

3. There is no provision of law making court costs a lien on the real property of the parties to the action as the costs accrue and the same do not become a lien in favor of the successful party until the rendition of the judgment. The lien in favor of the successful party arises by virtue of the judgment and the sections of the Code relating to dormancy of the judgment apply to the judgment for the court costs. If an execution is issued by the clerk of courts as provided in section 3028, General Code, the lien will attach to the real estate of the parties as of the date of the levy and to the personal property as of the date of the seizure under the execution.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3736.

APPROVAL—THREE ABSTRACTS OF TITLE, WARRANTY DEED, ENCUMBRANCE RECORD NO. 10 AND CONTROLLING BOARD CERTIFICATE RELATING TO THE PURCHASE OF SIX PARCELS OF LAND IN ASHLAND COUNTY BY THE STATE OF OHIO.

COLUMBUS, OHIO, January 3, 1935.

HON. CARL E. STEEB, *Secretary, Board of Control of the Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication to me with which you submit for my examination and approval three separate abstracts of title, a warranty deed, encumbrance record No. 10 and Controlling Board certificate relating to the purchase by the state of Ohio of six parcels or tracts of land in Hanover Township, Ashland County, Ohio. All of these tracts of land are in Section 17, Township 19, Range 16 of the Ohio River Survey and are more particularly described as follows:

(1) Being all of the North-west quarter of the North-east quarter of Section Seventeen (17), Township Nineteen (19), of Range Sixteen (16) except a strip Twenty-Nine (29) rods wide off the east side of the same heretofore deeded to Cora Belle Maxwell; the part hereby conveyed being $26\frac{1}{2}$ acres of land more or less.

(2) Being the South-west quarter of the North-east quarter of Section Seventeen (17), of Township Nineteen (19), and Range Sixteen (16), containing Forty (40) acres more or less.

(3) Being a part of the South-east quarter of the North-east quarter of Section Seventeen (17), Township Nineteen (19) of Range Sixteen (16), bounded and described as follows: Beginning at the center of the North-east quarter of Section 17, thence East 22 rods; thence south-easterly to a point on the south line of said South-east quarter of the north-east quarter 36 rods from the south-west corner of the same, thence west along the south line to the south-

west corner; thence North along the west line to the place of beginning containing $14\frac{1}{2}$ acres of land more or less.

(4) Being a part of the North-west quarter of the South-east quarter of Section 17, Township 19 and Range 16, beginning at the North-west corner of the North-west quarter of the South-east quarter of Section 17, thence south to State Road No. 97; thence East along State Road No. 97 to the line dividing the North-east and the North-west quarters of the South-east quarter of Section 17; thence North to the quarter section line; and thence west along the quarter section line, to the place of beginning and containing 27.575 acres of land more or less.

(5) Being a part of the West one-half of the North-east quarter of the South-east quarter of Section 17, Township 19, Range 16, beginning at the North-west corner of the North-east quarter of the south-east quarter of Section 17, thence east along the quarter section line 40 rods; thence south to the State Road No. 97; thence west along State Route No. 97 to the line dividing the North-west and the North-east quarters of the south-east quarter of Section 17, Township and Range aforesaid; thence north to the place of beginning and containing Ten (10) acres of land, more or less.

(6) Being the west one-half of the following tract of land being a part of the North one-half of the North-west quarter of Section 17, Township 19, of Range 16, beginning at the North-west corner of said tract, thence south along the quarter line 39.55 rods; thence east parallel with the north boundary line of said quarter to the east boundary line of said quarter; thence North 39.55 rods to the north-east corner of said quarter; thence west with the said quarter section line to the place of beginning containing 40 acres of land more or less; and the part hereby conveyed, containing 20 acres of land more or less.

One of the abstracts of title submitted covers the first, second, third and fifth tracts of land above described; another of said abstracts covers the fourth tract; and the third abstract covers the sixth tract of land above described.

Upon examination of these abstracts of title I find that Herbert C. Hamm, Lulu L. Ackerman and Iva K. Hamm, as tenants in common in and of each and all of the above described tracts of land have a good merchantable fee simple title to this real property, and that they own and hold the same free and clear of all outstanding claims and encumbrances except the inchoate dower interests of the respective spouses of Herbert C. Hamm and Lulu L. Ackerman, except the undetermined taxes on these several tracts of land for the year 1934 and except the following leases and easements which seem to affect only the first, second, third and fifth tracts of land above described, to wit:

On March 23, 1921, Clarissa A. Hamm, who then owned the first, second, third and fifth tracts of land described above, together with her husband, George Hamm, executed an oil and gas lease on these tracts of land to the Logan Natural Gas and Fuel Company, which company thereafter assigned their interest in this lease to the Ohio Fuel Gas Company. By this lease the lessee company, above named as assignee, was given the right

to explore for and to take from these lands oil and gas with the provision that any oil found was to be paid for on a royalty basis while the gas so taken is to be paid for on a stipulated retail basis with respect to each well. It appears, from the files submitted, that under this lease a number of wells have been drilled by one or the other of the companies above referred to and that there are now two producing gas wells on the property. This lease and the rights of the Ohio Fuel Gas Company therein is, of course, an encumbrance upon these tracts of land. On October 4, 1921, Clarissa Hamm and George Hamm conveyed to the Buckeye Pipeline Company an easement in the first tract of land above described in and by which said company was given the right to lay and maintain a pipe line in and through this tract of land. This easement is, of course, an encumbrance upon this particular tract. Under date of July 19, 1922, Clarissa A. Hamm and George Hamm executed an instrument in and by which they conveyed to the Logan Natural Gas and Fuel Company an easement or right to lay and maintain a pipe line in and through other tracts of land then owned by Clarissa A. Hamm. This easement, which is now owned and held by the Ohio Fuel Gas Company, is likewise an encumbrance upon the lands affected thereby. On April 27, 1923, Clarissa A. Hamm and George Hamm executed to the East Ohio Gas Company an instrument in and by which said company was given a right to lay and maintain a pipe line in and through one or more of the tracts of land then owned and held by Clarissa A. Hamm.

With respect to the oil and gas lease and the pipe line easements above referred to it is noted that in the deed executed by the owners of this property these outstanding rights and interests are excepted from the covenant against encumbrances contained in the deed and I assume from this that it is understood by your department that the State is buying this property subject to said encumbrances. However, the taxes on these several tracts of land for the year 1934 are not excepted from said covenant and from this I infer that the present owners of this property are to pay such taxes.

In addition to the exceptions above noted it is thought proper to observe that the present owners of this property obtained title to the first, second, third and fifth tracts of land above described by inheritance from their mother Clarissa A. Hamm who died intestate on the 20th day of October, 1924. Administration was thereafter granted on her estate and the final account of the administrator was filed and approved in the year 1925. I assume from this that either there were no debts of said estate or if there were such that they were paid prior to the time the final account of the administrator was approved. There is nothing in the abstract to show, however, whether there was any determination made by the court with respect to inheritance taxes, if any, to be paid upon the successions of her heirs to the property of which she died seized. In view of the exemptions to which these heirs, her children, were entitled, it is doubtful whether any inheritance taxes were taxable on such successions. If any such taxes were assessed, however, the same would, of course, be a lien upon the property until the taxes are paid.

Likewise it appears that the present owners of this property above named obtained title to the fourth and sixth tracts of land above described from their father, George H. Hamm, who died intestate on or about the first day of August, 1934. The administration of his estate has not yet been closed. In this connection the abstract sets out an affidavit executed by Herbert C. Hamm, the administrator of his father's estate, in which he states

that he has paid the funeral expenses of the deceased which were the only debts of the estate to be paid. From the value of the property of the deceased set out in the application for letters of administration on his estate considered in the light of the exemptions, to which his children as his heirs are entitled, it seems quite clear that although no determination as to inheritance taxes has been made with respect to this estate there will be none taxable on the successions by which this property was taken by the persons above named. It is suggested, however, that before the transaction for the purchase of this property is closed that some inquiry be made with respect to this matter of inheritance taxes, if any, accruing upon the successions of the property of Clarence Hamm and George Hamm, respectively.

Upon examination of the warranty deed tendered to the State by Herbert C. Hamm, Lulu L. Ackerman and George Hamm, the owners of this property, I find that this deed has been properly executed and acknowledged by the above named grantors and by Fred M. Ackerman and Nettie G. Hamm, the respective spouses of Lulu L. Ackerman and Herbert C. Hamm, who thereby release their right and expectancy of dower in this property. Upon examination of the provisions of this deed I find that the form of the same is such that it is legally sufficient to convey this property to the state of Ohio by full fee simple title free and clear of all encumbrances except the oil and gas lease and the pipe line easements above referred to as to which lease it is provided by way of reservation in the deed that the rentals and royalties from the two producing gas wells upon the property are to be retained by the grantors during the life of these wells.

Upon examination of contract encumbrance record No. 10, I find that this instrument has been properly executed and that there is shown to be an unencumbered balance in the appropriation account to the credit of the Ohio Agricultural Experiment Station sufficient in amount to pay the purchase price of the above described property, which purchase price is the sum of \$2780.00. It further appears by way of recital in this contract encumbrance record as well as by the certificate of the Controlling Board, that said board has approved the purchase of this property and has released from the appropriation account the amount necessary to pay the purchase price of the property.

Subject to the minor exceptions above noted the abstracts of title of these several tracts of land are approved and the same together with the warranty deed and contract encumbrance record No. 10, which are likewise approved, and the other files submitted are herewith returned to you for further appropriate action.

Respectfully,
JOHN W. BRICKER,
Attorney General.