diminishes the principal. This is not like a loss of principal through a bad investment, which, of course, the department would be required to make good. In this case, the only loss of principal would be the loss sustained by paying to the trustees the full amount received in payment of the interest coupon on the theory that it was the return on the investment when in fact in that amount there is a sum which with other similar sums retained from other similar payments will equal the premium paid so that at the bond’s maturity such retained amounts plus the par value of the bond will equal the sum originally invested. Such a treatment of the case gives to the trustees the actual earnings of the fund, which is all that is required.

I am familiar with the case of People, ex rel. Cornell University, v. Davenport, Comptroller, (N. Y.) 23 N. E. 664, and while I think the method used by the comptroller in that case in charging the entire premium paid as a payment to the university in a lump sum was improper, I do not think the opinion of the court to the effect that the State must make good the entire premium is sound. Manifestly if the bonds below par were purchased, there would be an accretion to the fund at their maturity which I think would be earnings and would be payable to the trustees. If that is true, by the same token, when bonds are bought at a premium, the premium should be repaid out of the receipts from the payment of interest coupons, since otherwise the trustees would receive more than the actual earnings from the investment.

CONSERVATION, DIVISION OF: Abstract of title to real estate, Sullivan County, for fire tower.

April 30, 1937.

E. P. Wilson,
Assistant State Forester,
Conservation Department,
Indianapolis, Indiana.

Dear Sir:

In re: Abstract of Title No. 11457, prepared for Alma Mitchell and William M. Mitchell by Brown Abstract Company, Sullivan County, Indiana, for fire tower site.
Your inquiry concerning the title to the real estate in the
above abstract of title is described as follows:

"Beginning at a point four hundred forty-nine
(449.0) feet east of the southwest corner of section
thirty-six (36), township seven (7) north, range eight
(8) west, on section line and running north along west
side of abandoned switch for Vigo No. 29 Mine, a
distance of five hundred (500.0) feet; thence east one
hundred ninety-three and five-tenths (193.5) feet;
there to the south one hundred fifty-three and five-tenths
(153.5) feet; thence west one hundred fifty-three and
five-tenths (153.5) feet; thence south along the east
east of railroad grade three hundred forty-six and five-
tenths (346.5) feet, more or less to the south section
line; thence west along the line for a distance of forty
(40) feet to the place of beginning, containing one
(1) acre, more or less.

"EXCEPTING all instruments conveying the coal
and other underlying mineral, executed subsequent
to the deed of severance."

After an examination of this abstract, it is my opinion that
a good and merchantable fee simple title is shown to the
surface of the above described real estate in Alma Mitchell
and William M. Mitchell, subject to the following exceptions
and recommendations:

1. Page 3 shows: The United States of America to Willis
Willis, "entry" dated October 9, 1837—Tract Record.

   Page 4 shows: "No patent of record from the United

   States."

   Because of the lapse of time, I am of the opinion that the
failure to show a patent deed from the United States, is a
defect in the title which may be waived; or if insisted upon,
a patent from the United States may be procured.

2. Page 6 shows a warranty deed to Elam E. Bedwell on
August 15, 1846.

   Page 7 shows a warranty deed by Elizabeth Bedwell, Bar-
thena Smith and husband, Thomas E. Smith to James A. Bed-
wells on January 27, 1877. No administration on the estate of
Elam E. Bedwell is shown. There is no showing as to how
the title passed from Elam E. Bedwell to Elizabeth Bedwell
and Barthena Smith and Thomas B. Smith. There is no showing that Elizabeth Bedwell was not a married woman on January 27, 1877.

To clear up this defect, an affidavit should be procured to show conclusively that on January 27, 1877, there were no other heirs at law of Elam E. Bedwell and showing the relationship to Elam E. Bedwell of Elizabeth Bedwell, Barthena Smith and Thomas B. Smith, and James A. Bedwell.

3. Page 8 shows a warranty deed executed September 19, 1901, to L. T. Dickason conveying the coal and other mineral substances underlying the described real estate as follows:

All the coal and other mineral substances underlying the following described real estate situate in Sullivan County and State of Indiana, to-wit:

The south half of the southwest quarter of the southwest quarter of section 36, Township 7 range 8 west, containing 20 acres, more or less, with the right to use and occupy so much of the surface of said land from time to time as shall be necessary to use in and about the proper mining of coal underlying said land and adjacent lands which shall include surface sufficient for a shaft or shafts and deposit of refuse from said mines and for roadways, railroad switches, airshafts, ponds and telephone lines and also the right to remove all buildings from said lands when mining operations shall cease. And granting unto grantee, his heirs and assigns, right to remove coal through, under and over said land from adjoining lands. It is further expressly agreed as a part of the consideration hereof that grantee of said premises, his heirs and assigns shall have right and privilege to take and possess such portion of surface of said land for purpose of constructing or building drives or passways on said premises that he may desire for purpose of enabling him, his heirs or assigns to properly mine and transfer to market or bring therefrom any coal, goods, property, merchandise, or other articles that he, his heirs or assigns may wish by paying $20.00 per acre for all such surface so taken as above set out and shall also have right to sink and build airshafts and to drill and bore for coal or other minerals and for all surface actually
used shall pay $20.00 per acre. And it is further agreed that said grantee shall not be liable to said grantor, his heirs or assigns for damages of any kind or character caused by subsidence of soil by reason of mining said coal from under same.

To insure quiet enjoyment of the land described, quit-claim deeds should be procured from L. T. Dickason, his heirs at law, his grantees, assigns, and lessees in and to the real estate described.

4. On page 11 appears a warranty deed dated November 15, 1918, to the Shirley Hill Coal Company, a corporation, conveying an irregular strip of ground of one and fifty-eight hundredths acres, more or less, for use as a railroad right-of-way. The abstract does not disclose whether or not this strip of land conveyed forms a part of the land described in the title of this abstract or would cause any interference with the quiet enjoyment thereof. Records in the Secretary of State’s office show that this corporation is still in being and active.

To insure quite enjoyment of said real estate a quit-claim deed should be procured from the proper officials of the Shirley Hill Coal Company, its lessees, grantees and assigns.


May 3, 1937.

Hon. Benjamin Friedman,
Director, Financial Responsibility Division,
Department of Treasury,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter dated April 28, 1937, reading in part as follows:

"With reference to section 3a, Acts 1935, page 414, we desire to know how long the Department must wait in order to place a person under the jurisdiction of the Financial Responsibility Law, where such per-