

J. W. Reppel, Resident District Deputy Director, assigned to Ross County—The Commercial Casualty Insurance Company.

R. A. Carnahan, Resident District Deputy Director, assigned to Jefferson County—Commercial Casualty Insurance Company.

Finding said bonds to have been properly executed, I have accordingly approved the same as to form, and return them herewith.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

2965.

APPROVAL, LEASE TO LAND IN PLEASANT TOWNSHIP, MARION COUNTY, OHIO, FOR GAME REFUGE PURPOSES.

COLUMBUS, OHIO, February 19, 1931.

HON. J. W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted Lease No. 2101, in which James Woods, F. P. Glosser, Elmer Schoenlaub and Charles Isaly, trustees of Camp John Owens, Boy Scout Association, of Marion, Ohio, grant 50 acres of land situated in Pleasant Township, Marion County, to the State of Ohio for State Game Refuge purposes.

Finding said lease to have been executed in proper legal form, I have accordingly approved the same and return it herewith.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

2966.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF CHARLES CRISP IN GREEN TOWNSHIP, ADAMS COUNTY, OHIO.

COLUMBUS, OHIO, February 20, 1931.

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

DEAR SIR:—I have in hand your letter submitting for my examination and approval an abstract of title, plat, option, warranty deed, controlling board authorization and encumbrance estimate No. 807, covering the proposed purchase of approximately three hundred and ten acres of land in Green Township, Adams County, Ohio, from one Charles Crisp, said land being described in said deed as follows:

“Being Ohio University Lot Number Forty-four (44), the same being described as follows, to-wit:

Beginning at a red oak and hickory at the southeast corner of Vir-

ginia Military Survey No. 14551; thence N. 42 deg. W. 47 poles to a black oak and a chestnut oak, another corner of said Survey No. 14551; thence S. 48 deg. W. 86 poles to a locust and sourwood, corner to Survey No. 16095; thence N. 72 deg. W. 22 poles to a linn and red oak, corner to Survey No. 15278; thence N. 68 deg. 30' W. 25 poles to a white oak stump; thence N. 29 deg. E. 106 poles to a white oak and sourwood, north side of Silvermine Hollow; thence N. 43 deg. E. 63 poles to two chestnut oaks; thence N. 75 deg. E. 20 poles to a hickory; thence N. 33 deg. W. 70 poles to a stone; thence N. 83 deg. 30' E. 215 poles to a stone in the line of Lot No. 42; thence S. 220 poles to a stone, corner to Lots No. 42, No. 43 and No. 46; thence W. 164 poles to the beginning.

Containing Three Hundred and nine and one-half acres, (309.5).

Being the same premises that was conveyed by the Trustees of The Ohio State University to Henry Morten by deed dated Dec. 21, 1880 and of record in Deed Book No. 59 at page No. 294 of the Adams County, Ohio, records.

And being the same premises conveyed by M. M. Redwine to said Charles Crisp, the grantor herein, by deed dated July 29, 1930."

An examination of the abstract submitted discloses that several defects mar Mr. Crisp's title.

First, by a deed dated March 26, 1912 (found in section 7 of said abstract), John and Elizabeth Harcha, the then owner of the premises and his wife, purported to convey the land in question to one W. R. Sprague in fee simple. However, the name of the notary public who acknowledged this instrument of conveyance does not appear upon the record. It is clear that the failure of an acknowledging official to sign his name precludes the legal title from passing to a grantee. *Hout v. Hout*, 20 O. S. 119. But if the grantee has given a valuable consideration, he receives by such an instrument an equitable interest in the land, with the right to have the defect cured. Inasmuch as this deed was executed less than twenty-one years ago, the defect is not cured by the doctrine of adverse possession, and I am unable therefore to approve the title as it stands. I suggest that a proceeding be instituted to quit title with reference to this defect. If the original deed is in existence and obtainable, an examination of it may reveal that the notary public did actually sign the instrument and that his name was merely inadvertently omitted in the instrument's recording. If such be the case, it will be sufficient in order to obtain my approval of the title, if this deed is forwarded to me for inspection and also taken to the recorder's office for correction of the record.

In the second place, I call your attention to another defect which had its origin in a warranty deed executed September 19, 1924 (found in section 16 of said abstract), by M. M. Redwine and his wife, Belle, apparently purporting to convey the premises in question to one Mark A. Crawford in fee simple. As a matter of fact, however, the description in said deed very noticeably mixed parts of the first and second calls in a manner which was practically tantamount to an omission of the second call. Thus, the first and second calls should accurately have read (that is, if the grantors intended to convey the whole of said Ohio State University lot No. 44):

"Thence N. 42 d. W. 47 poles to a black oak and a chestnut oak, another corner of said Survey No. 14551; thence S. 48 d. W. 86 poles to a locust and sourwood, corner to Survey No. 16095."

But the equivalent of the second and third calls in said deed actually read:

“Thence N. 42 d. W. 46 poles to a locust and sourwood on a point, corner to Survey No. 16095.”

This error can not be easily overlooked since the premises which form the basis of said conveyance are further described as “being *part* of lot No. 44,” and not as the whole of lot No. 44 which is the amount now being proposed to be conveyed to the State of Ohio.

However, by a sheriff's deed executed on August 23, 1928 (found in section 19 of said abstract), the premises, again so erroneously described, were apparently returned to M. M. Redwine in fee simple. If this sheriff's deed were valid (I shall discuss its validity in a moment), then the reunion in Mr. Redwine's hands would eradicate any break in the ownership of the whole of said lot No. 44 which might have resulted from Mr. Redwine's deed of September 19, 1924, to Mark A. Crawford which originally contained said erroneous description. It appears, though, that Mr. Redwine, in making the conveyance on July 29, 1930, to Mr. Charles Crisp, the alleged present owner, (said conveyance to be found in section 20 of said abstract) used the same confusing and erroneous description regarding the first and second calls as had been used previously in his deed of September 19, 1924, to Mark A. Crawford. In order to eliminate this defect I suggest that Mr. Crisp procure from Mr. Redwine and place on record, a quit claim deed bearing the true description of the land proposed to be conveyed to the State of Ohio.

In the third place, it is to be noted that, at least so far as the abstract shows, no signature and acknowledgment were made by the sheriff to the deed of August 23, 1928 (found in section 19 of said abstract), purporting to convey said premises to M. M. Redwine. It is altogether probable that this deed was actually signed and acknowledged by the sheriff and that the abstract has just failed to indicate it. Before approving the title I should like some definite information on this matter. In case an examination of the sheriff's deed does reveal that the sheriff did not sign and acknowledge the instrument, then I suggest that application be made to the court in which were instituted the foreclosure proceedings culminating in said sheriff's deed, in order to have said proceedings reopened, and that the court make an entry ordering the present sheriff to execute a new deed in proper form.

For the above reasons I am returning to you all of the papers in connection with this proposed purchase. In case the defects pointed out can be satisfactorily corrected, I further suggest that a new deed be made out eliminating several defects which are apparent in the deed which you have submitted. First, it is to be noted that in the first part of the description in said deed, the premises are delineated as “being *Ohio University* Lot No. 44.” As a matter of fact the abstract shows that “*Ohio State University*” should be inserted here in place of “*Ohio University*.” Secondly, the notary public who took the acknowledgment, failed to subscribe his name to the instrument. Thirdly, a comparison of the description used in the deed with the plats accompanying the abstract indicates a slight error in the next to the last call in the description. This call reads “THENCE S. 220 poles to a stone, corner to Lots No. 42, No. 43 and No. 46,” while reference to the plats indicates that the lots in the corner described are No. 43, No. 45 and No. 46. Fourthly, I suggest that the last paragraph in the description of said deed, which now reads “and being the same premises conveyed by M. M. Redwine to said Charles Crisp, the grantor herein, by deed dated July 29, 1930,” should be

broadened so as to include also the new quit claim deed, which I indicated above should be procured by Mr. Crisp from Mr. Redwine.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

2967.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR—FRANK H. GALBREATH.

COLUMBUS, OHIO, February 20, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of \$5,000, upon which the name of Frank H. Galbreath appears as principal and the name of the Royal Indemnity Company appears as surety. Said bond is conditioned to cover the faithful performance of the duties of the principal as Resident District Deputy Director assigned to Clermont County.

Finding said bond to have been executed in proper legal form, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

2968.

APPROVAL, QUIT CLAIM DEED RELEASING TO STATE OF OHIO, LAND IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO—EDWARD CUNNINGHAM—CAROL CUNNINGHAM.

COLUMBUS, OHIO, February 20, 1931.

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

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval a certain quit claim deed executed by one Edward Cunningham and Carol Cunningham, his wife, remising and releasing to the state of Ohio all of their right, title and interest in a certain three hundred acre tract of land situated in Nile Township, Scioto County, Ohio. The purpose of this deed is to release to the state of Ohio all the oil, gas and other minerals of whatsoever kind in said tract of land, which said Edward Cunningham had theretofore reserved in a deed conveying said tract of land to one John S. Cuppett from whom the state of Ohio later purchased said land for the use of your department pursuant to my Opinion No. 2473, directed to you under date of October 21, 1930, in which the title of said John S. Cuppett in and to