

2561.

APPROVAL, CORRECTED ABSTRACT OF TITLE TO LAND OF ADA R. BRAND IN FRANKLIN TOWNSHIP, ADAMS COUNTY, OHIO.

COLUMBUS, OHIO, November 21, 1930.

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

DEAR SIR:—I am just in receipt of information from the Abstracter, responsive to my communication to him under date of October 2, 1930, correcting the abstract of title covering seven certain tracts of land in Franklin Township, Adams County, Ohio, which are owned of record by Ada R. Brand of Columbus, Ohio, and which are more particularly described as follows:

FIRST TRACT: Situate on the headwaters of Scioto Brush Creek, beginning at three chestnut oaks, one of the original corners of Survey No. 14589; thence N. 39° W. 76 poles to a stone in said line; thence S. 55° W. 63 poles to a stone; thence S. 2° E. 48½ poles to a double chestnut oak; thence S. 27° W. 106 poles to a stone; thence S. 9° E. 27 poles to a chestnut oak; thence N. 72° E. 24 poles to a stone; thence N. 22° E. 100 poles to a gum, white oak and stone; thence N. 59° E. 66 poles to the beginning, containing 56 acres more or less, being part of Survey No. 14589.

SECOND TRACT: Beginning at two gums in the original corner to Survey No. 14589; thence with a line of said Survey S. 51½° E. 37 poles to a stake in an old field; thence N. 51½° E. 37 poles to a stake in said field; thence N. 21½° E. 7 3-5 poles to a stone in line of said Survey No. 14589 and on the south side of road; thence S. 55° W. 31 poles to a stone in the south side of said road; thence N. 74½° W. 38 poles to the beginning, containing two acres one hundred and forty and six-tenths square rods, being part of College Lot No. 147.

THIRD TRACT: Beginning at a stone near a white oak stump; thence along a line of said Survey No. 14589 S. 65° W. 81 1-5 poles to a stone on the south side of the road and eight feet from center of road, the true line; thence N. 41° E. 45 poles to a stone near two small black oaks; thence N. 78° E. 57 poles to the beginning, containing three acres and twelve square rods, being part of College Lot No. 147.

FOURTH TRACT: Beginning at a black oak in one of the original lines of Survey No. 14589; thence S. 54° E. 68 poles to three red oaks; thence N. the school house; thence N. 39° W. 90 poles to a rock oak and white oak and thence S. 3° W. 60 poles to a stone; thence N. 55° E. 63 poles to a stone near the school house; thence N. 39° W. 90 poles to a rock oak and white oak and stone; thence S. 65° W. 98 poles to a black oak and stone; thence S. 20° W. 32 poles to a rock, oak and stone; thence S. 50° W. 36 poles to a stone; thence N. 53° W. 36 poles to two gums; thence about 6 poles across to the beginning, containing fifty acres, more or less, being part of Survey No. 14589. (The above four tracts lie contiguous and are commonly known as the Tener farm, containing 114 acres.)

FIFTH TRACT: Lots Ncs. 97 and 98, and Surveys 15417, 14718, 14721 and 14731, on the waters of Scioto Brush Creek, bounded and described as follows: Beginning at a stone and a stump on the top of the hill in a field, corner to Survey No. 14589; thence with the same S. 72½° W. 20 poles to a black oak and stone; thence N. 8¼° W. 40 poles to a black oak and stone;

thence N. $29\frac{1}{4}^{\circ}$ E. $105\frac{1}{2}$ poles to a double chestnut oak; thence N. $1\frac{1}{4}^{\circ}$ W. 103 poles to a white oak; thence S. 78° W. 83 poles to a stone and black oak root; thence S. $38\frac{3}{4}^{\circ}$ W. 60 poles to a stone on edge of hill; thence N. $52\frac{3}{4}^{\circ}$ W. 64 poles to an old black oak, close to the road; thence N. $67\frac{1}{2}^{\circ}$ W. 45 poles to a white oak; thence N. 87° W. $40\frac{1}{2}$ poles to a black oak in the field; thence S. $40\frac{1}{2}^{\circ}$ W. 66 poles to a stone; thence S. 10° E. 45 poles to a stone; thence S. $67\frac{1}{2}^{\circ}$ E. $59\frac{1}{2}$ poles to a dogwood; thence S. $33^{\circ} 22'$ W. 28 poles to a walnut stump and a stone; thence N. 78° W. 72.3 poles to a gum; thence S. 78° W. 8 poles to a stone in the original line; thence S. $81\frac{1}{4}^{\circ}$ W. 33 poles to a stone; thence S. 76° W. 3 poles to a chestnut; thence N. 42° W. 28 poles to a stone, southwest corner to Survey No. 14539; thence N. 55° W. 16 poles to a white oak, corner to Yankie and Boyd; thence with Boyd S. 11° E. 105 poles to a white oak, corner to Wickerham No. -----, with the same, S. $60^{\circ} 6'$ E. $125\frac{1}{2}$ poles to a white oak, corner to Wickerham; thence N. $71^{\circ} 17'$ E. 116.8 poles to a white oak, corner to Survey No. 15417, with same S. $39\frac{1}{2}^{\circ}$ E. $118\frac{1}{2}$ poles to a poplar on the bank of the branch; thence N. $63^{\circ} 22'$ E. 47 poles to two dogwoods; thence N. $56\frac{1}{2}^{\circ}$ E. 14 poles to a white oak; thence N. $45\frac{1}{2}^{\circ}$ E. 32.2 poles to two white oaks; thence N. 28° W. 83 poles to the beginning, containing 517 acres, of which 63 are patent land No. 15417, all of College Lots Nos. 97 and 98, and, likewise 38 acres, 2 rods and 13 poles of the Keith Surveys Nos. 14718, 14721 and 14731.

SIXTH TRACT: Beginning at a black oak southeast corner to Survey No. 2340; thence S. 53° W. 18 poles to a sycamore; thence S. 35° W. 14 poles to a black oak; thence S. 59° W. $11\frac{1}{2}$ poles; thence S. 82° W. $17\frac{1}{2}$ poles; thence N. 83° W. 17 poles; thence S. 66° W. 17 poles to a cedar bush in a small drain; thence N. $51\frac{1}{2}^{\circ}$ W. 3 poles to a point of a large stone six feet up from the bed of the creek, marked "T"; thence N. $54\frac{1}{2}^{\circ}$ E. 17 poles to a cedar tree on the east side of the creek; thence N. $20\frac{1}{2}^{\circ}$ E. 26 poles to a red elm, close to the cliff on the east side of the creek; thence N. $16\frac{1}{2}^{\circ}$ W. 17 poles to an "X" in the stone in the side of the cliff; thence N. 48° W. 8 poles to a cedar on the side of the cliff; thence northwest to the line of Blanche Pemberton; thence with said line S. 48° E. 95 poles to the beginning, containing 35 acres, more or less, being part of Survey No. 2340.

SEVENTH TRACT: Lot No. 99, University Land, except 12 acres out of the northwest corner thereof, containing 242 acres and 36 square rods.

Upon examination of the abstract of title as corrected, I find that, subject to the observation hereinafter made with respect to the acreage, said Ada R. Brand has a good merchantable title to the above described real estate, free and clear of all encumbrances except the inchoate dower interest of her husband George F. Brand, and except the taxes on said property for the year 1930, the amount of which is not definitely stated in the abstract. It is quite probable that the amount of the taxes for the year 1930 on this property have been definitely ascertained by this time, and some adjustment with respect to said taxes should, of course, be made before the transaction relating to the purchase of this property is closed.

The question with respect to the aggregate acreage contained in the tracts of land above described arises out of the fact that the total acreage of said tracts of land in the deed of Charles H. Bancroft and Helen M. Bancroft to Ada R. Brand under date of October 17, 1922, appears to be about five square rods short of $872\frac{1}{2}$ acres. You will note that the aggregate acreage of the several tracts of land described in the deed tendered by Ada R. Brand to the State of Ohio is about 906 acres; and this is the acreage stated in the encumbrance estimate. The abstracter has not given any satisfactory explanation of this discrepancy in the acreage of this property. However,

the encumbrance estimate carries the signature of Mr. J. C. Kennedy, Consulting Engineer of the Department of Finance who, apparently from the files submitted to me, has made a check of the acreage in the several tracts of land described by metes and bounds in the deed tendered to the State of Ohio, and I will assume for the purposes of this opinion that said deed conveys to the State of Ohio all of the land that the State is buying and paying for. In any event, if any further question is made by you with respect to this matter, the same should be taken up with Mr. Kennedy.

I have examined the warranty deed tendered by said Ada R. Brand and find that the same has been properly executed and acknowledged by her and her husband, George F. Brand, and that the form of said deed is such that it conveys the above described property to the State of Ohio, free and clear of the inchoate dower rights of said George F. Brand in and to said property, and free and clear of all encumbrances whatsoever.

Encumbrance estimate No. 790, which has been submitted as a part of the files relating to the purchase of this property, has been properly executed and the same shows that there is a sufficient balance in the appropriation account to pay the purchase price of this property. It is likewise noted that under date of June 9, 1930, the Board of Control approved the purchase of this property and released the money necessary to pay the purchase price of the same.

Subject only to the exceptions above noted, I am herewith returning with my approval said abstract of title, and I likewise herewith return duly approved said warranty deed, encumbrance estimate and Controlling Board certificate. With the files just mentioned, you will also find herewith enclosed a copy of the action under which this property was purchased and the figures showing the check made by Mr. Kennedy with respect to the description and acreage of the several tracts of land above described.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2562.

MUNICIPAL CEMETERIES—MOTOR VEHICLE LICENSE AND GASOLINE TAXES—MUNICIPALITY'S PORTION APPLICABLE FOR REPAIR OF DRIVEWAYS IN SUCH CEMETERY.

SYLLABUS:

The municipality's portion of the motor vehicle license tax and the gasoline tax may be lawfully used for the repair of driveways in municipal cemeteries.

COLUMBUS, OHIO, November 21, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your communication which reads:

“Under date of July 15, 1930, Opinion No. 2090, was rendered to this department, in which it was held:

“The municipality's portion of the motor vehicle license tax and the gasoline tax may lawfully be used in connection with the construction, reconstruction, maintenance and repair of driveways in public parks under