

74.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF GEORGE H. WOOD,
IN CLINTON TOWNSHIP, FRANKLIN COUNTY.

COLUMBUS, OHIO, February 7, 1929.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There have been submitted for my examination and approval a completed abstract of title, trustees' deed and encumbrance estimate relative to the purchase of a tract of forty-five acres of land in Clinton Township, Franklin County, Ohio, formerly owned by Clementine Wood, which land is more particularly described in Opinion Number 3025 of this department directed to you under date of December 15, 1928.

In the opinion of this department above referred to, you were advised that the respective interests of Joseph M. Wood and George H. Wood in said land were subject to the encumbrances therein pointed out and to the right of one D. H. Welling to sell said land on the order of the court made in the entailment proceedings in the Common Pleas Court in case Number 99,397, and on the terms and conditions provided for in said order. Subsequent to the date of said former opinion, to-wit, on January 23, 1929, said D. H. Welling resigned his appointment as trustee for the purpose of selling said property on the order of the court theretofore made, and one E. W. Dillon was appointed in his stead. There was in my opinion some irregularity in the order of the court appointing said E. W. Dillon as trustee for the reason that no authority was in terms given to him to make a sale of said land, either expressly or by reference to the powers granted to said D. H. Welling for that purpose. However, E. W. Dillon did effect a sale of said land to the State of Ohio, which sale was reported by him to the court. Upon receipt of the report of said sale the court confirmed the same and ordered the trustee to execute and deliver to the State of Ohio a deed for said property. I am quite clearly of the opinion that the order and entry of confirmation in this case had the effect of curing all previous irregularities in the proceedings relating to the sale of this property, and that the irregularity above pointed out is now immaterial.

The report of said trustee with respect to the sale of said property could have quite properly recited that this property was sold to the Board of Trustees of Ohio State University instead of to the State of Ohio; but inasmuch as the statute requires deeds for all lands purchased by the Ohio State University be made to the State of Ohio as the grantee therein, this irregularity in said report of the trustee, if it be such, is likewise immaterial with respect to the right of the trustee to now execute and deliver to the State of Ohio a valid deed for the aforesaid property.

Such deed of said trustee and the fee simple estate thereby conveyed to the State of Ohio will be subject to the following liens and encumbrances:

1. Under date of September 15, 1905, Clementine Wood then the owner of said lands by a written instrument duly executed, acknowledged and filed of record, granted to the Ohio Fuel Supply Company, its successors and assigns the right to lay a pipe line in and through said lands. Apparently this instrument had the effect of granting said company a perpetual easement for said purposes. Under the conditions of this instrument the company was required to bury its pipe line not less than twenty-four inches below the surface of the ground so as not to interfere with the cultivation of said land.

2. Under date of July 3, 1906, said Clementine Wood by a written instrument duly executed, acknowledged and filed of record granted to the Ohio Telephone and

Telegraph Company the right, privilege and authority to construct, operate and maintain lines of telephone and telegraph including the necessary poles, wires and fixtures upon and over said lands, and upon and along the roads and highways adjoining said property, together with the right to cut all trees interfering with the construction and maintenance of said lines.

3. Under date of August 3, 1923, Joseph M. Wood, as executor of the estate of Clementine Wood filed an action in the Common Pleas Court of Franklin County, Ohio, against Robert P. Duncan as executor of the estate of Clara M. Duncan. On October 2, 1925, this action was dismissed by the court at plaintiff's costs, which costs, amounting to \$10.25 are unpaid. Said costs are a charge against the estate of said Clementine Wood.

4. The taxes for the year 1925, 1926 and 1927 are unpaid. These taxes, together with penalties thereon amount to \$405.00. The taxes for the year 1928 amount to \$135.37. All of the taxes here mentioned are a lien.

5. The abstract shows that there is an unpaid balance of \$60.25 on a special assessment laid for the improvement of the Hess road. The sixth, seventh and eighth installments of said assessment, together with interest and penalty thereon amounting in the aggregate to \$54.78 are due and payable in December, 1928.

I have examined the trustees' deed which he has executed pursuant to the order of the court in the case above referred to, and with certain minor corrections which have been made therein, I find said deed to be properly executed and acknowledged, and to be in form sufficient to convey to the State of Ohio a fee simple title to said property free from all entailments, limitations or conditions, but subject to the liens and encumbrances above referred to.

In connection with said abstract of title and trustees' deed, I have examined encumbrance estimate No. 5625, and find same to be properly executed. Said encumbrance estimate shows that there are sufficient balances in the property appropriation account to pay the purchase price of said property

I am herewith returning to you said abstract of title, trustees' deed and encumbrance estimate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

75.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE CHESAPEAKE & OHIO RAILWAY COMPANY FOR THE ELIMINATION OF GRADE CROSSING NEAR THE VILLAGE OF MIAMITOWN, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, February 6, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by and through Robert N. Waid, Director of Highways, as first party, the County of Hamilton, acting by and through its board of county commissioners, as second party, and The Chesapeake & Ohio Railway Company, as third party. This contract pertains to the elimination of a grade crossing over the tracks of The Chesapeake & Ohio, an Ohio railway company located in state highway No. 42, just east of the village of Miamitown, in Hamilton County, Ohio.