

91.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF EAST BARBERTON
LAND COMPANY, IN SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, February 14, 1929.

HON. A. W. REYNOLDS, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, submitting for my examination and approval an abstract of title and a warranty deed covering a certain parcel of land in Barberton, Summit County, Ohio, and which is more particularly described as follows:

“Being a parcel of land situated in Tract 15, lot 12, Coventry Township, now in the city of Barberton, Ohio, and beginning at the northwest corner of said lot No. 12; thence south for a distance of nine hundred sixty-six and fifty-seven hundredths (966.57) lineal feet along the center line of Manchester Road to the place of beginning; thence north eighty-nine (89°) degrees thirty-two minutes (32′) east for a distance of three hundred forty four and eighty-seven hundredths (344.87) lineal feet to an iron pipe; thence south for a distance of four hundred ninety and seven hundredths (490.07) lineal feet to an iron pipe; thence south eighty-nine (89°) degrees thirty two minutes (32′) west for a distance of three hundred forty-four and eighty seven hundredths (344.87) lineal feet to an iron pipe in the center line of Manchester Road; thence north along the center line of Manchester Road for a distance of four hundred ninety and seven hundredths (490.07) lineal feet to the place of beginning, containing three and eighty-eight hundredths (3.88) acres more or less, being a part of a parcel of land containing 48.95 acres.”

From my examination of the abstract of title submitted, I am inclined to the view that in all probability the East Barberton Land Company, the grantor in the proposed deed to the State of Ohio, has a good and sufficient fee simple title to said parcel of land, free and clear of all encumbrances save and except the taxes on said parcel for the year 1928 and certain sewer assessments, the amount of which is not stated. However, there are certain apparent defects in said abstract which, under the rules governing this department in the consideration of matters of this kind, prevent my approval of said title of the East Barberton Land Company until the abstract of title is corrected by certain further information herein requested.

In the first place, there are certain apparent inaccuracies in the printed part of the abstract which make it impossible to trace with certainty the history of the title to the north part of lot 12 in Tract 15, which includes the parcel of land here under consideration. Assuming that said north part of lot 12 was properly conveyed by Samuel Hinckley to John Harter some time prior to December 15, 1846, it is noted in Section 2 of the abstract that on said last named date John Harter and wife conveyed the north part of lot 12 to one Jacob Kepler; and a description of the land conveyed by said deed by Harter and wife to Kepler is set out in said Section 2 of the abstract. At Section 7 of the abstract there is noted a conveyance by Jacob Kepler and wife to Samuel Kepler. No description of the property covered by this conveyance is set out in said Section 7 of the abstract, but such property is referred to as Lots 12 and 13 of Tract 15, with a reference for further description of the property conveyed as follows, to-wit: “Description of property same as on Nos. 3 and 4.” Assuming that Nos. 3 and 4 contained in the language above quoted refer to previous sections of the abstract, it is noted that Sections 3 and 4 of said abstract contain no

reference whatever to Lot 12 of Tract 15, or to any part thereof, but said sections of the abstract thus referred to deal only with Lot No. 13 in Tract 15. It would seem that the former sections of the abstract referred to in Section 7 as Nos. 3 and 4 should have been 2 and 4. Again, at Section No. 16 of this abstract there is noted a conveyance by warranty deed by Samuel Kepler and wife to William A. Johnson, under date of May 15, 1902. This section of the abstract contains no description whatever of the property conveyed by said deed, but we are referred for said description to "No. 3, 4, 7, 12 and 14." As above noted, neither Sections 3 or 4 here noted contain any description of or reference to lot 12 of tract 15, which, as above noted, included the property here under investigation. The same defect is noted in Section No. 17 of the abstract, which refers to a conveyance by William A. Johnston and wife to the East Barberton Land Company.

Another defect noted in the abstract of title submitted is that in none of the deeds in the chain of title to the north part of lot 12, including the property here under investigation, does it appear that the conveyance was to the grantee therein named and to his heirs and assigns. In other words, the abstract does not show that any of the deeds in the chain of title contain such words of inheritance or perpetuity as was necessary to convey a fee simple title to land in this state prior to the enactment of Section 8510-1, General Code, in 111 O. L., 18. All of the deeds here in question were warranty deeds, and, assuming that such deeds were in the usual form, it is altogether probable that each and all of said deeds contain some suitable words of perpetuity. However, this defect in the abstract should be cured by a certificate over the signature of the abstracter that said deeds did contain in the granting clause or in the habendum clause, or both, operative words sufficient to convey a fee simple title in and to said north part of lot 12 of tract 15. Likewise, such further information should be furnished by the abstracter as will correct or explain the apparent defects in the abstract first above noted.

The warranty deed signed by the East Barberton Land Company, by the hands of its president and secretary, has been properly executed and acknowledged and is in form sufficient to convey to the State of Ohio a fee simple title to the above described parcel of land here under investigation, free and clear of all encumbrances whatsoever, "except all taxes and assessments now or hereafter due, all of which grantee assumes or agrees to pay." The recital in said deed above quoted has no proper place in a deed to the State of Ohio, which is required to take title to all lands free and clear of encumbrances. The abstract does not show the amount of taxes and assessments which is attributable to said parcel of land and is a lien thereon. However, some adjustment should be made with respect to said taxes and assessments before the consummation of the transaction, whereby the state takes title to this land.

In connection with said deed, it is noted that the same has been executed in such manner as to import prima facie that the board of directors of said East Barberton Land Company has authorized its president and secretary to execute said deed on behalf of the corporation. It is suggested, however, that the abstracter ascertain such fact and incorporate in the abstract his certificate with respect to the same.

I am returning herewith to you said abstract of title and warranty deed. When said abstract of title is corrected with respect to the matters above pointed out, the same, together with said deed, should be again submitted to this department for approval.

Respectfully,
GILBERT BETTMAN,
Attorney General.