

536.

## DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF CHARLES B. EYMAN, ET AL, WAYNE COUNTY, OHIO.

COLUMBUS, OHIO, May 24, 1927.

In re: Abstract of Title of Charles B. Eyman, et al.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—My examination of the abstract of title as corrected and supplemented, warranty deeds and guardians' deeds and other data re-submitted for my examination and approval discloses the following:

Pursuant to my opinion numbered 108 and rendered to you under date of February 26, 1927, the abstract has been supplemented by the Wayne County Abstract Company of Wooster, Ohio, and I am of the opinion that such abstract now shows a good and merchantable title, subject to certain encumbrances hereinafter noted, to an undivided half interest in Isabelle Eyman and the remaining undivided half interest in Charles B. Eyman, Anna Hofacre, Minnie M. Martin, Grace Eyman, Jennie Eyman, Olive Eyman, Glenn Eyman, Clara Eyman, Janet C. Eyman and Mamie Perman, which last undivided half interest is subject to the dower interest of Isabelle Eyman, widow of Simon B. Eyman, deceased, in the following described real estate:

“Known as the north part of the northeast quarter of Section Number 28 in Township 16 of Range Number 12 and the northeast part of the northwest quarter of said Section Number 28, Township and Range aforesaid, beginning for the same at the northeast corner of said Section Number 28 and extending thence west on the north line of said section fifty (50) chains and three (3) links to a post; thence south 5 degrees east ten (10) chains and fifty (50) links to a post; thence north  $89\frac{3}{4}$  degrees west seven (7) chains and fifty (50) links to a post; thence south  $11\frac{1}{4}$  degrees east four (4) chains and sixty-eight (68) links to a post; thence south  $34\frac{1}{2}$  degrees east ninety-one (91) links to a post; thence south 60 degrees west two (2) chains and forty (40) links to a post; thence south  $45\frac{1}{4}$  degrees east four (4) chains and eight (8) links to a post; thence north 45 degrees east forty-five (45) links to a post; thence south 24 degrees east two (2) chains and sixty-three (63) links to a post; thence north 83 degrees east fifty-three (53) chains and four (4) links to a post on the east line of said half section; thence north on said east line fourteen (14) chains and sixty-one (61) links to the place of beginning, containing in the northeast quarter seventy-one and thirty-seven hundredths (71.37) acres and twenty-one (21) acres in the northwest quarter, in both quarters ninety-two and thirty-seven hundredths (92.37) acres exclusive of the land in the railroad right of way. EXCEPTING from the above described tract the fifteen (15) acre tract of land heretofore sold and conveyed by John P. Emerson now deceased to Margaret Bott, wife of Jacob Bott, and known as a part of the northeast quarter of Section Number 28 in Township Sixteen (16), Range Twelve (12), beginning for the same at the northeast corner: thence north 89 degrees west to the east line of the right of way owned by the Cleveland, Akron and Columbus Railroad Company; thence in a southeasterly direction along the line of said Railroad to a corner on the south line of said

tract of land and connecting with the north line of land owned by John Hindman; thence east along said north line to a corner on the east line of said section; thence north on said east section line to the place of beginning, containing fifteen (15) acres of land; said deed recorded in Vol. 135, page 146, Wayne County, Ohio Deed Records. The tract of land hereby intended to be conveyed being seventy-seven and  $37/100$  (77.37) acres more or less excepting and reserving therefrom a parcel of land situated in the Village of Apple Creek, County of Wayne and State of Ohio: Being a part of outlot number fourteen (14) in said village and beginning at the northwest corner of said outlot and on the north line thereof, which line separates said outlot from the lands owned by the trustees of East Union Township and used as a public cemetery; thence in an easterly direction along said north boundary line two hundred and seventy-five (275) feet to a stone used as a mark; thence in a southerly direction one hundred (100) feet to a stone; thence in a westerly direction on a line parallel with the north line of said outlot two hundred and seventy-five (275) feet to a stone; thence in a northerly direction along the west line of said outlot one hundred (100) feet to the place of beginning, containing  $63/100$  of an acre more or less. Also excepting the following described tract of land: Situated in the Township of East Union, County of Wayne and State of Ohio, and being known as part of the northwest quarter of Section 27, Township 16, Range 12. Beginning at a stone on the north line of said section said stone being at the northeast corner of the cemetery; thence east along said section line 237.5 feet to an iron pipe; thence south  $5^{\circ} 0'$  east 795.0 feet to a stake; thence north  $89^{\circ} 45'$  west 457.5 feet to a stake on the east line of the property heretofore conveyed to the Village of Apple Creek; thence north  $11^{\circ} 15'$  west along said east line 100 feet to an iron pin; thence south  $89^{\circ} 45'$  east 232.0 feet to a stake; thence north  $5^{\circ} 0'$  west 693.0 feet to the place of beginning, containing 4.80 acres more or less. Leaving a tract of land containing seventy-one and ninety-four hundredths acres (71.94) more or less, being the acreage of tract hereby conveyed."

The abstract still shows that the title is subject to the following encumbrances:

1. An oil and gas lease by M. W. Numbers and Emerillas Numbers to The Interstate Oil Company, executed May 24, 1904, by the terms of which the lease was to continue in force as long as oil or gas is found in paying quantities, but the lease shall be void unless the well is drilled within five years, or the lessee shall pay the owner \$0.10 per acre. From an affidavit attached to the abstract, designated as Item No. 60, it appears that no rentals or royalties have ever been paid under the lease, that no oil or gas well has been begun or drilled upon the premises by the lessee, or its assignee, and that no claim or demand has at any time been made upon the owners of the property by any person, firm or corporation by virtue of said uncanceled oil and gas lease.
2. The uncanceled interest of R. O. Murphy in and to an oil and gas lease from Emerillas Numbers and M. W. Numbers, recorded July 1, 1912, Lease Record, Vol. 15, page 348.
3. An oil and gas lease executed by S. B. Eyman and Isabelle Eyman, his wife on October 23, 1920, to The East Ohio Gas Company, recorded November 7, 1920, by the terms of which lease the lessor was to have one-eighth of the oil and \$300.00 per year for each gas well, the lease to continue in force for ten years and as long thereafter as the oil is found in paying quantities, the lease to

be void, however, unless a well was commenced in three months from the date of execution or the lessee to pay \$76.00 per year.

4. The 1926 taxes amounting to \$81.72 are unpaid and a lien.

5. The abstract still contains no reference to the payment of the inheritance tax in the S. B. Eyman estate.

The deeds tendered are in proper form and when delivered will transfer good title to the premises under consideration, subject to the five encumbrances above noted.

Evidence of approval of the Board of Control of the purchase of the above real estate, together with a regularly certified encumbrance estimate should accompany this abstract.

The abstract, deeds and other data submitted are herewith returned.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

537.

COUNTY TREASURER—ACTION BROUGHT UNDER SECTION 2667, GENERAL CODE, TO ENFORCE LIEN FOR DELINQUENT TAXES MAY BE MAINTAINED ALTHOUGH SAID TAXES HAVE NOT BEEN DELINQUENT FOR FOUR YEARS—OBJECTIONS OF PROPERTY OWNERS—COSTS OF ACTION.

SYLLABUS:

1. *An action to enforce a lien for delinquent taxes or assessments, by the county treasurer, under the provisions of Section 2667, General Code, may be maintained, although the assessments at the time of the filing of the action have not been delinquent for four years.*

2. *No property owner may object to the amount of an assessment who originally petitioned for the improvement and in said petition expressly waived the right to object to the amount of such assessment.*

3. *Any property owner who is duly notified of the proposed improvement and has further received notice by publication of the amount of the assessment in accordance with the provisions of Section 3895 of the General Code, and has not filed his objection to the amount of such assessment with the clerk of the municipality, will be deemed to have waived his right to object to the amount of such assessment, even though such amount is in excess of the statutory limitation of 33⅓% of the actual value of the lands or lots or parcels of land in question after the improvement is made.*

4. *Where in an action by the county treasurer to enforce a lien for delinquent taxes or assessments against lands or lots or parcels, as provided by Sections 2667, et seq., General Code, the proceeds of the sale are not sufficient to pay the costs of the action, the city cannot be held for any resulting deficiency.*

COLUMBUS, OHIO, May 24, 1927.

HON. HARRY B. REESE, *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication as follows: