

of Ohio, acting by the Department of Public Works, for the Ohio State Archaeological and Historical Society and Sneed and Company of Jersey City, New Jersey. This contract covers the construction and completion of Bookstacks Contract and Alternate No. 2 and one Complete Bookstack of Alternate No. 3, as set forth in form of proposal dated January 6, 1930, as set forth in form of proposal dated January 6, 1930, for Museum and Library Building on the campus of the Ohio State University, Columbus, Ohio, and calls for an expenditure of \$21,360.00 (Twenty-One Thousand Three Hundred Sixty Dollars).

You have submitted the certificate of the Director of Finance, to the effect that there are unencumbered balances legally appropriated, in a sum to cover the obligations of the contract. You have also furnished evidence to the effect that the Director of Finance has released monies for the purposes of this contract in accordance with Section 9 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the Fidelity and Deposit Company of Maryland appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared, notice to bidders was properly given, bids tabulated according to law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies have been complied with.

The Secretary of State has furnished a certificate showing that the above foreign corporation is authorized to do business in Ohio. A certificate of the Industrial Commission, as to compliance with the laws pertaining to the Workmen's Compensation expired May 4, 1930. A new Industrial certificate should be obtained before the contractor is permitted to proceed with the work.

Finding said contract and bond in proper legal form, with the exception noted in the last paragraph, I hereby approve the same conditioned upon the obtaining of a certificate from the Industrial Commission. I have noted my approval on the contract and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1838.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF WINIFRED McCURLEY, BEN F. SPENCER AND MARTIN CORFMAN IN BAZETTA TOWNSHIP, TRUMBULL COUNTY, OHIO.

COLUMBUS, OHIO, May 9, 1930.

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

DEAR SIR:—

This is to acknowledge receipt of your recent communication submitting for my examination and approval an abstract of title, warranty deed, encumbrance estimate No. 1011, controlling board certificate and other files relating to the proposed purchase by the State of Ohio of a tract of 2.18 acres of land owned of record by Winifred McCurley, Ben F. Spencer, and Martin Corfman in Bazetta Township, Trumbull County of Ohio, the same being more particularly described as follows:

“Being a part of original Lot No. 33 of said township. Commencing at a point at the north east corner of said original Lot No. 33: thence due south

742.9 feet to a point; thence S. 87 deg. 09' W. a distance of 305.39 feet to the 'point of Beginning', thence S. 87 deg. 09' W. a distance of 377.21 feet to the east line of the right of way of the Erie Railroad; thence N. 13 deg. 12' E. a distance of 315.06 feet along the easterly right of way of said Erie Railroad to a point; thence due east a distance of 302.6 feet to a point; thence due south a distance of 285.5 feet to the point of beginning and containing within said bounds according to the survey of F. R. Cavanaugh, 2.18 acres of land, the above described tract being a parcel of land bounded on the south by Cortland Board of Trade Plat No. 2 on the west by the Erie Railroad on the north by parcel of 1.35 acres of land now owned by Frank W. Gillis et al, and on the east by the center line of a proposed street known as Trumbull Ave."

Upon the examination of the abstract of title submitted, I find that I am unable to approve the title of the present owners of record of the property here under investigation, above named, for the following reasons:

Without discussing certain minor irregularities in the early history of the title to this property which, as shown by the abstract, begins with a conveyance from David Abel and wife to Lewis Abel under date of December 7, 1835, it is noted that on and prior to October 23, 1920, one Robert O. Dunbar and Fay F. Dunbar were the owners of record by fee simple title of a tract of 10.24 acres of land which included the above described lands here under investigation. On the date above mentioned said Robert O. Dunbar and Fay F. Dunbar, their respective wives joining with them in the deeds, conveyed said 10.24 acres tract of land to F. R. Burrows and seven other persons named in said conveyance who thereafter and until the conveyance hereinafter mentioned, owned and held said 10.24 acres tract of land as tenants in common, each having a one-eighth interest therein. On October 28, 1920, said F. R. Burrows and the other tenants in common of said 10.24 acres tract of land, their respective wives joining with them in the instrument, executed a mortgage on said tract of land to said Robert O. Dunbar and Fay F. Dunbar in and for the sum of eight thousand eight hundred eighty-eight dollars and eighty-nine cents (\$8,888.89). Thereafter on December 10, 1920, the tenants in common of said tract of land other than said F. R. Burrows, together with the wife of said F. R. Burrows and Robert O. Dunbar and Fay F. Dunbar, said above named mortgagees and their respective wives executed a power of attorney to said F. R. Burrows by which the grantors named in said instrument constituted and appointed said F. R. Burrows as their attorney to bargain, sell and convey in fee simple, by deed of general warranty for such price and to such person or persons as he should think fit, the whole or any part of said 10.24 acres tract of land.

On December 28, 1922, said F. R. Burrows under said power of attorney and in the exercise of the powers conferred upon him thereby, and acting in the name of the grantors in said power of attorney executed the warranty deed, in which he joined as an individual, by which there was conveyed to the Cortland Steel Tube Company out of said tract of 10.24 acres of land above mentioned, a smaller tract described as 2.10 acres of land which is the tract of land here under investigation.

Thereafter, through mesne conveyances on order of the court of judicial proceedings and otherwise, the property here in question passed into the ownership of Winifred McCurley, M. Korfman and Ben F. Spencer, each of whom were tenants in common with F. R. Burrows in the 10.24 acres of land above mentioned. On December 6, 1928, said Winifred McCurley, M. Korfman and Ben F. Spencer, being then the owners of the tract of land here under investigation, executed a warranty deed with release of dower of their respective spouses, by which there was conveyed to F. R. Burrows, Frank W. Gillis, O. N. Richards, W. N. Hogan and Minnie Galley an undivided five-eighths interest in and to the tract of land here in question. This deed

was filed for record on January 19, 1929, at 8:31 A. M. On the same day on which the above mentioned warranty deed was executed, to-wit, December 6, 1928, said Frank W. Gillis, F. R. Burrows, Minnie Galley, W. N. Hogan and O. M. Richards "by F. R. Burrows their attorney in fact and as a grantor" reconveyed said undivided five-eighths interest in and to the property here in question to said Winifred McCurley, Ben F. Spencer and Martin Corfman. This deed was filed for record on January 19, 1929, at 8:32 A. M.

The abstract of title does not show any power of attorney executed by the named grantors in the deed above mentioned, empowering said F. R. Burrows to execute said deed upon their behalf; and inasmuch as each of said named grantors were tenants in common with said F. R. Burrows and others in the 10.24 acres tract of land above referred to, it is assumed that said deed last above mentioned was executed by said F. R. Burrows on behalf of the named grantors therein, solely by virtue of the power conferred upon him in the power of attorney executed to him by his cotenants in the 10.24 acres tract of land above noted, and which was executed on December 10, 1920. By said power of attorney a special power was conferred upon F. R. Burrows as agent of his cotenants in said 10.24 acres tract of land to convey their respective interests in said tract of land or in any part thereof; and I am inclined to the view that when this power was executed by said F. R. Burrows in the conveyance of the tract of land here under investigation to the Cortland Steel Tube Company, his power was exhausted so far as any subsequent conveyance of said tract of land was concerned. By this power of attorney he was made the special agent of his cotenants to do a particular thing, to-wit, to convey the interests of said cotenants in said 10.24 acres tract of land or any part thereof, and his duties and his powers were at an end with respect to the particular tract of land here in question when he conveyed the same to the Cortland Steel Tube Company. It follows from this conclusion that said Frank W. Gillis, O. M. Richards, W. M. Hogan and Minnie Galley each have an undivided one-eighth interest in the tract of land here in question, and that before a transaction relating to the purchase of this land is closed said Winifred McCurley, Ben F. Spencer and Martin Corfman should procure from said above named persons a quit claim deed conveying their respective interests in this property, in which deed it is suggested that said F. R. Burrows should likewise join.

As above noted, said F. R. Burrows and the other tenants in common in said 10.24 acres tract of land which included the tract of land here in question, executed a mortgage on said larger tract of land to Robert C. Dunbar and Fay F. Dunbar. It appears from the abstract that this mortgage was canceled by a decree of the Common Pleas Court of Trumbull County in the case of *Dunbar vs. Burrows*, Case No. 18810 on the docket of said court. The proceedings in this case should be abstracted sufficiently to show that the court had the necessary jurisdiction to make this decree of cancellation.

For the reasons above noted the title of said Winifred McCurley, Ben F. Spencer and Martin Corfman of the tract of land here under investigation is disproved on the abstract of title submitted; and said abstract of title is herewith returned to you. I am likewise returning the warranty deed of said Winifred McCurley, Ben F. Spencer and Martin Corfman with the exception that a new deed will be executed by said persons when they have secured by quit claim deed the outstanding interests in said tract of land now held by Frank W. Gillis and others above mentioned.

I am retaining in my office encumbrance estimate No. 1011, the certificate of the controlling board with respect to the release of the money for the purchase of this property and the blue print which were submitted to me with said abstract of title and warranty deed.

Respectfully,
GILBERT BETTMAN,
Attorney General.