

416.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN HANOVER TOWNSHIP, COLUMBIANA COUNTY, OHIO.

COLUMBUS, OHIO, April 29, 1927.

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

DEAR SIR:—I have examined the encumbrance estimate and abstract of title purporting to cover Tract No. 14, "Guilford Lake Park", consisting of 87.87 acres of land, more or less, standing in the name of Julian Irey.

The abstract as submitted was prepared by McMillen & Kelso, under date of May 17, 1926, and continued by said abstracters to December 24, 1926.

The abstract as submitted pertains to the following premises, to-wit:

87.87 acres, part of which lies in the West half of the Southwest quarter of Section 1, Township 15, Range 4, while about two-fifths of the land lies in the East half of the Southeast quarter of said section, and being more particularly described as follows:

Situated in the Southwest Quarter of Section No. 1, Hanover Township, Columbiana County, Ohio, and bounded and described as follows:

Beginning at a stake set at the southwest corner of said section No. 1 township, county and state aforesaid, which point is also the southwest corner of said grantor's land; thence north along the west line of said section No. 1, 3172.08 feet to a stake in said section line; thence S. 50° 13' E. 31.25 feet to a stone in the westerly line of lands of Levi Gardner; thence south along the westerly line of said Levi Gardner's land 498.00 feet to a post at the southwest corner thereof; thence S. 89° 49' E. along the southerly line of said Levi Gardner's land 312.80 feet to a stone; thence S. 3° 50' E. 377.10 feet to a stake; thence S. 20° 21' E. 362.10 feet to a stake; thence S. 10° 24' W. 306.20 feet to a stake; thence S. 35° 40' E. 296.30 feet to a stake; thence S. 77° 50' E. 275.10 feet to a stake; thence S. 44° 10' E. 342.90 feet to a stake; thence N. 88° 0' E. 216.25 feet to a stake; thence N. 24° 23' E. 455.30 feet to a stake; thence S. 84° 27' E. 141.60 feet to a stake; thence S. 17° 11' E. 213.00 feet to a stake; thence S. 43° 39' E. 205.75 feet to a stake; thence S. 61° 23' E. 153.70 feet to a stake; thence N. 17° 18' E. 333.65 feet to a stake; thence S. 54° 55' E. 155.95 feet to a stake; thence S. 24° 23' E. 182.85 feet to a stake; thence S. 3° 40' W. 351.20 feet to a stake; thence S. 22° 53' E. 158.45 feet to a stake; thence N. 56° 52' E. 192.10 feet to a stake; thence N. 26° 30' E. 182.15 feet to a stake; thence S. 86° 45' E. 66.45 feet to a stake in the center of the north and south road running through the center of said section No. 1; thence S. 0° 06' W. along the center line of said road 921.23 feet to a point in the southerly line of said section No. 1, which line is also the south line of said grantor's land; thence N. 89° 54' W. along the south line of said section No. 1, 2647.92 feet to the place of beginning and containing 87.87 acres of land be the same more or less.

Upon examination of said abstract I am of the opinion that the same shows a good and merchantable title to said premises in Julian Irey, subject to the following:

(1) The abstract contains no record of any Government patent, although attached thereto is a certificate of the auditor of state showing that the whole of the Southwest quarter of Section 1, Township 15, Range 4, Columbiana County, Ohio was patented to John Howard, September 1, 1804.

(2) It appears that The Sandy & Beaver Canal Company acquired title to the Southwest quarter of Section 1, on March 24, 1837, but the mortgages recited on page 3 et seq. of the abstract, and apparently foreclosed in the cases of Thomas Charlton vs. The Sandy & Beaver Canal Company and James Kelly vs. The Sandy & Beaver Canal Company, do not cover the land in question or any land in Section 1, so far as disclosed by the abstract. Notwithstanding this fact the proceedings eventually bring into their scope the land in question and the same is subsequently acquired by James Kelly on April 22, 1857.

If at all possible, the chain of title from the time of the patent to April 22, 1857 should be more fully abstracted.

(3) The mortgage from Julian Irej to Mary E. Hoopes, acknowledged September 5, 1919, (Item 40, page 48) is still a subsisting lien on the land in the West half of the Southwest quarter.

(4) The 1926 taxes are unpaid and a lien. The abstract shows that no examination has been made in the United States courts, and that examination was made in the name of record owners only for the period during which each one respectively held said title.

No deed was submitted with the abstract and other papers except a blank form of Ohio warranty deed containing a description of the property which it is proposed to convey to the state. Since this deed has not been prepared and executed this department is unable to pass upon the same.

The encumbrance estimate submitted with the above abstract bears No. 3984, is dated December 22, 1926, bears the certificate of the Director of Finance under date of December 23, 1926, and appears to be in regular form.

I am returning herewith your file pertaining to Tract No. 14, including the abstract of title, encumbrance estimate and other papers.

Respectfully,
EDWARD C. TURNER.
Attorney General.

417.

AUTOMOBILE—SEIZED FOR ILLEGAL TRANSPORTATION OF LIQUOR
—RIGHTS OF MORTGAGEE.

SYLLABUS:

If a mortgagee intervenes under Section 6212-43 G. C. and establishes that he holds a bona fide lien which was created without notice to him that the vehicle was being used or was to be used for the illegal transportation of liquor, he will be entitled to priority of distribution of proceeds as against the state, even though his chattel mortgage was not recorded until after the seizure. The state is not a creditor under Section 8560 G. C.

COLUMBUS, OHIO, April 30, 1927.

HON. B. F. McDONALD, *Prohibition Commissioner, Columbus, Ohio.*

DEAR MR. McDONALD:—I am in receipt of the following agreed statement of facts respecting an automobile confiscated under Section 6212-43 of the General Code of Ohio: