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1. MORTGAGE—PIECE OF PAPER PASTED TO MORTGAGE AFTER PRESENTATION FOR RECORDING, WHICH PAPER CONTAINS PURPORTED RELEASE OF MORTGAGE, NOT EXECUTED AS PRESCRIBED BY SECTION 8510 G. C., NOT A PROPER RELEASE—COUNTY RECORDER UNDER NO DUTY TO RECORD SAME ON MARGIN OF RECORD OF ORIGINAL MORTGAGE.
2. WHEN PIECE OF PAPER ON WHICH APPEARS PORTION OF LANGUAGE OF MORTGAGE IS PASTED OR AFFIXED TO MORTGAGE, PRIOR TO ITS EXECUTION, SUCH PAPER INTEGRAL PART OF MORTGAGE—RELEASE WRITTEN ON SUCH PAPER NEED NOT BE WITNESSED OR ACKNOWLEDGED—IF SUCH PASTED PIECE OF PAPER CONTAINS ONLY CUSTOMARY WORDS USED TO RELEASE MORTGAGE, NOT A PART OF MORTGAGE—IF PURPORTED RELEASE NOT WITNESSED OR ACKNOWLEDGED, NOT DUTY OF RECORDER TO DETERMINE IF PAPER PASTED OR AFFIXED BEFORE OR AFTER MORTGAGE PRESENTED FOR RECORDING.
3. RECORDER AND SURETY NOT LIABLE WHEN RECORDER, ACTING IN GOOD FAITH, REFUSES TO RECORD ON MARGIN OF ORIGINAL MORTGAGE SUCH DESCRIBED TYPE OF RELEASE.

SYLLABUS:

1. A piece of paper pasted to a mortgage after same has been presented for recording, on which paper appears a purported release of such mortgage but not executed in the manner prescribed by Section 8510, General Code, is not a proper release and a county recorder is under no duty to record same on the margin of the record of the original mortgage.

2. When a piece of paper on which appears a portion of the language of the mortgage itself is pasted or affixed to a mortgage form prior to the execution of the mortgage, such paper becomes an integral part of the mortgage and a release written thereon need not be witnessed or acknowledged; if, however, such pasted piece of paper contains only such wording as is customarily used to release a mortgage such pasted piece of paper is not a part of the mortgage, and, if the purported release appearing thereon is not witnessed or acknowledged, it is not the duty of the recorder to determine whether such paper was pasted or affixed to the mortgage before or after the same was presented for recording.

3. The recorder and his surety are not liable when the former, acting in good faith, refuses to record on the margin of the original mortgage a release of the nature herein described.

Columbus, Ohio, February 11, 1943.

Hon. J. Dale McNamar, Prosecuting Attorney,
Newark, Ohio.

Dear Sir:

This will acknowledge receipt of your letter of recent date, which reads as follows:

"It has become necessary for me to submit to you for your opinion the following questions:

1. Where a previously recorded real estate mortgage is presented to the County Recorder, and, since the original filing of such mortgage and the recording thereof, a piece of paper has been pasted to the original paperwriting and such pasted piece of paper contains a purported entry of satisfaction of mortgage, such as is customarily made on the original mortgage, and such entry not being witnessed or acknowledged, is it the duty of the Recorder to record such purported satisfaction upon the margin of the record of the original mortgage, upon tender of the proper fee, in the same manner as though it had been entered upon the same piece of paper upon which the original mortgage is written?

2. What is the duty of the Recorder where he can not determine whether the pasted piece of paper containing the entry of satisfaction was pasted to the mortgage paper before or after the filing and recording of the original mortgage?

3. What duty of inquiry devolves upon the Recorder before accepting such pasted satisfaction for recording upon the margin of the record?

4. Are the Recorder and his surety liable where such pasted satisfaction is recorded by him in good faith on the margin of the record in the event (a) he should have refused the same for lack of legal formality; (b) such pasted satisfaction was fraudulent?

I am writing you this letter because our County Recorder has advised me that he has had presented to him occasionally original mortgages with the purported satisfactions, without witnesses, acknowledgment or the formality of separate releases, brought to him for record upon the margins of the records, where such satisfactions are entered upon pieces of paper pasted to the original mortgages, and he has requested my opinion.

I have examined the statutes relating to the Recorder and the statutes relating to conveyances and encumbrances. I have

also examined your Opinion Number 2857, dated October 4, 1940. Yet I have been unable to arrive at a satisfactory answer for the guidance of our Recorder.

I am directing your attention especially to the case of Snyder vs. Castle, et al., 16 Ohio Appellate 333, decided April 19, 1922. This case holds that the three methods provided by Sections 8546, 8547 and 8548 of the General Code, relating to the record of the release of a mortgage, are not exclusive."

You have called attention to Section 8546, General Code, which provides:

"When the mortgagee of property within this state, or the party or parties to whom the mortgage has been assigned, either by a separate instrument, or in writing thereon, or on the margin of the record thereof, which assignment, if in writing thereon or on the margin of the record thereof, need not be witnessed or acknowledged, receives payment of the whole or a part of the money due the holder thereof, and secured by the mortgage, and enters satisfaction or a receipt therefor, either on the mortgage or on the record thereof, such satisfaction or receipt when entered on such record, or copied thereon from the original mortgage by the recorder of the proper county, will release the mortgage to the extent of such receipt. In all cases when a mortgage has been assigned in writing thereon, the recorder must copy the assignment or assignments thereof, from the original mortgage, upon the margin of the record of the mortgage before such satisfaction or receipt is entered upon the record thereof."

It will be noted this section contemplates the release or discharge of a mortgage by either (1) a satisfaction on the mortgage record, or (2) the copying on the record of the satisfaction written on the original mortgage.

A further method of release is authorized by Section 8547, General Code, which provides:

"A mortgage also must be discharged upon the record thereof by the recorder of the proper county when there is presented to him a certificate executed by the mortgagee or his assigns, properly acknowledged and witnessed in the manner provided for deeds and other instruments for the transfer of real estate, certifying that the mortgage has been fully paid and satisfied. In addition to the discharge on the records by the recorder, such certificate shall be recorded in a book kept for that purpose by the recorder. He will be entitled to the same fees for recording the certificates as for recording deeds."

To determine the manner in which a deed and other instruments for

the transfer of real estate must be executed, it is necessary to refer to Section 8510, General Code, which provides:

"A deed, mortgage, or lease of any estate or interest in real property, must be signed by the grantor, mortgagor, or lessor, and such signing be acknowledged by the grantor, mortgagor, or lessor in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation. Such signing also must be acknowledged by the grantor, mortgagor, or lessor before a judge of a court of record in this state, or a clerk thereof, a county auditor, county surveyor, notary public, mayor, or justice of the peace, who shall certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name thereto."

Your letter also refers to the case of *Snyder v. Castle, et al.*, 16 O. App. 333, the second paragraph of the syllabus of which reads:

"Three methods are provided by Sections 8546, 8547 and 8548 for the record of the release of a mortgage. But these methods are not exclusive, and a release of a mortgage written on a sheet of paper and signed by the mortgagee, when copied by the recorder on the margin of the mortgage record, is sufficient record of such release."

Section 8548, General Code, therein noted does not seem to set forth one of the three ways in which a mortgage may be released. That section, which requires certain duties on the part of the recorder, provides:

"When recording a mortgage, county recorders must leave space on the margin of the record for the entry of satisfaction, and record therein the satisfaction made on the mortgage, or permit the owner of the claim secured thereby to enter therein such satisfaction. Such record shall have the same force and effect as the record of a release of the mortgage."

A careful analysis of the facts in *Snyder v. Castle*, supra, discloses that on January 19, 1920 Castle and wife executed a note, and mortgage securing the same, which they delivered to one Williams. On the following day Williams endorsed said note and mortgage in blank and delivered same to plaintiff. The latter then filed the mortgage with the recorder but *did not have the assignment of such mortgage recorded*. Thereafter a release of the mortgage appears to have been obtained from Williams. Such release was not executed according to law and it may be of little consequence to now make the observation that the county recorder was, therefore, *under no duty* to note the same on the margin of the record. But the fact remains that he did so. Plaintiff sought judgment upon the

note and charged that the release of the mortgage to Williams was obtained by fraud. The opinion of the court concludes with the following:

“In our judgment, this is a case for the application of the principle announced in *Selser, Exr. v. Brock*, 3 Ohio St., 302:

‘Where one of two innocent persons must suffer by the fraud of a third person, he who first trusted such third person, and placed in his hands the means which enabled him to commit the wrong, must bear the loss.’

The plaintiff first trusted Williams, and, by neglecting to make and record a proper assignment, placed in his hands the means, that is, made it possible for Williams to commit the wrong—the making of the fraudulent cancellation. The plaintiff, therefore, must bear the loss.”

In the light of the foregoing, I would be quite reluctant to construe the case as giving blanket approval of and validity to a release of mortgage *not properly executed*, but, nevertheless, placed on the margin of the mortgage by the recorder. The case is illustrative of the mischief that resulted from the acts of the parties and should serve as a beacon light that points the way for a recorder to exercise the greatest care and caution.

With the foregoing statutes in mind, I pass now to a consideration of your several questions. In this connection I do not regard your inquiry as calling for a discussion of any of the ways in which a mortgage may be released other than the three heretofore mentioned.

Your first inquiry relates to a piece of paper pasted to a mortgage after such mortgage has been recorded. This paper has on it wording customarily used for releasing a mortgage but is not witnessed or acknowledged. It is difficult to understand how such a piece of paper, merely because of its annexation to the mortgage after such mortgage had been recorded, could by that fact alone, be considered as meeting the requirements of Section 8510, General Code, above quoted. To permit it to be so regarded would be tantamount to reading out of the law the specific provisions of that section relating to the formalities of execution of certain documents.

Therefore, answering your first inquiry specifically, I have no hesitancy in stating that a piece of paper pasted to a mortgage after same has been presented for recording, on which paper appears a purported release of such mortgage but not executed in the manner prescribed by Section 8510, General Code, is not a proper release and a county recorder

is under no duty to record same on the margin of the record of the original mortgage.

Your second and third questions might well be discussed as though constituting one inquiry. They relate to the duty devolving upon the recorder, when the original mortgage is presented to him with a piece of paper attached thereto containing a form of release, to determine whether such paper was pasted to the mortgage before or after the recording of such mortgage. The context of your letter is such that it is evident such pasted piece of paper does not have on it any portion of the description of the real estate involved or any other portion of the wording ordinarily contained in a mortgage. While I do not have before me the precise question, it would seem that the paper would be regarded as an actual part of the mortgage and not as a separate document if any wording of the mortgage was thereon. I know of no prohibition against several sheets of paper being so attached so as to obviously constitute one document. It is stated in 41 C. J. at page 392:

“* * * Nor is a mortgage invalid because not all written on the same sheet of paper, provided the completeness of the instrument is not destroyed by the separation.”

I would have great difficulty in arriving at the conclusion that a sheet of paper on which nothing but a form of release appears and which was pasted to a mortgage, was ever any part thereof. I am aware that in many instances some form of release or cancellation is printed on a portion of the one or more sheets of paper constituting the mortgage. A space for signature and date is customarily left blank so that when the indebtedness is paid this printed or typed form can then be filled in so that the release can become complete. But, I do not understand there is any duty on the part of the county recorder, at the time the mortgage is presented for recording, to also record such form of release. And this notwithstanding the release form appears on the mortgage.

Therefore, specifically answering your second and third inquiries it is my opinion that a piece of paper that is pasted to a mortgage may, by reason of the wording thereon, constitute an integral part of the mortgage. In such event it is not a separate paper. If, however, such pasted piece of paper contains only such wording as is customarily used to release a mortgage, and is not witnessed or acknowledged, no duty devolves upon the recorder to determine whether such paper was pasted to the mortgage before or after the same was presented for recording. Such piece of paper was never any part of the mortgage.

Your fourth question concerns the liability of the recorder and his

surety. Your letter directs my attention to my Opinion No. 2587, found in Opinions of the Attorney General for 1940, at page 911. I therein discussed that precise question. The third paragraph of the syllabus of said opinion reads:

“When an instrument is presented to the county recorder for record and the recorder upon examining the same, in good faith determines that it is not a recordable instrument, either by reason of the purpose sought to be accomplished or its defective execution or both, he is justified in refusing to accept the instrument and thereby incurs no liability upon himself and his bond.”

No useful purpose could be served by reviewing the authorities set forth in this opinion. I, therefore, direct your further attention thereto for a more detailed consideration of the question.

Therefore, in specific answer to your fourth inquiry, it is my opinion that the recorder and his surety are not liable when the former, acting in good faith, refuses to record on the margin of the original mortgage a release of the nature herein described.

Respectfully,

THOMAS J. HERBERT,
Attorney General.