence south eighty (80) degrees *west* one hundred and thirty three (133) poles to three (3) white oaks."

As a matter of fact the term "west" is erroneously inserted in place of the term "east." I likewise call to your attention the fact that this deed makes a res-

ervation of the same oil, gas and mineral rights which were originally reserved in the deed from E. J. Gregg to Lafayette Taylor and Volney S. Taylor.

I come now to a discussion of the title to parcel No. 2 of the caption land, containing approximately 50 acres. This parcel is a part of the Virginia Military Survey No. 14896, said survey containing approximately 731¼ acres of land (p. 12, Abstract). By a deed dated May 1, 1877 (p. 15, Abstract), in which the sheriff of Scioto County, Ohio, was the grantor, a fee simple title was conveyed to William M. Dodds and S. J. Norman in these 731¼ acres of land comprising survey No. 14896.

Later, by a deed dated April 16, 1878 (p. 17, Abstract), said William M. Dodds conveyed in fee simple to one John A. Watson his undivided one-half interest in the 731¼ acre tract comprising survey No. 14896, but the deed states the following exception:

> "excepting however fifty (50) acres heretofore conveyed by said William M. Dodds and S. J. Norman to Robert McChesney."

There is nothing in the abstract of title submitted to indicate whether, out of this 731¼ acre tract, the 50 acres recited as having been conveyed to Robert McChesney, do or do not coincide with the 50 acre tract now being offered to the state as parcel No. 2 of caption land. I think it would be expedient to ascertain that these two 50 acre tracts are distinct and exclusive tracts in the 731¼ acre tract.

As a result of the aforesaid conveyance by William M. Dodds to John A. Watson of the former's undivided one-half interest in the 731¼ acre tract, John A. Watson and S. J. Norman became, in fee simple, the joint owners of said 731¼ acre tract (excepting the 50 acres which had theretofore been conveyed by William M. Dodds and S. J. Norman to Robert McChesney).

By a deed dated November 13, 1882 (p. 18, Abstract), S. J. Norman and wife purported to convey apparently a complete interest in parcel No. 2 of caption land to one Robert G. Chancy. In the succeeding conveyances one can then trace the title from Robert G. Chancy down to Lafayette and Volney S. Taylor. But it is to be remembered that S. J. Norman, who granted the land to Robert G. Chancy, did not own the complete interest in parcel No. 2 of caption land, but that John A. Watson owned an undivided one-half interest therein. There is no deed on record in Scioto County, Ohio, which conveys away the interest of John A. Watson in parcel No. 2 of caption land (see footnote, p. 18, Abstract).

Therefore, at least as far as the record title is concerned, John A. Watson is the owner in fee simple of an undivided one-half interest in parcel No. 2 of caption land, and Lafayette Taylor and Volney S. Taylor are the owners of the other undivided one-half interest in said parcel.

Of course, irrespective of the recorded title, Lafayette Taylor and Volney S. Taylor may have acquired the complete interest in said No. 2 parcel by reason of Lafayette and Volney S. Taylor and their predecessors in title having held adverse possession to this parcel for over twenty-one years. If this fact can be established by the affidavits of a number of reliable people who have been in a position to know the status of the possession of this parcel, then Lafayette and Volney S. Taylor may be deemed to have acquired the complete title therein. However, I call to your attention the great difficulty of establishing title by adverse possession of one tenant in common against another. 1 O. Jur., sections 16 and 45. Ordinarily it is presumed that the occupancy of one cotenant is with full recognition of, and not adverse to, the rights of the other. I herewith quote, from section 16 of the work just cited, a statement of the law which governs the acquisition of title, through adverse possession, by one tenant in common against the

other, in order that you may be guided by it in an effort to determine whether the Taylors have acquired complete title to parcel No. 2 by possession adverse to John A. Watson:

> "The occupation by a tenant in common of the common estate is not ordinarily adverse to his cotenants. Such occupancy will be presumed to be with a full recognition of the rights of the true owners of the title, and on their behalf as well as his own. When a tenant in common, claiming as such, enters upon the common land, he is exercising a right which his title gives him, and his resulting possession is presumed to be consistent with his avowed title, and, therefore, to be the possession of his cotenants and himself. His contenants have the right to rely on this presumption until his acts or declarations are palpably inconsistent with it.
>
> It is an equally well-recognized rule that the tenant may hold adversely to his cotenant, if he does so under a distinctive claim that his possession is on his own behalf, and against his cotenant; and this is true without regard to the character of his original entry; that is, whether it was with intent to hold adversely, or as a tenant in common. In order that such possession may be regarded as adverse, there must be some overt act of an unequivocal character clearly indicating an assertion of ownership of the entire premises, to the exclusion of the right of the cotenant. There must be an unmistakable act of which the cotenants have notice, or of which it is their duty to take notice, that the tenant thus in possession disclaims to hold as tenant in common and asserts ownership of the entire estate. Or, as stated in another case, the tenant in common must show a definite and continuous assertion of adverse right by overt acts of unequivocal character, clearly indicating an assertion of ownership of the premises to the exclusion of the right of the cotenant. The act must be so distinctly hostile to the rights of his cotenant as to evidence unmistakably his intention to disseise the cotenant. The fact that the ousted tenant to whom the notice has been brought home does not acquiesce in his cotenant's claim of ownership does not defeat the possession as the basis of an adverse claim, if otherwise it has the essential requisites of such a claim."

Other suggestable remedies are the institution of a suit to quiet the title with reference to this parcel, or the procurement of a deed from John A. Watson, or in case of his death, from his heirs, to the state of Ohio.

I further call to your attention that E. J. Gregg, in her deed purporting to convey to Lafayette and Volney S. Taylor parcel No. 2 of caption land (p. 22, Abstract), made the same reservation with reference to the oil, gas and mineral rights as was made by her, as quoted verbatim, supra, with reference to parcel No. 1 of the caption land. Likewise, it is to be noted that the proposed deed from Lafayette and Volney S. Taylor to the state of Ohio with reference to parcel No. 2, makes the same reservation concerning these oil, gas and mineral rights.

According to the certificate of the abstracter, certified under date of October 20, 1930, the taxes for 1930 had not yet been fixed by the county auditor, and of course had not therefore been paid at that time. The taxes for 1931 became a lien upon this property just a few days ago. Otherwise there are no encumbrances. However, inasmuch as the abstract in my hands concerns the title down to the twentieth of last October only, it might be well to have the record examined from

that time unto the present in order to make sure that no further transactions have taken place which might jeopardize or encumber the title to this land in the interim.

Encumbrance estimate No. 811 is in proper form and shows that there remains in the proper appropriation account a sufficient balance to pay the purchase price of said land.

The controlling board has given its approval.

I am herewith returning to you all the papers enumerated above as having been received.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3168.

APPROVAL, BONDS OF COAL GROVE VILLAGE SCHOOL DISTRICT, LAWRENCE COUNTY, OHIO—$25,000.00

COLUMBUS, OHIO, April 21, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3169.

APPROVAL, BONDS OF CITY OF WOOSTER, WAYNE COUNTY, OHIO —$17,000.00.

COLUMBUS, OHIO, April 21, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3170.

COUNTY COMMISSIONERS—POWER TO PURCHASE ROAD MATERIALS AND LATER ADVERTISE FOR BIDS FOR THE LABOR ONLY TO BE PERFORMED ON DESIGNATED ROAD.

SYLLABUS:

When county commissioners have already purchased road materials without reference to any designated road project, and later decide to construct a road, they are legally authorized to advertise for and accept bids for the labor only to be performed on a designated road.

COLUMBUS, OHIO, April 21, 1931.

HON. FREDERIC V. CUFF, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

> "May I have your opinion on the following question, viz:
>
> Has a board of county commissioners the power, for example, to purchase crushed stone to be used in the construction of county roads without reference to any particularly designated highway or improvement; and if the board has such power and does make such purchases,