

3123.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF G. F. THOMAS,  
JEFFERSON TOWNSHIP, ADAMS COUNTY, OHIO.

COLUMBUS, OHIO, January 10, 1929.

HON. CARL E. STEEB, *Secy., Ohio Agricultural Experiment Sta., Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date including therewith Abstract of Title, Warranty Deed, Incumbrance Estimate, number 4767, and Controlling Board certificate relating to the proposed purchase of a tract of two hundred ninety-nine (299) acres of land situated in Jefferson Township, Adams County, Ohio, the same being owned of record by G. F. Thomas, trustee in trust for the Bank of Peebles, Peebles, Ohio, and being more particularly described as follows:

“Beginning at a stone marked “P” S. E. corner to Martin Moore’s pre-emption claim, and S. W. corner to Lot 173 and N. W. corner of Lot 174; thence S. 46 deg. E. 34 poles to a stone on the edge of the creek, a Hornbeam 4 in. in diameter bears S. 28 deg. W. 2 links; thence S. 27 deg. E. 10 poles to an Elm Stump; thence 55 deg. 30’ E. 34 poles to a Black Oak and Poplar; thence S. 42 deg. E. 14 poles to a Beech; thence S. 57 deg. 45’ E. 12 poles to a Hornbeam; thence S. 30 deg. 30’ E. 24 poles, passing the mouth of Spice Lick crossing Churn Creek twice to a Dogwood; thence S. 65 deg. 30’ E. 40 poles to a stone; thence S. 35 deg. 30’ E. 10½ poles to two Hornbeams; thence S. 24 deg. 30’ W. 16½ poles up the hill to two Black Locusts; in Martin Brown’s fence: thence with the fence S. 63 deg. W. 12 poles to a Black Locust; thence S. 79 deg. W. 18 poles to a Black Locust; thence S. 35 deg. W. 22 poles to a stone in the line of Lot No. 42; thence S. 40 deg. 30’ E. 284 poles to a stone in the line of Survey 15625 on the head of Upper Twin Creek; thence with one line of said Survey N. 48 deg. 30’ E. 37 poles to a stone on the hillside in the line between the Counties of Adams and Scioto; thence with said line N. 2 deg. 47’ W. 346 poles, crossing a divide the head of Churn Creek and Nellie Sutton, to a stone 10 links N. of three small White Oaks, S. E. corner to said Lot No. 173; thence with one line thereof W. 280 poles to the beginning, crossing several branches, containing 347 acres, more or less, save and except a certain tract or parcel of land, a part of said Lot No. 174, containing 48 acres heretofore conveyed to one John Moore by Warranty Deed dated January 6, 1883, and duly recorded in Vol. No. 62, Page 233, Records of Deeds of Adams County, Ohio, and leaving to be conveyed by this deed 299 acres, more or less, being part of Lot 174.”

On examination of the Abstract Title submitted, I find that aside from certain minor defects in the early history of the title to the lands here in question, which I think may be safely waived, the proceedings relating to the sale of said property in the Common Pleas Court of Adams County, Ohio, whereby said G. F. Thomas, trustee obtained record title to said lands are so defective in matters of substance as to prevent my approval of the title to these lands upon the Abstract Title submitted. As to this matter, it appears that on January 20, 1925, one A. J. Best, being then the owner of said lands, conveyed the same by Warranty Deed to G. F. Thomas, trustee in trust for the Bank of Peebles, Peebles, Ohio, his wife, Anna E.

Best, joining in said deed. Therefore said A. J. Best having died, Anna E. Best, as administratrix of the estate of A. J. Best deceased, on May 9, 1925, filed a petition in the Common Pleas Court of Adams County, Ohio, against said G. F. Thomas, trustee in trust for the Bank of Peebles, the Bank of Peebles, Ohio, and certain other defendants therein named, in which petition it was alleged that said Warranty Deed executed by A. J. Best and Anna E. Best to G. F. Thomas, trustee in trust for the Bank of Peebles, Ohio, was for the purpose of securing certain indebtedness of said A. J. Best to the Bank of Peebles, Ohio, evidenced by two certain Promissory Notes of said A. J. Best, then owned and held by said Bank. In said petition it was further alleged that said Warranty Deed was in reality a mortgage for the purpose of securing said indebtedness, and that said Administratrix should by order of Court be permitted to administer said lands as part of the estate of said A. J. Best and to sell the same for the purpose of paying the indebtedness of said estate. The parties defendant in said action, other than the trustee and the Bank above named were Anna E. Best, Olive Myers, Charles Best, Lillian Sheeley, William Best, Maurice Best and Dwight Best, concerning which parties defendant, it was alleged that they were the next of kin of said decedent, A. J. Best, having the next estate of inheritance from him in and to said lands and said premises. It appears that Maurice Best and Dwight Best, the parties defendant last above named, were minors under the age of fourteen (14) years and as to these minor defendants, it appears that summons was issued and served upon each of them and also upon their mother with whom said minor defendants presumably lived. And although the abstract shows that summons was issued and served in said case upon G. F. Thomas, trustee and upon the Bank of Peebles, parties defendant, said abstract fails to show that any summons was issued and served upon the other party defendants therein named, to wit: Anna E. Best, Olive Myers, Charles Best and William Best and Lillian Sheely; neither is there anything in the abstract to show that said party defendants otherwise entered their appearance in said case. The Court found that the Warranty Deed, executed and delivered by A. J. Best and Anna E. Best to G. F. Thomas, trustee in trust to the Bank of Peebles, was in truth and fact a mortgage and the Court further ordered the sale of the lands in question. However it is somewhat uncertain from the proceedings of said case as abstracted whether the order of sale made and entered by the Court in said case was made upon the petition of Anna E. Best, Administratrix of the estate of A. J. Best, deceased, the plaintiff in said case, or upon the cross petition of G. F. Thomas, trustee in trust for the Bank of Peebles, and of the Bank of Peebles, Ohio. Inasmuch, however, as the Warranty Deed executed by A. J. Best and wife was only a mortgage, the individual defendants above named taking the estate in said lands by inheritance from A. J. Best, were not only necessary parties defendant in said case under provisions of Section 10780, General Code, but their rights in the fee of said lands could not be cut off unless they were served with summons, or their appearance was otherwise entered in said case. And this would be true whether the order of sale was issued on the petition of the plaintiff or upon the cross petition of G. F. Thomas, trustee and the Bank.

In this connection it is noted that the order of sale made and entered by the Court in this case was directed to the sheriff of the county and not to the plaintiff as administratrix of the estate of A. J. Best, deceased. If said order of sale was so made and entered upon the petition of the plaintiff, it is not at all clear by what authority the order of sale was directed to the sheriff of the county. See Sections 10786, 10804 and 10807, General Code. Pursuant to the order of the Court made and entered in this case, the lands here in question were sold by the sheriff of Adams County to G. F. Thomas, trustee in trust for the Bank of Peebles, the present

owners of said lands, and the deed for such lands was made and executed by said sheriff. As above noted, a serious question arises upon a consideration of the proceedings of the Court in this case, whether the sheriff had any authority to sell said lands upon the order of the Court to him directed. It is altogether probable that a more complete abstract of the proceedings of the Court in the case above referred to will obviate the objections here noted. Further it is to be noted that no guardian ad litem was appointed for the infant defendants, Maurice Best and Dwight Best. Although it was not necessary that such guardian ad litem be appointed in order to effect the sale of said lands by the plaintiff, as administratrix on her petition for that purpose (Section 10782, General Code), it would seem that such appointment was necessary in order to effect the sale of said lands upon the mortgage interest set up in the cross petition of G. F. Thomas, trustee and the Bank of Peebles. It is altogether likely that the objection last suggested may be likewise cleared up by further information relating to the proceedings of the Court in the case above referred to.

Other than the taxes for the year 1928, amounting to Fifty-three Dollars and Sixty Cents, (\$53.60) which are a lien on said lands, I find no exception to the title other than those above noted. These exceptions are however, of such nature as to prevent my approval of the title to the above described lands, or the Abstract of Title submitted; and said Abstract Title, together with the Warranty Deed, Incumbrance Estimate, number 4767, and Controlling Board certificate above referred to, are herewith returned to you.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

3124.

## APPROVAL, BONDS OF HANCOCK COUNTY—\$20,750.00.

COLUMBUS, OHIO, January 10, 1929.

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

3125.

## APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES—THOMAS C. TAYLOR.

COLUMBUS, OHIO, January 10, 1929.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted to this department a bond given by Mr. Thomas C. Taylor for the faithful performance of his duties as Resident District Deputy Director for the State Highway Department in Fairfield County, Ohio.

Upon examination I find that this official bond is in proper legal form and I have noted my approval thereon as to form, and am returning the same herewith to you.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*