

In order to vest jurisdiction in a board of township trustees to proceed under Section 5910, *supra*, "written notice to all adjoining land owners of the time and place of meeting" must be given. Such was not done in the case that you present.

I am therefore of the opinion that, inasmuch as written notice was not given to L. C. R., who was a co-owner with H. C. R. of the premises in question, the township trustees were without jurisdiction to make the assignment as provided by Section 5910, General Code. It is my opinion that a new assignment will have to be made after proper notice be given as provided by Section 5910, General Code.

Your attention is directed to the fact that if a new assignment is desired, as provided by Section 5910, *supra*, all adjoining land owners must be served with written notice of the time and place of meeting.

The answer to your first question renders it unnecessary to answer your second inquiry.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2367.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF EDWARD CUNNINGHAM
AND WIFE, IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, July 18, 1928.

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

DEAR SIR:—This is to acknowledge receipt of your communication of recent date enclosing an abstract of title and a warranty deed signed by Edward Cunningham and wife, covering certain land in Nile Township, Scioto County, Ohio, and more particularly described as follows:

"BEING known as part of Lot Number Ten (10) of Ohio State University Lands, more particularly bounded and described as follows, to wit:—BEGINNING at a stone marked "Y", two hickories, chestnut and chestnut oak, Southeast corner of this Lot Number Ten (10) and Northeast corner to Survey No. 15881; thence with one line thereof West 33-83/100 chains to the southeast corner of lands lately sold and deeded by Arthur R. Gleason and wife to Charles R. Williams; thence North along the East line of said lands last named forty-eight (48) chains to the South line of Survey No. 15587; thence East along said last named line 33-83/100 chains to a stone marked "K" "B" "O" and two hickories corner to Lot Eleven (11); thence south forty-eight (48) chains to the place of beginning, containing one hundred sixty one (161) acres, more or less. Being the same premises conveyed to Wallenstein, Loeb, Freiberg and Company from Andrew J. Miller by deed dated May 28, 1897, recorded in Volume 58, page 544, Scioto County, Ohio, Record of Deeds."

An examination of the abstract of title submitted discloses a question of some difficulty arising out of the fact that one of the deeds in the chain of title to the above described lands was executed to a partnership in the firm name. As to this, it appears that on and prior to May 28, 1897, the lands in question were owned in fee simple by one Andrew J. Miller. On said date said Andrew J. Miller and Mary Miller, his

wife, executed and delivered a warranty deed to said lands to Wallenstein, Loeb, Freiberg & Co., for a stated consideration of \$800.00. It appears that Wallenstein, Loeb, Freiberg & Co., were at the time a partnership consisting of Abraham Wallenstein, Louis Loeb and Joseph Freiberg, doing business as I am advised, at Cincinnati, Ohio. Said Abraham Wallenstein died intestate, on September 15, 1904, leaving as his sole heirs and next of kin, one Fannie Wallenstein, his widow, and two daughters, Mamie Efrogmson and Birdie Vehon.

On February 23, 1928, a warranty deed was executed by one or more of the surviving partners, in which "Wallenstein, Loeb, Freiberg and Company, a partnership heretofore existing and consisting of Abraham Wallenstein, (now deceased) Louis Loeb and Joseph Freiberg" were named as grantors to "Louis Loeb, Joseph Freiberg and the heirs at law, next of kin and devisees of Abraham Wallenstein, namely Mamie Efrogmson and Birdie Vehon" as the named grantees therein. On the same day, to wit: February 23, 1928, said Louis Loeb, a widower, Joseph Freiberg and Bertha Freiberg, his wife, Mamie Efrogmson and G. A. Efrogmson, her husband, and Birdie Vehon and Harry Vehon, her husband executed and delivered a warranty deed for said lands to Edward Cunningham, his heirs and assigns forever.

On June 11, 1928, there was filed in the office of the County Recorder of Scioto County, Ohio, an affidavit which was executed on March 26, 1928, transferring to Mamie Efrogmson and Birdie Vehon the interest of Abraham Wallenstein in the above described lands, it appearing that Fannie Wallenstein, the widow was then deceased.

In 30 Cyc., page 431, it is said:

"A deed to a partnership in its firm-name is not void, for while a partnership as such cannot be the grantee at law in a deed, or hold real estate because it is not a person either in fact or in the law, and while therefore a conveyance of real estate to a partnership in its firm-name fails to carry the legal title to the land, such a conveyance does vest an equitable estate in the firm. When the firm style contains the surnames of all the partners, a conveyance to the partnership in such style is generally held to pass the legal title to the individuals for the firm. If, however, the firm style contains the surname of one, or more, but not of all the partners, it has been held that a conveyance to the partnership in such style vests the legal title in the partner or partners, whose names appear, but in trust for the firm; and such named partners can convey a valid title to the property."

In the case of *Rammelsberg vs. Mitchell and Lape*, 29 O. S., 22, 52, it is said:

"It must be conceded that a copartnership is incapable of taking or holding the legal title to real estate, yet it is equally certain that it may acquire an equitable estate therein. It is well settled that whenever real estate is purchased with partnership funds, an equitable estate accrues to the partnership, whether the legal title be conveyed to the partners as individuals, or to either of them, or to a stranger; and in such case, upon the death of the person holding the legal title, it descends to his heir at law in trust for the benefit of the partnership—at least to the extent that it may be needed to satisfy demands against the partnership, whether such demands exist in favor of a stranger or a member of the copartnership. This doctrine is quite familiar, as is also the doctrine that in such case the realty is regarded and treated as personal property in the hands of the partnership to the extent it may be needed for partnership liabilities."

It is obvious that one of the questions here presented on the facts above stated, is whether by the deed of conveyance from Andrew J. Miller and wife, to Wallenstein, Loeb, Frieberg & Co., an equitable estate only in said lands passed to said partnership, leaving the legal title to said lands in Andrew J. Miller, or whether on the other hand said conveyance was effective to convey the legal title in said lands to the individual members of the firm in trust for partnership purposes. It is not improbable that the lands were taken by the partnership in satisfaction of a debt owing by said Andrew J. Miller to the partnership, or for some other purpose connected with the activity of the partnership in the conduct of its business. It follows from this, as a reasonable assumption, that although it is not likely that said lands were used for partnership purposes, the proceeds of the same could have been made available for the payment of partnership debts and in adjusting the rights and equities between the surviving partners and others, arising out of the dissolution of the partnership, on the death of Abraham Wallenstein, one of said partners. On account of the lapse of time since the dissolution of the partnership, on the death of said Abraham Wallenstein, it is probable that the claims of all creditors of said partnership have been paid or adjusted, and that all rights and equities between the surviving partners and the personal representatives of the deceased partner have been long since determined and settled. However, before finally passing upon the question of the validity of the title of Edward Cunningham in and to the lands here in question, it is desired that an affidavit be procured from one of the surviving partners of said partnership, showing the purpose for which said lands were acquired and held by said partnership and how the same was treated in the settlement of the partnership affairs of the dissolution of the firm, which occurred on the death of Abraham Wallenstein. In this connection, it may perhaps be assumed that all the indebtedness of Abraham Wallenstein's individual estate has likewise been paid or otherwise settled. It will be well to have the affidavit set out the facts as to this matter also. When the affidavit requested has been furnished and made part of the abstract, an opinion will be directed to you on the merits of the question here presented, touching the title of Edward Cunningham to said lands.

I am herewith returning said abstract of title, deed and encumbrance estimate No. 3397.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2368.

APPROVAL, BONDS OF THE CITY OF GALLIPOLIS, GALLIA COUNTY,
OHIO—\$16,000.00.

COLUMBUS, OHIO, July 18, 1928.

Industrial Commission of Ohio, Columbus, Ohio.