

See also on this point, *Jones vs. Wattles*, 66 Nebr. 533, *Case vs. Kramer*, 34 Mont. 142.

Whether the item here in question is to be considered as an account receivable or as "other intangible property," for purposes of taxation, the same is to be returned as of the first day of January, the actual return of the taxpayer being made thereafter between the 15th day of February and the 31st day of March. It would appear therefore that at the time the taxpayer returns this item for taxation the check which was given to the taxpayer by the customer in payment for the bill of goods referred to in your communication had the effect of discharging the customer's indebtedness for said bill of goods from the time said check was received, which on the facts stated in your communication, was before tax listing day. It follows from this that the item in question can not be classified as an account receivable on tax listing day, but that the check which was uncollected on tax listing day should be returned as other intangible property.

In the consideration of the second question presented in your communication it is noted that under the provisions of section 5370, General Code, as amended by the personal tax law, each person is required to return all the taxable property of which he is the owner excepting that required by this section or by the regulations of the commission to be returned for him by a fiduciary. Although on the facts above stated, the bank receiving this check for collection is, in a sense, the agent of the person depositing the check, the bank is not in this case such agent as makes it a fiduciary under the provisions of this section of the General Code; and it will be the duty of the owner depositing the check to return the same as "other intangible property."

Respectfully,

GILBERT BETTMAN,
Attorney General.

4185.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF KATE McMAHON,
IN JEFFERSON AND GREEN TOWNSHIPS, ADAMS COUNTY, OHIO.

COLUMBUS, OHIO, March 25, 1932.

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

DEAR SIR:—I am in receipt of your letter submitting for my analysis an abstract of title and other relevant papers relating to the proposed purchase of a 265.92 acre tract of land in Jefferson and Green Townships, Adams County, Ohio, from one Kate McMahan. At the time negotiations were first made by the state to purchase said property, one C. W. G. Hannah was the alleged owner. In the interim said property was conveyed by said Hannah to said Kate McMahan who now proposes to deed said property to the state of Ohio.

The abstract of title begins by reciting that:

"The following is an abstract of property conveyed by C. R. Himes, et al., and W. W. White, sheriff of Adams County, Ohio, to C. W. G. Hannah, in two deeds: one deed conveying three tracts of land, recorded

in Volume 129, page 236, Adams County Records of Deeds, and the other conveying one tract, recorded in Volume 129, page 325; Scioto County Records of Deeds."

However, on the second succeeding page, the following statement is made:

"This land at the present time is in the possession of C. W. G. Hannah and deeded to him from C. R. Himes, et al. in two deeds: one recorded in Volume 129, at page 326 and the other recorded in Volume 129 at page 529."

It is apparent that these two statements are inconsistent with regard to the pages upon which said deeds are recorded. Inasmuch as the abstract does not, at the beginning, set out a definite description as caption land, but makes reference to said two recorded deeds, it is important that the correct page numbers be given. Another inconsistency is apparent in the fact that the beginning statement in the abstract refers to one of said sheriff's deeds as being recorded in *Scioto County*, while reference to said deed on page 18 of the abstract shows that it was recorded in Adams County.

The land now proposed to be conveyed to the state comprises four tracts. These are supposed to be the same tracts of land which were conveyed to said C. W. G. Hannah by two separate sheriff's deeds dated November 18, 1927 (abstract, pp. 2, 3 and 4; and p. 18). Said sheriff's deeds are very important links in the chain of title and yet a comparison of the descriptions in said sheriff's deeds and in said proposed deed to the state reveals that there is an unusual number of unexplained discrepancies.

Thus, the first tract in said sheriff's deed (abstract, p. 3) is supposed to correspond with the first tract in the proposed deed to the state, but an examination reveals the following discrepancies:

1. The fourth call in the latter deed reads "thence S. 64¼ E. 194 poles" etc.; while in the former deed the corresponding call reads "thence S. 64¼ deg. W. 194 poles" etc.

2. The ninth call in the latter deed reads "thence N. 74 W. 44 poles" etc.; while the corresponding call in the former deed reads "thence N. 74 deg—44 poles" etc.

3. The eleventh call in the latter deed reads "thence W. 38 poles" etc.; while the corresponding call in the former deed reads "thence north 38 poles" etc.

4. From the first tract in the latter deed four different parcels of land are excepted; while no exceptions are appended to the first tract of the former deed; but strangely enough, the same four exceptions which were saved from the first tract of the latter deed were excepted from the second tract of the former deed. Inasmuch as said first tract and said second tract lie in entirely different surveys, it is error to interchange said exceptions from one tract to another.

Likewise, the second tract in said sheriff's deed (abstract, p. 4) is supposed to correspond to the second tract in the proposed deed to the state, but a comparison of the two reveals the following differences:

1. The second call in the latter deed reads "thence S. 27 W. 52 poles to a stone"; but the former deed does not make mention of any such call.

2. The third call in the latter deed reads "thence S. 12 W. 30 poles" etc.; while the corresponding call in the former deed reads "thence South 12 deg. W. 20 poles" etc.

3. The fifth call in the latter deed reads "thence S. 57 30' E. 19½ poles" etc.; while the corresponding call in the former deed reads "thence S. 57 deg. 30—19.5 poles" etc.

4. The seventh call in the latter deed reads "thence N. 9 30' E. 60 poles" etc.; while the corresponding call in the former deed reads "thence N. 9 deg. 3560 poles" etc.

5. The eighth call in the latter deed reads partially "to a *linn*" etc.; while the corresponding call in the former deed reads "to a *line*" etc.

6. The ninth call in the latter deed reads "thence N. 43 30' E. 19.5 poles to a linn in a hollow"; but there is no mention of any corresponding call in the former deed.

7. There are four parcels excepted from the land in tract No. 2 in the former deed; while there are no exceptions appended to tract No. 2 in the latter deed. (See point No. 4 under the discrepancies between the first tract in the state deed and the first tract in the sheriff's deed, *supra*).

Similarly, the third tract in said sheriff's deed (abstract, p. 4) is supposed to correspond to the third tract in the proposed deed to the state. However, a comparison of the two descriptions discloses the following differences:

1. The first call in the latter deed reads "thence S. 61 E. 21 poles" etc.; while the first call in the former deed reads "thence south 61 deg. W. 21 poles" etc.

2. The second call in the latter deed reads partially "to a *linn*" etc.; while the corresponding words in the former deed are "to a *line*" etc.

3. Calls Nos. 5, 6 and 7 in the latter deed are entirely omitted in the former deed.

4. Call No. 9 in the latter deed is omitted in the former deed.

5. Call No. 10 in the latter deed reads "thence N. 86 E. 41 poles" etc.; while the corresponding call in the former deed reads "thence N. 86 deg.—41 poles" etc.

6. Call No. 12 in the latter deed reads "thence N. 20 W. 140 poles" etc.; while the corresponding call in the former deed reads "thence N. 20 deg. E. 140 poles" etc.

7. Beginning with the fourteenth call in the latter deed and reading on to the end of the description, there is no similarity to the corresponding part of the description in the former deed. Thus, said part of the description in the state deed reads as follows:

"thence S. 32 W. 22 poles to a black walnut on a ridge and in an old line; from the aforesaid black walnut S. 89 deg. 31' W. 49 rods 5 L., over ridge top at 21 rods to a stone on E. bank of a branch, marked 'B', a double black walnut each 9 inches in diameter bears N. 76½ W. 15 L., a single black walnut 13 in. in diameter is S. 81 E. 8 L.; thence crossing drain up over top of hill to a stone in old field on W. side of ridge, a 3 inch black locust bears S. 2 E. 5½ L., a 4 inch sassafras is S. 63½ E. 10 L.: thence down the hill past two large trees which have side line marks on them, crossing run at 49 rods to an old white oak stump, said to be corner tree, beginning corner surveyed Nov. 6, 1931."

while the corresponding part of the description in the sheriff's deed reads:

"with a black walnut on the ridge and in an old line thence in a westerly direction 50 poles to a stone marked 'G' and being 8 feet from a double walnut and five feet from a single walnut; thence still bearing in a westerly direction 55 poles to a stone; thence south 48½ deg. west 55½ poles to the beginning"

Likewise, the tract in the sheriff's deed (p. 18, abstract) is supposed to correspond to tract No. 4 in the proposed deed to the state, but a comparison of descriptions shows the following variations:

1. The first call in the latter deed reads "thence N. 32 E. 76 poles" etc.; while the first call in the former deed reads "thence N. 22 deg. E. 76 poles" etc.

2. The third call in the latter deed reads "thence S. 86 W. 40 poles" etc.; while the corresponding call in the former deed reads "thence S. 36 deg. W. 40 poles" etc.

3. The fourth call in the latter deed reads "thence S. 8 E. 19 poles" etc.; while the corresponding call in the former deed reads "thence N. 8 E. 19 poles" etc.

4. The sixth call in the latter deed is not to be found in the former deed.

Said Kate McMahan has title, if any, only to the land which she received from said Hannah and which said Hannah received by reason of the aforementioned sheriff's deeds. In view of the above pointed out, unusual number of discrepancies, it is impossible to approve the description in the proposed deed to the state. There is nothing in the abstract explaining the reason for this wholesale variance.

It appears from the abstract that one Minnie Himes was supposed to be the owner of the land in question some time prior to the ownership of said C. W. G. Hannah. There is nothing in the abstract which clearly traces the chain of title from said Minnie Himes to said C. W. G. Hannah. True, the sheriff's deed, portrayed on page 2 of the abstract, relates that The First National Bank of West Union brought suit against "C. R. Himes, Nettie Himes, Vivian Riggs, Pearl Himes, Dewey Himes, Robert Himes, George Himes, Mabel Seculla, heirs at law and next kin of Minnie L. Himes, deceased; C. R. Himes, as Administrator of the Estate of Minnie L. Himes, deceased, and C. W. G. Hannah, Defendants," and that said plaintiff recovered a money judgment and that execution was levied upon the property in question. The administration proceedings for the estate of said Minnie L. Himes are not given and, outside of said statement in said sheriff's deed, there is no evidence that the persons mentioned in said sheriff's deed are the heirs of said Minnie L. Himes. Furthermore, even said sheriff's deed does not recite that the persons therein named were the sole heirs of Minnie L. Himes. Hence, as far as the abstract shows, one does not know whether or not Minnie L. Himes had other heirs who succeeded to rights in the property in question and whose interests in the property were unaffected by said sheriff's sale by reason of the fact that they were not parties to said action brought by said bank. The abstract does not indicate the nature of the suit brought by said bank.

There is also some uncertainty as to whether or not the spouses of the persons who were mentioned as defendants in said suit have not some rights of dower in said property. If said property was merely levied upon to satisfy a judgment against certain defendants, and the spouses of said defendants were not parties to the suit, it is possible that said property is still subject to the dower rights of said spouses.

In 1912, one C. R. Himes made a conveyance of some of the land in question to one Nettie Himes (abstract, p. 6). There is nothing to show whether or not said grantor was married at the time of said conveyance. Hence, as far as the abstract shows, we do not have sufficient information to decide whether or not the land mentioned in said conveyance is subject to the possible dower rights of a living wife to whom said C. R. Himes might have been married at the time of the conveyance.

Trace No. 3 in the proposed deed to the state is described as comprising 48¾ acres in survey No. 16092 and 57 acres in survey No. 14354. The earliest

transaction which the abstract gives relating to said 57 acre tract is a deed executed by L. F. Evans to Arminta Green in 1909 (p. 15, abstract). The abstract then states that due to the fact that the records of Adams County are incomplete because a fire destroyed the court house in February, 1910, it is impossible to trace the title of this particular piece of property any further. In other words, the recorded history of this particular parcel of land is merely about twenty-three years. Though, ordinarily, this would be sufficient time in which to acquire title by twenty-one years of adverse possession, yet if, as a matter of fact, some minors had interests in this parcel at the time, their rights would not be eradicated by twenty-one years of adverse possession. Moreover, we do not know that even said L. F. Evans was the owner of the property at the time he gave the deed in 1909. Naturally, the purchase of a piece of property whose recorded history is known for a period of only twenty-three years is attended with a certain amount of risk.

Next, I shall consider the $48\frac{3}{4}$ acre tract in section 16092, mentioned in the preceding paragraph as being one of the two parcels comprising tract No. 3 in the proposed deed to the state. The earliest transaction given by the abstract in which said $48\frac{3}{4}$ acre tract is definitely identified is the deed from Arminta Green to J. O. McManis, dated December 27, 1915 (p. 14, abstract). The abstract shows (p. 15, abstract) that said Arminta Green received a conveyance in 1896 from one J. V. Morgan conveying

"100 acres in survey 16092, reserving therefrom 33-1/3 acres which Jerry Green deeded to Perry Lacy who deeded it to Sabina Dugan."

There is nothing in the abstract to show where, in said survey 16092, said 100 acres lay, and there is nothing to show that said 100 acres include the $48\frac{3}{4}$ acre tract conveyed by said Arminta Green to said J. O. McManis. Tracing the title back from said J. V. Morgan still further, one finds in the deed from Jerry Green to J. V. Morgan, made in 1896 (p. 16, abstract), the same indefinite description, just pointed out in said deed from J. V. Morgan to Arminta Green. Still more indefinite is the deed made in 1883 from Georgianna Lantz to Jerry Green (p. 16, abstract), it merely saying "100 acres in section 16092". (It probably means *survey* 16092). Still worse is the next preceding link in said chain of title to said $48\frac{3}{4}$ acre tract. I refer to the deed from Charles Reed to Georgianna Lantz, dated February 28, 1880 (p. 17, abstract). The description given by the abstract for said deed reads "100 acres in survey No. 14354". Thus, not only does the description fail to identify the location of the 100 acres within the survey, but it mentions, not survey No. 16092 with which said $48\frac{3}{4}$ acre tract is concerned, but a wholly irrelevant survey, that is, survey No. 14354.

The fourth tract in the proposed deed to the state, which is described as being $33\frac{3}{8}$ acres located in survey No. 16092, is supposed to be the same tract described in the deed from the sheriff to said Hannah on page 18 of the abstract. One of the earlier transactions in the chain of title of this particular parcel of land is the deed, dated November 12, 1889, from Perry J. Lacy to Sabina Dugan (p. 19, abstract). There is nothing in the abstract to indicate the marital status of said Lacy, and the abstract does not indicate that dower was released. Said Perry Lacy received a conveyance for said tract in 1888 from one Jerry Green (p. 19, abstract). However, there is nothing in the abstract to indicate the manner in which said Jerry Green received title. The next preceding, purported link in the title to said parcel given in the abstract is a deed from the sheriff to one Charles Reed. Not only does the abstract show no conveyance by Charles Reed to said Jerry

Green, but said sheriff's deed relates to 720 acres in survey No. 14354, while the 33 $\frac{3}{8}$ acre tract, with which this portion of the abstract is supposed to be dealing, is in survey No. 16092. Said sheriff's deed relates that it was given as a result of a levy of execution to satisfy a judgment against one Elizabeth Wallace. However, there is nothing to show how said Elizabeth Wallace became entitled to the land described in said sheriff's deed.

The original body of the abstract, made by James B. Miller, purports to show the condition of the recorded title up to and including the 11th day of December, 1930. Said abstracter states that "The taxes due on the property up to and including the June installment 1931, or the 1930 taxes, are \$215.08." The abstracter likewise adds "The interest which is due is not included in the above." Then referring to six different parcels into which the property is divided for the purposes of taxation, the abstracter says "There is due a fee of 85 cents on each of the above tracts" and "The taxes on all of these tracts, except Tract No. 6 above, have been delinquent since 1929. Taxes on the sixth tract have been delinquent since 1923."

A continuation of the original abstract has been submitted, signed by said C. W. G. Hannah and purporting to relate to the condition of the title down to and including August 13, 1931. The continuation certificate states that "Taxes against said property, as described in Mr. Miller's abstract, are still unpaid". Of course, the taxes for the year of 1931 are now a lien upon said property, too.

The continuation of the abstract shows that on May 26, 1931, said C. W. G. Hannah conveyed to said Kate McMahan property which is referred to as being "The same lands as are described on pages 2, 3, and 4 of the abstract prepared and signed by James B. Miller". It is to be remembered that the land described on pages 2, 3 and 4 of the original abstract relates only to the first three tracts of land now proposed to be conveyed to the state. Therefore, as far as the abstract discloses, the fourth tract now proposed to be conveyed to the state, which was the same tract conveyed to said Hannah by the sheriff's deed given on page 18 of the abstract, was not conveyed by said Hannah to said Kate McMahan who now proposes to convey it to the state. Likewise, said continuation certificate of said C. W. G. Hannah only certifies that "the foregoing is a continuation of an abstract of real estate described on Pages 2, 3, and 4 of the abstract prepared and certified to, by James B. Miller".

Because of the legion of irregularities above pointed out, I am of the opinion that the title disclosed by said abstract is not a good and marketable title.

Enclosed, please find the papers of which I acknowledged receipt above.

Respectfully,

GILBERT BETTMAN,
Attorney General.