

the case of an appeal to the Appellate Court of Indiana would include thirty days additional within which a petition to transfer could be filed.

CONSERVATION, DIVISION OF: Abstract of title to real estate situated in Wells County.

May 3, 1937.

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

Dear Sir:

I have examined the abstract of the chain of title of the following described real estate, situate in Wells County, Indiana, to-wit:

“A part of the southwest quarter of the southeast quarter of section two (2), township twenty-six (26) north, range twelve (12) east, bounded and described as follows, to-wit:

“Commencing at the southwest corner of said southeast quarter of section two (2), and running thence north along the west line of said southeast quarter three hundred forty (340) feet, thence east parallel to the south line of said southeast quarter three hundred twenty and three-tenths (320.3) feet to the west bank of the creek running through said southeast quarter, thence south parallel to the west line of said southeast quarter of section 2, three hundred forty (340) feet to the south line of said southeast quarter, thence west along the south line of said southeast quarter three hundred twenty and three-tenths (320.3) feet to the place of beginning, containing two and one half (2½) acres of land.”

I find after an examination of the abstract prepared and certified to by John W. Carnall and Sons of Bluffton, Indiana, as of 4:00 P.M., April 20, 1937, that the fee simple title of the above described real estate is in Calvin J. Gerber and Sarah A. Gerber, husband and wife.

The title is subject to the following criticisms:

Paragraph 1. The patent from the United States of America was to John Burnside.

Paragraph 3. The transfer by warranty deed was from John Burnside and wife, Rachel, to Robert McKinnis in fee. While there is a variance in the names, the time of the patent was 1834 and the deed to McKinnis 1844, so that the error can be waived, without prejudice to the title. Also it will be noticed that the transfer from the Burnside to McKinnis was signed in the presence of one Joseph Springgs, while the acknowledgment recites that it was one Spriggs, a Justice of the Peace. This error is immaterial and can also be waived.

Paragraph 4. Robert McKinnis and Susan McKinnis, his wife, conveyed by warranty deed a fee simple to Philip Hoffman. This conveyance is in regular form.

Paragraph 5. This paragraph recites that a sheriff's deed issued on April 29, 1896, to Standard Oil Company of Ohio pursuant to a judgment of foreclosure at the February Term of the Wells Circuit Court, Wells County, Indiana, against Andrew E. Huffman and Sarah J. Huffman. A reference to paragraph 19 on page 13 of the abstract will show that the suit to foreclose was against Andrew E. Hoffman and Lorah J. Hoffman. Because of the difference in the names of the parties, there might be some question as to whether or not the wife of Andrew E. Hoffman had been named as a party in the foreclosure proceedings. However, since the foreclosure is dated 1895, the statutory limit of 20 years for release of mortgages would permit a waiver of this error. It will be also noticed that no notary seal is shown to the acknowledgment of the grantor in the conveyance to the Standard Oil Company of Ohio. This is likewise immaterial and may be waived.

Paragraph 6. Henry H. Hoffman and wife, Anna S. Hoffman, conveyed by warranty deed to Calvin J. Gerber the undivided one-sixth of the above described real estate.

Paragraph 7. Paragraph 7 was a grant from the heirs of Phillip Hoffman, who died intestate. This grant is for an undivided two-thirds and was made to Calvin J. Gerber. Paragraph 8 is a conveyance by Standard Oil Company to Calvin J. Gerber of an undivided one-sixth. It will be noticed that in Paragraph 7 the name of Phillip Hoffman is spelled different than the name Philip Hoffman appearing as the grantee in Paragraph 4. However, again this error may be waived due to lapse of time.

Paragraph 13. Paragraph 13 shows in the release of mortgage that "a certain mortgage given by Andrew E. and Sarah J. Huffman" was released of record. There is a variance here of the spelling of the surname. This also can be waived.

Paragraph 14. Paragraph 14 shows a mortgage given to one Fred Gerber. Paragraph 15, the release of the mortgage, sets out certain names as being all and the exclusive heirs of the late "Fenderic Geber." It will be noted also that the name Christian J. Gerber appears in the body of the instrument. The last syllable of this given name is not spelled "tian." Your attention is also directed to the first signature of the release. The name appearing there is Christian J. Gilbert. This is not the party who is referred to in the body of the release as being one of the heirs of the late Fenderic Geber. The difference between the name Fenderic Geber and Fred Gerber is immaterial and may be waived. However, if Christian Gerber is still living, it might be well to have him sign a release for the reason that his name does not actually appear on the release. On the other hand, if he is dead, sufficient time has elapsed since the release, which was given in 1912, so that the State might waive this error.

Paragraph 16. Your attention is directed to the fact that the November installment of taxes for 1936, payable in 1937, are unpaid. They are, of course, not as yet due. The 1937 taxes, payable in 1938, are, of course, a lien on the land.

Paragraph 17. I desire to call your attention to the fact that the affidavit of George W. Hoffman contains

these words, "Affiant makes this statement from personal knowlege * * *." While the word "knowledge" is incorrectly spelled, I think such is *an immaterial error*.

Paragraph 18. In Paragraph 18, it is not said that the defendants being each three times audibly called—*in court*—come not but make default. It will be noticed that the word "times" is misspelled. The fact that the words "in court" do not appear and that the word times is misspelled can be waived.

In conclusion then the chain of title subject to the above criticism is continuous and without break running from the Government of the United States to various people until now, 4:00 P.M., April 20, 1937, when the fee simple title is vested in Calvin J. Gerber and Sarah A. Gerber, his wife.

There are no encumbrances as of 4:00 P.M., April 20, 1937, except the November installment of 1936 taxes due and payable in November, 1937, and the 1937 taxes, due and payable in 1938, the amount of which has not as yet been determined.

**ACCOUNTS, STATE BOARD OF: Flood Control Commission.
Constitutionality of provision as to payment of salary to
city civil engineer.**

May 5, 1937.

Hon. Wm. P. Cosgrove,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 29 submits the following question:

"Does chapter 43 of the Acts of the Indiana General Assembly of 1937 which requires the appointment of the City Civil Engineer as a member of the Board of Flood Control Commissioners and providing the payment of \$2400.00 per year salary, contravene the provisions of article 15, section 2, of the Constitution of the State of Indiana?"

It will be noted that article 15, section 2, of the Constitution of Indiana provides that,