

Boyd. An affidavit or other evidence should be furnished to establish the identity of Maria Stewart as Maria Baylor.

3. At page 33 of the abstract an affidavit of inheritance is noted as having been executed July 29, 1914, and recorded in Vol. 194, page 63, of the Butler County Deed Records, by the terms of which Nancy Graves inherited this land as a cousin and as the sole heir at law of Ellen Boyd. The affidavit further discloses that the decedent left no personal estate. An affidavit or other proof should be furnished respecting the payment of the debts of Ellen Boyd, and that there are no suits pending in respect to the settlement of the Ellen Boyd estate. The abstractor notes on this page that an administrator was appointed. Sufficient data from the administration docket should be noted to disclose whether the estate has been settled.

The encumbrance estimate is numbered 2651, and is made to William H. Bruce of Hamilton, Ohio, for the sum of \$1,200.00. It has been properly drawn and approved by the required officials and is by me approved as to form and sufficiency.

The deed for this tract has been executed by William H. Bruce under date of December 2, 1927, and by him acknowledged before a Notary Public on the same date. The deed is in proper form and will, when delivered, transfer such title as William Bruce has in the property under consideration to the President and Trustees of Miami University, subject to the payment of taxes and assessments, payable June 20, 1928, and thereafter, which, by the terms of the deed, the grantee assumes and agrees to pay as part of the consideration for the conveyance.

I herewith return the abstract, deed, encumbrance estimate and other papers submitted therewith.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1652.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF DAVID M. AND
PHOEBE J. SHEARD, IN THE VILLAGE OF OXFORD, BUTLER
COUNTY, OHIO.

COLUMBUS, OHIO, February 1, 1928.

HON. W. P. ROUDEBUSH, *Secretary, Board of Trustees, Miami University, Oxford, Ohio.*

DEAR SIR:—You have submitted under recent date a request for my opinion, accompanied by an abstract of title prepared and certified under date of December 2, 1927, by Paul Scudder, abstractor of Hamilton, Ohio, an encumbrance estimate and a deed covering a parcel of real estate situate in the Village of Oxford, Butler County, Ohio, more particularly described as follows:

“TRACT 2—Being a part of Outlot number twenty-nine (29) in the Village of Oxford, Butler County, Ohio, and more particularly described as follows:—Beginning at a point in the east line of said Outlot distant eighty (80) links south from the northeast corner of said Outlot and running thence west parallel with the north line of said Outlot a distance of two hundred (200) feet, thence south parallel with the east line of said Outlot a distance of one hundred and five and sixty-five hundredths (105.65)

feet to a point (said point being on the line of division between grantors' and the property of William H. Bruce,) thence east parallel with the north line of said Outlot a distance of two hundred (200) feet to a point on the east line of said Outlot and thence north on the east line of said Outlot to the place of beginning."

An examination of the abstract for this tract discloses the following :

1. The President and Trustees of Miami University by a writing dated September 7, 1810, and filed for record November 2, 1819, leased to Merrikin Bond, Outlot No. 29 in the Village of Oxford, containing four acres, by the terms of which writing, Merrikin Bond or his representatives agreed to well and truly pay on the 22nd day of May, every year after the date thereto to the Treasurer of Miami University the sum of \$1.32, being the amount of interest on the purchase money, at the rate of six (6) per cent per annum, for said tract of land, the lease further providing that, if said Merrikin Bond, or his representatives, should so pay, then he or his assigns or representatives would be entitled to hold said lot for the term of ninety-nine years, and would also be entitled so often as the lease should expire to have the same renewed on the same conditions forever.

This land passed by successive conveyances to Joshua Davis, who some time before 1871 subdivided Outlot No. 29 and transferred the tract under consideration to Martha Jane Burrell. From Martha Jane Burrell it passed in regular succession to David M. Sheard and Phoebe J. Sheard, the present claimants.

The abstract does not disclose that this lease was renewed upon the expiration thereof in 1909; and in the absence of a renewal of said lease, upon the authority of *B. & O. Railroad Co. vs. Vest*, 57 O. S., 161 and *Gladwell vs. Holcomb*, 60 O. S. 427, it is my opinion that David M. Sheard and Phoebe J. Sheard are only tenants from year to year, and have no estate in this land beyond September 7, 1928; and not any estate after September 7, 1927, unless the President and Trustees of Miami University elected on that date to treat David M. and Phoebe J. Sheard as tenants.

However, information furnished subsequent to the certification of this abstract discloses the facts that this property has been continuously occupied by the assignees of the original lessee to the present time by and with the consent of the lessor; that the ground rent has been paid at the times stipulated since the expiration of the term of the lease; and that the lessor has continuously treated the present claimants as tenants. In fact, the lessor has so far recognized their right to a renewal of the lease, that it has accepted and recorded transfers of title since the expiration of the ninety-nine year lease, and has entered into an agreement with the present claimants for the purchase of the property. Under these circumstances, the present claimants would undoubtedly have a claim upon the land, which a court of equity would recognize, and will, under the circumstances obtaining at present, constitute a cloud upon your title which would be worth something to remove. The value of that advantage is for the Trustees of the University to determine.

Therefore, while I am of the opinion that the abstract does not disclose a good and merchantable title in fee simple to the property in David M. Sheard and Phoebe J. Sheard, they have such an equitable interest therein that it would support a contract looking to the purchase of that interest.

2. That a deed dated October 5, 1874, is recorded in Vol. D, page 239 of the Miami University Deed Records, by which Joshua Davis transferred to Martha Jane Burrell a tract of land said to contain one acre of ground, which included the part known as Tract No. 2. By the terms of this deed, it was stipulated that

Mary Jane Burrell was to have possession of the described premises and have full and complete title to the same during her natural life and at her death the title to said premises should be vested in the heirs of her body, absolutely and forever; yet by a deed dated October 31, 1881, recorded in Vol. 94, page 428, of the Butler County Deed Records, Samuel Burrell and Mary Jane Burrell, his wife, transferred the property under consideration with full warranty to Clara Baxter. Clara Baxter thereafter transferred the property to Benjamin Simpson by a warranty deed, and through him it reaches the present claimants, David M. Sheard and Phoebe J. Sheard.

There is nothing in the abstract which establishes the relationship of Martha Jane Burrell to Samuel Burrell and Mary Jane Burrell, his wife. If, as a matter of fact, a mistake has been made by the abstracter in copying the name Martha for Mary, or vice versa, and Martha Burrell and Mary Burrell are one and the same person, it is my opinion that Clara Baxter took no title under the deed of October 31, 1881, which would extend beyond the life of the grantor, except such as might have ripened into a prescriptive title by open, notorious and adverse user for at least twenty-one years. If such be the fact, of course, it should be thoroughly established by proof in the form of affidavits or courts records; but for your information, I may say that a recognition of the original lease on the part of Clara Baxter and her successors in title by paying the stipulated ground rents would not aid them in establishing a prescriptive title against the University. On the other hand, if Samuel Burrell was the sole heir of the body of Martha Jane Burrell, the facts should be established by affidavit or a notation of sufficient character to establish the kinship. However, in the present state of the abstract of title, it seems clear that those claiming title in the line of succession from Clara Baxter, do not have any present interest which can be transferred.

3. In the succession of the title claimed by David Sheard and wife, appears an affidavit of inheritance under date of November 22, 1918, recorded in Vol. 213, page 490 of the Butler County Records, by which Henry J. Burton appears as the heir at law of Rachel Burton, deceased. The affidavit recites that Rachel Burton died intestate in April, 1918, leaving her husband Henry J. Burton as her sole heir at law. A notation by the abstracter on Sheet 35 indicates that no administration is found of record upon the estate of Rachel Burton. An affidavit should be supplied showing that all debts of the Rachel Burton estate have been paid, and that there are no suits pending which involve the estate of Rachel Burton.

4. A mortgage given by David M. Sheard and Phoebe J. Sheard, his wife, to The Oxford Building and Loan Association, dated August 3, 1925, and recorded in Vol. 243, page 314, of the Butler County Mortgage Records, given to secure the payment of the Mortgagors' note for \$2,100.00, is uncancelled of record and a subsisting lien on the interests of David M. Sheard and wife.

The encumbrance estimate is numbered 2652, and is made in favor of David M. and Phoebe J. Sheard, for the sum of \$800.00. It has been properly drawn and approved by the required officials and is by me approved as to form and sufficiency.

The deed has been executed by David M. Sheard and Phoebe J. Sheard, his wife, under date of December 2, 1927, and by them acknowledged on the same day before a Notary Public at Oxford, Ohio, by the terms of which they convey to the President and Trustees of the Miami University the land known as Tract 2, free and clear of encumbrances, except taxes and assessments due and payable on June 20, 1928, and thereafter, which, it is recited, the grantee assumes and agrees to pay as part of the consideration for the conveyance. If it is established that

David Sheard and Phoebe Sheard have title to the land in consideration, the deed will be sufficient, when delivered, to pass that title.

I herewith return the abstract, the deed, encumbrance estimate and other papers submitted therewith.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1653.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF MARIA S. JOYNER,
IN THE VILLAGE OF OXFORD, BUTLER COUNTY, OHIO.

COLUMBUS, OHIO, February 1, 1928.

HON. W. P. ROUDEBUSH, *Secretary, Board of Trustees, Miami University, Oxford, Ohio.*

DEAR SIR:—You have submitted under date of December 5, 1927, a request for my opinion, accompanied by an abstract of title prepared and certified under date of December 2, 1927, by Paul Scudder, abstracter of Hamilton, Ohio, an encumbrance estimate and a deed covering a parcel of real estate situate in the Village of Oxford, Butler County, Ohio, more particularly described as follows:

TRACT 1. Being part of Outlot number twenty-nine (29) in the Village of Oxford, Butler County, Ohio, and more particularly described as follows: Beginning at the northeast corner of said Outlot and running thence west along the north line of said Outlot a distance of two hundred and fifty-five (255) feet, thence southwardly at right angles and parallel with the east line of said Outlot a distance of fifty-two and eighty hundredths (52.80) feet, thence east parallel with the north line of said lot a distance of two hundred and fifty-five (255) feet to the east line of said Outlot and thence north along the east line of said Outlot fifty-two and eighty hundredths (52.80) feet to the place of beginning, being the east two hundred and fifty-five (255) feet of that part of said Outlot number twenty-nine (29) conveyed to said grantor by Karl H. Zwick by deed dated June 13, 1923 and recorded in Deed Records 262, page 268 of the Records of Butler County, Ohio, subject to the payment of an annual ground rent of \$1.00 to the Treasurer of Miami University on the 22nd day of May of each and every year.

An examination of this tract discloses the following:

1. The President and Trustees of Miami University by a writing dated September 7, 1810, and filed for record November 2, 1819, leased to Merrikin Bond, Outlot No. 29 in the Village of Oxford, containing four acres, by the terms of which writing, Merrikin Bond or his representatives agreed to well and truly pay on the 22nd day of May, every year after the date thereof to the Treasurer of Miami University the sum of \$1.32, being the amount of interest on the purchase money, at the rate of 6% per annum, for said tract of land, the lease further providing that if said Merrikin Bond, or his representatives, should so pay, then he or his assigns or representatives would be entitled to hold said lot for the term