

delivery of the warrant for the amount assessed by the jury as compensation for the land taken. Accordingly, the title of the State is unaffected thereby.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2293.

APPROVAL, BONDS OF CITY OF CLEVELAND HEIGHTS, CUYAHOGA COUNTY, OHIO—\$3,000.00.

COLUMBUS, OHIO, September 4, 1930.

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

2294.

APPROVAL, TWO ABSTRACTS OF TITLE TO LAND IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, September 5, 1930.

State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—There has been submitted for my examination and approval two certain abstracts of title, warranty deeds and other files relating to the proposed purchase by the State of Ohio of a certain parcel of land situated in the city of Columbus, Franklin County, Ohio, and more particularly described as follows:

FIRST TRACT: Being thirty one and one-quarter ($31\frac{1}{4}$) feet off of the north side of fractional inlot No. 115, in the city of Columbus, Ohio, as said lot is numbered and delineated upon the recorded plat thereof, of record in Deed Book "F", page 332, Recorder's Office, Franklin County, Ohio.

SECOND TRACT: Being thirty one and one-quarter ($31\frac{1}{4}$) feet off of the south side of fractional Inlot No. 116, in the city of Columbus, Ohio, as said lot is numbered and delineated upon the recorded plat thereof, of record in Deed Book "F", page 332, Recorder's Office, Franklin County, Ohio.

Said tracts together being the same premises conveyed to one George E. Mitchell, by Mary Jane Laurens, June 15, 1889, and recorded in Deed Book No. 205, page 382, in the Office of the County Recorder of Franklin County, Ohio; and by Elizabeth Treyens on August 23, 1906, and recorded in Deed Book No. 433, page 508, in the office of the Recorder of Franklin County, Ohio."

Upon examination of said abstract of title, the last continuances of which are certified by the abstracter under date of August 12, 1930, I find that Mrs. Pearl M. Mitchell has a good and indefeasible title to the underlying fee in and to the above

described real property which she obtained by devise under the last will and testament of her husband, George E. Mitchell, who died sometime prior to January 13, 1930, when his said last will and testament was admitted to probate. It appears, however, that the title of Mrs. Pearl M. Mitchell in and to the real property above described is subject to a ninety-nine year lease, renewable forever, which is now owned and held by one Letta Hesse Stanton, and which was executed to her by said George E. Mitchell and Pearl M. Mitchell, then his wife, under date of April 19, 1924.

From said abstracts of title it appears further that the interests of said Letta Hesse Stanton in and to said property under said ninety-nine year lease is subject to a certain lease executed by her December 12, 1924, under her then name of Letta W. Hesse, by which she leased and demised said property to one James J. Demopoulos for a term of ten years from March 1, 1925. It likewise appears that the interest of Letta Hesse Stanton under said ninety-nine year lease aforesaid is subject to a mortgage executed by her October 29, 1926, under her then name of Letta W. Hesse, to The Columbian Building and Loan Company, to secure the payment of her promissory note of even date therewith, payable to The Columbian Building and Loan Company in the sum of \$25,000. This mortgage to the extent of the amount remaining unpaid upon the promissory note secured thereby is a lien on the estate and interest of Letta Hesse Stanton in and to said property. Before the transaction relating to the purchase of this property by the State of Ohio is closed, there should be presented to you a release of this mortgage in proper form executed by the authorized officers of The Columbian Building and Loan Company.

It does not appear that the lease above referred to, executed by Letta W. Hesse (now Letta Hesse Stanton) to James J. Demopoulos, has been canceled of record or otherwise surrendered. Before closing the transaction for the purchase of this property and paying any part of the purchase money therefor, evidence should be presented to you by affidavit showing unequivocally that said lease, although not canceled of record, has been surrendered or otherwise effectually abandoned by said lessee.

In addition to the foregoing, it appears inferentially from said abstracts of title that the above described property, or a part of the same, is now in the physical possession of one Donald Tullis and his wife Harriet Tullis, as occupying tenants. Inasmuch as said Donald Tullis and Harriet Tullis are in actual occupancy of said property, the state as the purchaser of said property is required to take notice of whatever interest, legal or equitable, said persons may have in this property. *Ranney vs. Hardy*, 43 O. S. 157; *Schlos vs. Brown*, 13 Ohio App. 294. Before purchasing this property, therefore, evidence should be submitted showing that said Donald Tullis and Harriet Tullis do not hold this property under a lease for a term of years, or otherwise than as tenants from month to month.

As above stated, the last will and testament of George E. Mitchell, deceased, was admitted to probate on January 13, 1930. On the same date an administrator of his estate was appointed by the Probate Court of this county. It appears from the abstract that the administration of said estate has not as yet been settled. Although it appears that inheritance taxes, federal and state, on said estate, and the succession thereto have been paid, it does not appear that the general indebtedness of said George E. Mitchell, if any, existing at the time of his death, has been fully paid. Inasmuch as such general debts of said decedent, if any exist, have in a sense the status of a lien against the property of which he died seized, you should, before paying the purchase price of this property, be satisfied that any indebtedness of said George E. Mitchell has been fully paid or that there exists other property of the estate ample in amount to pay such debts.

It appears from the abstracts presented to me that on July 8, 1929, one James C.

Nicholson, of this city, filed a petition against said Letta Hesse Stanton in the Common Pleas Court of Franklin County, Ohio, in which petition it was alleged that on or about a certain date prior thereto said Letta Hesse Stanton contracted and agreed in writing to convey to said James C. Nicholson the right, title and interest which she owned and held in the above described property under said ninety-nine year lease aforesaid, in exchange for a farm in Delaware County to be conveyed to her by said Nicholson, and the prayer of the petition is that said Letta Hesse Stanton be required to specifically perform said agreement and convey to the plaintiff, by proper instrument of conveyance and assignment, all her right, title and interest in and to said ninety-nine year lease, or that adequate compensation be granted to the plaintiff for the alleged non-performance of said contract on the part of said Letta Hesse Stanton, the defendant in said action. Said action has been pending since said date of July 8, 1929, when summons was issued and served upon the defendant in said action.

Touching this situation, Section 11300, General Code, provides that when the summons in an action has been served, the action is pending so as to charge third persons with notice of its pendency; and that while so pending no interest can be acquired by third persons in the subject of the action as against plaintiff's title. Inasmuch, however, as the state is not bound by the terms of a general statute, unless it be so expressly enacted (*Ohio ex rel vs. Board of Public Works*, 36 O. S. 409), it may well be doubted whether this statute, or the rule of *lis pendens*, therein embodied, has any application to the State of Ohio as a purchaser of the interest of Letta Hesse Stanton in and to the above described property. Aside from this, however, it does not appear that the contract set up in plaintiff's petition in the case of *Nicholson vs. Stanton*, above referred to, is anything more than an executory contract; and although a vendee under a contract for the purchase of real property has an equitable interest therein to the extent of purchase money paid thereon, an executory contract for the sale of the property, although it may form the basis of legal as well as equitable remedies, does not of itself convey any interest either legal or equitable in the property and is essentially but a chose in action. *Churchhill vs. Little*, 23 O. S., 301, 308. In other words, with respect to the State of Ohio as the purchaser of this property, the only rights of said James C. Nicholson are those of contract against Letta Hesse Stanton. In this situation the rule is well established that the mere contract rights of third persons with respect to property needed by the state for public purposes, and which it requires either by appropriation or purchase in lieu thereof, cannot avail as against the sovereign right of the state to acquire such property. *Doan vs. Cleveland Short Line Railway Company*, 92 O. S. 461; *Norfolk & Western R. R. Co. vs. Gale*, 119 O. S. 110. I am of the opinion, therefore, that said James C. Nicholson has no rights under his said contract with said Letta Hesse Stanton which he can assert against the State of Ohio as the purchaser of this property.

In addition to the foregoing, the above described property is subject to the lien of taxes and special assessments here noted, as follows:

1. The taxes for the year 1930, the amount of which is as yet undetermined, are a lien upon this property.
2. There is a balance of \$90.59 remaining due on the special assessment for the improvement of Front Street. This balance is a lien upon said property.
3. There is an assessment against this property in the amount of \$292.94, for the lighting system on Front Street. This assessment, the first installment of which amounted to \$32.54, due in December, 1930, is a lien upon this property.
4. There is a delinquent assessment for street cleaning in the sum of \$4.32 on this property, which is due and payable in December, 1930.

There has been tendered to the State of Ohio two Warranty deeds, one executed

by said Pearl M. Mitchell, widow and sole devisee of George E. Mitchell, deceased, and the other executed by said Letta Hesse Stanton. The first deed above mentioned has been properly executed and acknowledged by said Pearl M. Mitchell and as to form it is sufficient to convey to the State of Ohio the fee simple title to said above described property, free and clear of all encumbrances "except said ninety-nine year lease to said Letta W. Hesse and except also all taxes, assessments, mortgages and other liens created by said lessee or levied against said leasehold estate." The other deed, which is signed by said Letta Hesse Stanton, and by Frederick M. Stanton, her husband, has been properly executed and acknowledged by both of said persons as grantors, and as to form said deed is sufficient to convey to the State of Ohio a fee simple title in and to the above described property, free and clear of all encumbrances whatsoever, except "the taxes and assessments due and payable on and after the December, 1930, payments.

There have been presented to me a part of the files relating to the purchase of this property, two encumbrance estimates, the same being numbered 636 and 637, covering payments of the purchase price of this property to be made respectively to said Pearl M. Mitchell and to said Letta Hesse Stanton. Both of said encumbrance estimates have been properly executed and approved and it is shown thereby that there are sufficient balances in the appropriation account to pay the respective amounts therein provided for.

I am herewith returning to you said abstracts of title with my approval of the same, subject to the exceptions above noted, and likewise the warranty deeds and encumbrance estimates above referred to, which are hereby approved.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2295.

APPROVAL, ABSTRACT OF TITLE TO LAND OF MARGARET G. PULLING AND ROBIN PULLING IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, September 5, 1930.

The State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—There has been submitted for my examination and approval an abstract of title, warranty deed and encumbrance estimate No. 638, relating to the proposed purchase by the State of Ohio of a certain parcel of real property situated in the city of Columbus, Franklin County, Ohio, which is owned of record by Margaret G. Pulling and Robin Pulling and which is more particularly described as follows:

"Being part of Inlot One Hundred Twenty-four as the same is numbered and delineated upon the recorded plat of the Town (now City) of Columbus, Ohio, of record in Deed Book F, page 332, Recorder's Office, Franklin County, Ohio.

Beginning at the northeast corner of said Inlot, thence running westwardly with the south line of West Broad Street 46.44 feet to the center of a brick wall, thence south with the center of said wall 70.30 feet to a stake, thence westerly parallel with the south line of Broad Street 16.76 feet to the east line of Scioto Street, thence south and southeasterly along the east line of