

1941.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF FOREST E. ROBERTS, BENTON TOWNSHIP, PIKE COUNTY, OHIO.

COLUMBUS, OHIO, April 6, 1928.

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

DEAR SIR:—Under date of March 26, 1928, you submitted for my opinion an abstract of title and a deed from Forest E. Roberts to the State of Ohio, covering certain property situated in Benton Township, Pike County, Ohio, and more particularly described as follows:

“Beginning at a hackberry and a black oak in the southeast corner of Mosby’s Survey No. 14560, and westerly corner to corner to Allen Latham’s Survey No. 14859; thence with the Latham line S. 23.7 deg. East 122.8 poles to an ash and gum, southwest corner to said survey; thence N. 85.7 deg. West 59.1 poles to a locust, the most northerly corner to the east line of A. Roger’s Survey No. 12899; thence S. 74.4 deg. West 108 poles to two white oaks, northeast corner to the west line of said survey; thence west 67.80 poles to a stake, southeast corner to Henry Mitchell’s lot; thence with his line north 130.7 poles to an elm in the line of Mosby’s said survey; thence with said line east 183.2 poles to the place of beginning, containing 150 acres, more or less.

Save and except 50 acres off of the west end of said premises sold and conveyed by warranty deed to Mary A. Lawrence by B. F. Atwell, James H. Malone and Martha J. Malone, his wife, by deed dated December 15th, 1898, and recorded in Volume 45 at page 231 of the deed records of Pike County, Ohio, to which for greater certainty of description reference is here made, leaving 100 acres, more or less, hereby conveyed, and being the same premises conveyed to A. J. Miller by B. F. Atwell and James H. Malone by deed dated February 18th, 1889, and recorded in Volume 45 at page 294 of the Deed Records of Pike County, Ohio, to which for greater certainty of description reference is here made.”

Upon an examination of this abstract I find that I am unable to approve the title to this land for the reason that in the abstract made of the deeds in the chain of title to this tract of land it does not appear that in any case the conveyance was made to the particular grantee therein named and “to his heirs and assigns.” In other words, it does not appear from the abstract that any of these deeds contain words of inheritance or perpetuity as was required by the laws of this state prior to the passage of the act of March 5, 1925, 111 O. L. 18. Without such words of inheritance the deeds in the chain of title to said lands that were executed in Ohio had the effect of conveying only a life estate. *Ford vs. Johnson*, 41 O. S. 366. The deeds that were executed in Ohio were warranty deeds and it is altogether probable that the same contains in the granting clause or in the habendum clause, or both, appropriate and sufficient words of inheritance; however, as above noted, the abstract does not show this to be the fact. Some of the deeds in the chain of title were executed in the State of Colorado and some in the State of Missouri. It may be that under the laws of said states words of inheritance are not necessary in a deed to convey a fee simple title. If this is true and these deeds do not in fact contain words of in-

heritance, the question is presented whether as to such defect in said deeds from the standpoint of the Ohio law, the defect is cured by the provisions of Section 8516, of the General Code. In any event it is important that the corrected abstract to be submitted to this department show in each instance clearly and fully the operative words of conveyance in both the granting and habendum clause in each and all of the deeds in the chain of the title to this land and which are noted in said abstract submitted. The abstract of the deeds in the chain of title executed in the states of Colorado and Missouri indicates that said deeds were not witnessed. It seems however that neither the laws of the State of Colorado nor those of the State of Missouri require witnesses to deeds; and this defect from the standpoint of the Ohio law is in my opinion corrected by the provisions of Section 8516 of the General Code.

At page 20 of the abstract it appears that the lands here in question were sold to one Charles H. Wiltsie at a delinquent tax sale on January 20, 1903, the lands then standing in the name of A. J. Miller, the record owner. At page 21 of the abstract there is recorded a transfer of said tax from Charles H. Wiltsie to C. E. Still and Warren Hamilton under date of December 10, 1904. It does not appear that any tax deed was ever executed by the Auditor of Pike County to either said Charles H. Wiltsie or to the said C. E. Still and Warren Hamilton. At page 22 of the abstract there appears an affidavit by Mae DeWitt Hamilton who says that Warren Hamilton died in Adair County, Missouri, on August 2, 1911, leaving surviving him as the sole and only heir at law, Arthur Hamilton, his son and this affiant as his widow. This affidavit was not executed until December 14, 1927, and filed for record on December 20, 1927. This affidavit is not in the form prescribed by law for an affidavit of inheritance and there is no information in said affidavit or elsewhere in the abstract showing that said Warren Hamilton died intestate. The defects here pointed out should be corrected by further information.

The taxes for the last half of the year 1927 which are due and payable in June, 1928, are unpaid and a lien on said lands. The abstract does not state the amount of the unpaid portion of the 1927 taxes.

There has been submitted to me a copy of the certificate showing that the Board of Control has approved the purchase of the land here in question. The encumbrance estimate is numbered No. 3383, dated March 17, 1928, and covers the payment of the purchase price of said lands to Forest E. Roberts out of the Division of Forestry G-1 Lands account. The encumbrance estimate shows an unappropriated balance in this fund sufficient to cover the purchase but the Director of Finance has not by his signature certified to this fact. The estimate is approved by the Director of the Department and the Bursar. The certificate of the Director of Finance should be obtained, and when this is done the encumbrance estimate will be approved.

The deed conveying these lands to the State of Ohio has been executed by Forest E. Roberts, and Gladys Roberts, his wife, and by them acknowledged before a notary public under date of March 15, 1928, and warrants title to the land without any exceptions. The description of the land used in the deed covers 150 acres, excepting 50 acres off the west end of the premises which is recited as having been sold and conveyed to other parties, to which deed for greater certainty of description reference is made, leaving 100 acres more or less to be conveyed by Forest E. Roberts to the State of Ohio. This is not the proper form of description to use, and Mr. Roberts should be required to prepare and execute a new deed in which the 100 acres to be conveyed to the State of Ohio is described by metes and bounds, so that nothing will be left to conjecture.

I herewith return said abstract, deed, encumbrance estimate and certificate of the action of the Controlling Board.

Respectfully,
EDWARD C. TURNER,
Attorney General.