question of this kind, I have no reason to question the correctness of the figures arrived at by you as to rates to be charged the lessee company for the water to be used by it under this lease. The rentals provided for in said lease are, therefore, hereby approved.

My aproval of this lease indicated in the foregoing opinion is likewise noted by endorsement on said lease and the duplicate and triplicate copies thereof, which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

165.

APPROVAL, NOTES OF URBANA CITY SCHOOL DISTRICT, CHAMPAIGN COUNTY—$75,000.00.

COLUMBUS, OHIO, March 7, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

166.

APPROVAL, NOTES OF NEW BREMEN VILLAGE SCHOOL DISTRICT, AUGLAIZE COUNTY—$80,000.00.

COLUMBUS, OHIO, March 7, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

167.

MINOR—JUDGMENT OF FOREIGN COURT REMOVING DISABILITY—NOT EFFECTIVE IN OHIO TO LEGALIZE SAID MINOR'S DEED OF CONVEYANCE—SECTION 8516, GENERAL CODE, INAPPLICABLE.

SYLLABUS:

A judgment and decree of a court of competent jurisdiction in another state, removing the disability of a minor residing and domiciled in such state, pursuant to the statutory law there, does not of its own force operate in this state so as to confer capacity in such minor to execute an indefeasible deed conveying lands in this state.

The provisions of Section 8516, General Code, are held not to be applicable for the reason that the deed in question was not executed by said minor in the state where such judgment removing his disability as an infant was rendered.

COLUMBUS, OHIO, March 7, 1929.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval abstract of title, warranty deed, encumbrance estimate No. 4771 and controlling board certificate relating to three certain tracts of land in Brush Creek and Morgan Townships, Scioto County, Ohio, which is owned of record by one Harold Herndon DeWitt, subject to the outstanding dower interest of one Alice DeWitt. The tracts of land above referred to are more particularly described as follows:

> *TRACT ONE:* Being a part of survey 15761, beginning at a hickory and chestnut oak, corner to John Altman's land, thence west 113 poles to a white oak, corner to J. Jenkins and Guthrie land; thence north to a stake and stone in the line of Jason Crabtree's land; thence east with Jason Crabtree's line 113 poles to a stake and stone; thence south to the beginning, containing 24 acres, more or less, on the waters of McColloch creek, and being the same premises conveyed to Nate Rickey by deed from Phoebe Throckmorton, recorded in volume 83, page 466, record of deeds of Scioto County, Ohio, all being in Morgan Township.
>
> *TRACT TWO:* Being a part of survey 15761, beginning at a white oak and chestnut oak, southwest corner to a lot deeded to Peter Crabtree by Allen Latham, and the northeast corner to lands of William G. King, thence south 251 poles to three white oaks in the original line of the survey, corner to John R. H. Lachaw; thence east with the original line 113 poles to the southwest corner to Frances Rose's land; thence north 251 poles to two chestnut oaks and hickory, southeast corner to the Peter Crabtree lot; thence with his line west 113 poles to the beginning, containing 209.75 acres, more or less, 155.75 acres being in Brush Creek Township and 34 acres in Morgan Township.
>
> *TRACT THREE:* Being a part of survey 15761, beginning at a stake and stone, northwest corner to the William King land and northeast corner to John S. Thomas, thence north 201 poles to two chestnut oaks and white oak in the original line and corner to survey 15761; thence west 147 poles to a chestnut and gum, northwest corner of survey; thence south 201 poles to the northwest corner of John S. Thomas; thence with his line east 147 poles to the beginning, containing 204 acres, more or less, all being in Brush Creek Township except a very small part of the northeast corner which is in Morgan Township.

An examination of the abstract shows that the above described tracts of land were owned of record by one J. W. DeWitt at the time of his death March 1, 1922. It further appears that his rights and interest in and to said tracts of land came through two separate chains of title. One chain of title was predicated upon a patent issued to one Allen Latham under date of April 10, 1854, which patent was on a survey, No. 15761, theretofore entered in the name of said Allen Latham for 634 acres in the Virginia Military District the actual acreage in this survey as made greatly exceeded the number of acres for which the same was entered, and this fact, together with the fact that said survey was not returned for patent until after January 1, 1852, had the effect of making said survey and entry and the patent issued thereon void, and of no effect as a source of title to the lands here in question which were embraced

in said survey. *Fussell* vs. *Gregg,* 113 U. S. 550; *Coan* vs. *Flagg,* 123 U. S. 117; *Board of Trustees* vs. *Cuppett,* 52 O. S. 567.

The other chain of title by which said J. W. DeWitt held said tracts of land at the time of his death came through a quit-claim deed executed to him by the board of trustees of Ohio State University under date of October 29, 1909. The title of the Ohio State University to the above described tracts of land as well as to other lands in said survey No. 15761 came to it through respective acts of the congress of the United States and the Legislature of Ohio as unsurveyed lands by reason of the fact that the survey made and entered in the name of said Allen Latham and the patent issued thereon were null and void. *Fussell* vs. *Gregg* and *Coan* vs. *Flagg,* supra.

After said J. W. DeWitt obtained title to said tracts of land through the conveyance made to him by the board of trustees of the Ohio State University, he, together with his wife, M. W. DeWitt, who at the time held record title through the chain of title that was based on the Latham survey, executed a warranty deed under date of December 17, 1919, to one Harold H. DeWitt, who, I assume, was a son of said J. W. DeWitt. Thereafter, said Harold H. DeWitt, his wife joining with him in the deed, re-conveyed said lands to J. W. DeWitt under date of July 7, 1921. Thereafter, on March 1, 1922, as above noted, said J. W. DeWitt died, leaving as his only heirs and next of kin, his widow, Alice DeWitt and Harold Herndon DeWitt, a grandson, who was a minor then fourteen years of age.

With respect to the title to said lands, therefore, it appears from the abstract that said Harold Herndon DeWitt has a good and merchantable fee simple title to the tracts of land above described, subject only to the dower interest of Alice DeWitt, the widow of said J. W. DeWitt, and to the taxes which are a lien on said lands.

From the abstract submitted, which was certified by the abstracter under date of September 5, 1928, it appears that taxes in the sum of $24.07 on Tract One, $204.33 on Tract Two and $199.83 on Tract Three have been certified as delinquent. In addition to the delinquent taxes above mentioned, it is quite certain that the taxes for the year 1928 on said lands are unpaid and a lien thereon.

With the abstract of title to these lands there is submitted a warranty deed signed and otherwise acknowledged and executed by Alice DeWitt Munday, formerly Alice DeWitt, the widow of J. W. DeWitt, deceased, and by said Harold Herndon DeWitt. This deed which was executed and acknowledged by Alice DeWitt Munday, in El Paso County, Colorado, and by Harold Herndon DeWitt, in Henry County, Illinois, is in all respects in proper form and by its terms is sufficient to convey to the State of Ohio a fee simple title to the above described lands free and clear of all encumbrances whatsoever.

A question arises, however, with respect to the capacity of said Harold Herndon DeWitt to execute and deliver a deed for these lands. This question arises by reason of the fact that under the laws of the State of Ohio said Harold Herndon DeWitt is a minor who, under the facts appearing in the abstract, will not attain his majority until some time in June, 1929. In this connection it appears from the abstract that on December 1, 1927, and for some time prior thereto, said Harold Herndon DeWitt, together with his mother, resided in Potter County, Texas, and that on said date above mentioned, to wit, December 1, 1927, the District Court of Potter County in the 108th Judicial District of said state, pursuant to proper proceedings for the purpose under the laws of the State of Texas, made and entered a judgment, order and decree that all of the disabilities of said Harold Herndon DeWitt as a minor, except that with respect to the right to vote, should be and thereby were removed, and that with the one exception above noted, said Harold Herndon DeWitt should thereafter be held to be of full age for all legal purposes.

Aside from the effect, if any, to be given to the judgment, order and decree of the District Court of Potter County, Texas, in the proceedings above noted, removing

the disabilities of said Harold Herndon DeWitt, and measured by the laws of this State, it is quite clear that the deed here in question, though signed and otherwise executed in proper form, is voidable. *Card* vs. *Patterson,* 5 O. S. 220. That is, the deed, if delivered, would be effective to transfer the title to these lands to the State of Ohio, subject to the right of Harold Herndon DeWitt to disaffirm the conveyance when he becomes of age. The further question here presented is as to the effect to be given to the judgment, order and decree made and entered by the court in the proceedings in the District Court of Potter County, Texas, removing the disabilities as an infant of said Harold Herndon DeWitt. It is a rule of general application that the validity and effect of any transaction by which an interest in land is created, conveyed or transferred is determined by the law of the situs of the land; and that this rule is applicable to questions concerning the capacity of the parties to the transaction and to the form and effect of the conveyance. *Goodrich on Conflict of Laws,* page 333; 12 *Corpus Juris,* page 466; *Sell* vs. *Miller,* 11 O. S. 331.

Section 1 of Article IV of the Constitution of the United States provides that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." For the purpose of effectuating this provision of the Constitution, the Congress of the United States in the enactment of Section 905 of the Revised Statutes, has provided a method for the authentication of the records of judicial proceedings and has thereby declared that the "records and judicial proceedings so authenticated shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken." With respect to the judgment and decree of the District Court of Potter County, Texas, in the proceeding above noted, the provisions of the Constitution and of the act of Congress above quoted have their full force and effect in furnishing conclusive evidence that in said proceeding said Court rendered a judgment, order and decree removing all of the disabilities of Harold Herndon DeWitt as an infant other than those pertaining to his right to vote, and that said Court had thereby adjudged a majority status for said person before he was twenty-one years of age. See *Cole* vs. *Cunningham,* 133 U. S. 107, 112; *Wisconsin* vs. *Pelican Insurance Co.,* 127 U. S. 265, 291, 292. Such judgment and decree is not by its own terms and by its own force the equivalent of a judgment in this State in a proceeding of this kind under similar laws of this State. And it must be held, therefore, that the judgment and decree of the District Court of Potter County, Texas, has no effect with respect to the status of Harold Herndon DeWitt as an infant under the laws of the State of Ohio, or to affect his incapacity as such infant to execute a deed for lands in Ohio which will not be subject to disaffirmance on his part.

Recognizing and applying the principles of law above noted, the Supreme Court of the State of Arkansas in the case of *Beauchamp* vs. *Bertig,* 90 Ark. 351, refused to give effect to a judgment and decree of a court of competent jurisdiction in the Territory, now State, of Oklahoma, removing the disabilities of a minor there resident and domiciled, with respect to a conveyance by such minor of real property in the State of Arkansas. And in said case of *Beauchamp* vs. *Bertig* it was further held that where such minor subsequent to the proceedings removing his disabilities as an infant, but before he had arrived at the age of twenty-one years, executed a deed conveying to another real property in the State of Arkansas, such minor could disaffirm said conveyance on attaining his majority by conveying the property to someone else.

Likewise, in the case of *State to the use of Gilbreath* vs. *Bunce,* 65 Mo. 349, it was held that an order of a court in the State of Arkansas made in conformity to a statute of that State and purporting to relieve an infant residing in that State from his disabilities as an infant, could have no operation in the State of Missouri.

The question here presented is one of some difficulty, and it is to be noted that the courts of this State have at times given the same effect to a judgment or decree of another State, having rights and interests in real property here situate, as would have been given to a judgment or decree of a court of competent jurisdiction in this State on the same facts. Thus, in the case of *McGill* vs. *Deming,* 44 O. S. 645, it was held that a divorce decree entered in favor of the wife against the husband for his aggression, rendered and entered by a court of competent jurisdiction in the State of California, was effective to give such divorced wife the same rights as to dower in the lands of the husband located in the State of Ohio as she would have had if said divorce had been granted on the same facts by a court of competent jurisdiction in this State. The court in its opinion in this case, after quoting from Judge Story's work on Conflict of Laws, said:

> "And so, upon the same principle, if a right of dower, according to such local law, would accrue upon the granting of a divorce by a local tribunal, the like effect would follow a foreign divorce of the same sort decreed by a competent tribunal. The foreign divorce would not be recognized as exerting an extra-territorial force, *proprio virore,* but would owe its effect rather to its conformity to the law of the place where the real property might be situated. A divorce granted to the wife by reason of the aggression of her husband by a competent court in California—both parties being there domiciled in good faith—would thus, in a claim of dower in Ohio laws, have a like effect with a divorce for an aggression of the same sort decreed by one of our own courts."

It is obvious from the language of the opinion of the court in the case of *McGill* vs. *Deming,* supra, that the case can have no application to the question here presented, because of the fact that there are no statutes of this State authorizing and providing for proceedings such as were had in the District Court of Potter County, Texas.

If the deed here in question were executed in the State of Texas some question might be made as to whether this deed might not be effective with respect to lands in the State of Ohio under Section 8516, General Code, which provides, among other things, that all deeds and other instruments of writing for the conveyance of lands situate within this State executed and acknowledged in any other State in conformity with the laws of such State shall be as valid as if executed within this State, in conformity with the provisions of the chapter of which said section is a part. See *Smith* vs. *McKelvey,* 28 O. App. 361.

However, as above noted, the deed here in question has been executed by said Harold Herndon DeWitt in the State of Illinois where the judgment and decree of the Texas Court removing the disabilities of this young man can have no greater effect than can be ascribed to such judgment and decree in the State of Ohio; and without passing upon the question of the force and effect of Section 8516, General Code, with respect to a question of this kind, said section obviously has no application under the facts here presented.

On the considerations above noted, I am of the opinion that said Harold Herndon DeWitt does not at this time have capacity to execute to the State of Ohio a deed conveying lands in this State which he would not have a right to disaffirm on attaining his majority by conveying the same lands to someone else. The deed here submitted is therefore disapproved with the suggestion that when said Harold Herndon DeWitt attains his majority in June, 1929, he execute to the State of Ohio a deed for the lands here in question.

I am herewith returning to you said abstract of title, warranty deed, encumbrance estimate and controlling board certificate.

Respectfully,
GILBERT BETTMAN,
Attorney General.