

691.

APPROVAL, ABSTRACT OF TITLE TO LAND OF PHILIP MORTON IN  
THE CITY OF CINCINNATI, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, July 29, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication from your department over the signature of Herbert B. Briggs, then state architect and engineer, submitting for my examination and approval an abstract of title and a copy of a warranty deed relating to a certain parcel or tract of land in the city of Cincinnati, Ohio, owned of record by one Philip Morton, and in and upon which the State proposes to procure a perpetual easement for the purpose of constructing a tunnel in and through said property. The property here under investigation is more particularly described as follows:

“Situate in Section 12, Millcreek Township, in the City of Cincinnati, formerly the village of Carthage, Hamilton, County, Ohio, viz:

Beginning at a point in the east line of Longview Street one hundred forty-five (145) feet southwardly from the south line of Seventy-first Street; thence eastwardly, on a line parallel with the south line of Seventy-first Street, forty (40) feet, more or less, to the Miami and Erie Canal; thence southwardly with the westerly line of the Miami and Erie Canal lands fifteen (15) feet, more or less, to a point; thence westwardly on a line parallel with the south line of Seventy-first Street forty (40) feet, more or less, to the east line of Longview Street; and thence northwardly along the east line of Longview Street fifteen (15) feet to the place of beginning; the grantor reserving the right to construct buildings on the surface of the above described property over the tunnel to be constructed in and through the same.”

A careful examination of the abstract of title submitted, which is certified by the abstracter under date of January 15, 1929, shows that said Philip Morton, record owner of the above described property has a good and indefeasible fee simple title to said property subject only to the following exceptions:

(1) Said abstract as certified by the abstracter under date of January 15, 1929, shows the number of actions pending in the Common Pleas Court of Hamilton County, Ohio, in which said Philip Morton is a party and in which judgments have been rendered, or may be rendered against said Philip Morton, either for suit money or costs, or both.

The first action noted in said abstract is one by Gordon G. Hypes versus Phil Morton, as Phil Morton Art Bulletin System, to recover money in the amount of \$3,239.26, together with interest and costs. This action was filed April 31, 1925, and although on April 25, 1927, a verdict was rendered in said action in favor of the plaintiff in the sum of \$2,404.31, it appears by a later statement of the abstracter under date of June 13, 1929, that on March 2, 1929, a verdict was rendered in the case in favor of the defendant. No judgment of the court on this verdict is shown.

(2) On October 26, 1925, an action was filed by said Phil Morton against the city of Cincinnati for damages in the sum of \$2,008.00, and costs. From a supplemental statement of the abstracter, under date of June 13, 1929, it appears that on June 8, 1929, a verdict in this case was rendered in favor of the plaintiff for an amount not stated. It does not appear that any judgment has been rendered on this verdict.

(3) On March 20, 1926, said Phil Morton filed an action in mandamus in the

name of the State against one Clifford Brown et. al. It appears that this action is still pending.

(4) On November 13, 1926, one Byron Wall Anderson filed an action against said Phil Morton for the recovery of money in the sum of \$1,278.00, together with interest and costs. This action is still pending.

(5) On July 15, 1928, Lowe Brothers, Ltd., a corporation of the Province of Ontario, Dominion of Canada, recovered a judgment against said Phil Morton doing business as the Philip Morton Art Bulletin System, in the sum of \$307.43, together with costs, and that later on September 20, 1928, execution was issued on said judgment. There is nothing in the abstract to show the satisfaction of this judgment.

Section 11656, General Code, as amended by House Bill No. 180 of the 87th General Assembly and which went into effect August, 1, 1927, provides that lands and tenements within the county where the judgment is entered shall be bound for its satisfaction from the day on which said judgment is rendered. The above mentioned actions in the Court of Common Pleas of Hamilton County in which said Phil Morton is a party, were all pending prior to the effective date of the act amending Section 11656, General Code, with the exception of the case of Lowe Brothers, Ltd., in which as above noted, judgment has already been entered against said Phil Morton. Any judgments rendered in the other actions referred to as pending actions and proceedings would be governed by the provisions of Section 11656, General Code, as they read prior to the amendment of said section by the act passed April 20, 1927; and any final judgments rendered in said actions will be a lien upon the real property of the judgment debtor in Hamilton County from the first day of the term at or during which the judgment is entered. The first day of the present term of the Common Pleas Court of Hamilton County was July 1, 1929, and any judgments entered against said Philip Morton either for suit money or costs during the present term of said court will be a lien on his property from that date.

Other than the judgment against said Philip Morton in the case of Lowe Brothers, Ltd., above referred to, it is apparent that there is not much likelihood of any considerable amount of judgment indebtedness becoming a lien against his property by reason of said pending suits; and in this connection I note a statement in the files that said Philip Morton is the owner of five hundred and eighty-five (585) parcels of land in the city of Cincinnati, with a tax value of more than \$650,000. It would seem, therefore, that the State of Ohio would not be taking any appreciable risk in acquiring this easement so far as any present or perspective liens against the property of said Philip Morton is concerned.

From a statement in writing made by the abstracter under date of June 13, 1929, it appears that the taxes for the last half of the year 1928, amounting to \$5.40 on said lots, are unpaid and a lien on said premises as well as are the undetermined taxes for the year 1929. Said abstracter is unable to say whether the taxes for the first half of the year 1928 were at that time paid or not. An adjustment with respect to this matter should of course be made before this transaction is closed with Mr. Morton.

I have examined a typewritten copy of the warranty deed executed by said Philip Morton, conveying to the State of Ohio a perpetual easement for the construction of a tunnel through the above described property, and it appears from the copy that said deed has been properly signed and otherwise executed by said Philip Morton and Emma Morton, his wife, and same is in form sufficient to convey to the State of Ohio a perpetual easement in said property for the purpose desired.

No encumbrance estimate or certificate showing release of the purchase money by the controlling board has been presented with said abstract of title and copy of warranty deed. Before the transaction with respect to the acquisition of the easement in question is closed, such encumbrance estimate and controlling board certificate should of course be presented to this department for approval.

I am herewith returning said abstract of title, warranty deed copy, and other files.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

692.

SLOT MACHINE—WHEN A GAMBLING DEVICE.

SYLLABUS:

*When a slot machine is a gambling device, discussed.*

COLUMBUS, OHIO, July 30, 1929.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“I am enclosing herewith a photograph of a device which is now on the market, and which several people are seeking to install in this county. I would like, very much, to have your opinion as to whether or not this is a gambling device.

You will note that the nickel is inserted at the top of the machine, and is shot over towards the other side of the machine by means of a lever which is visible in the picture. I am informed that when the nickel finally drops, if it hits a certain spot immediately above any of the so-called jack pots, whatever nickels happen to be in the jack pots are released, and the player gets the nickels. If the nickel does not hit one of these spots, it eventually finds its way into one of the jack pots, and the player receives nothing. If one of the jack pots becomes filled with nickels before anyone is lucky enough to empty it, the operator of the machine gets that pot, and this is the way he makes his money.

The contention of the manufacturer is that this is a game of skill, and that it requires skill to shoot the nickel in such a manner as to make it drop on one of the spots which will cause the jack pot to empty.

I would appreciate a reply from you as soon as possible and also ask that you kindly return the illustration which I am enclosing.”

The following authorities pertaining to your inquiry are cited.

“A slot machine, it has been said is not per se a gambling device, since it may be used or played upon for an innocent purpose, and courts cannot, therefore, take judicial notice that every slot machine is a gambling device, as the use to which it is put must determine its character.” 12 R. C. L., 73, *State vs. Krauss*, 114 O. S., p. 346.

“The term gambling device has no settled and definite meaning, it is not defined by the common law and often the statutes fail to define it. It has been judicially defined as an invention used to determine the question as to who wins and who loses, that risk their money on a contest of chance of any kind; anything necessarily adapted to the use, and necessarily used in the carrying on, of any gambling game; an instrumentality for the playing of a game upon which money may be lost or won; anything which is used as a means of play-