

noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4712.

JUDGMENT LIEN—REQUIREMENTS FOR PERFECTING JUDGMENT LIEN ON REGISTERED LANDS.

SYLLABUS:

Under the provisions of Section 11656, General Code (116 O. L. 274), no requirement with respect to perfecting a judgment lien on registered lands is imposed in addition to that heretofore imposed by Section 8572-50, General Code.

COLUMBUS, OHIO, September 25, 1935.

HON. HERMAN E. WERNER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Your assistant has requested my opinion as to the duties of the county recorder in connection with the matter of the perfecting of a judgment lien as set forth in the following letter:

“Will you please give me your opinion on the following set of facts:

In order to perfect a judgment lien on registered land, is it necessary to comply with Section 11656 of the General Code, or may a party desiring to perfect a judgment lien proceed under section 8572-50 and disregard section 11656? In other words, under section 8572-50, it never was necessary to first file in the office of the Clerk of the Court of Common Pleas a Certificate of Judgment to perfect a judgment lien on real estate within the county where the judgment was rendered. However, under section 11656, for a judgment to become a lien, it is necessary to file such a certificate. And section 11656 further provides that ‘No *such* judgment shall be a lien upon any registered lands, unless’ etc.

Our County Recorder now asks whether or not he must insist that a judgment lien be properly perfected in the Common Pleas Court under the provisions of 11656 before he accepts the Clerk’s certificate.”

Section 8572-50, General Code, was enacted as a part of the so-called Torrens Law in 1913. It provides as follows:

“No judgment or decree or order of court shall be a lien upon or affect registered land, or any estate or interest therein until a certificate under the hand and official seal of the clerk of the court in which the case is entered, or of record, stating the date and purport of the judgment, decree or order, or other action of the court taken, giving the number of the case, the full names of the parties, plaintiff and defendant and the volume and page of the journal or record in which it is entered, or certified copy of such judgment, decree, order or action of the court, stating the facts above required, is filed and noted in the office of the recorder; and upon such filing a memorial of the same shall be entered by the recorder upon the folium of the register in which the title to the land to be affected is last registered.”

Section 11656, General Code, as enacted by the 91st General Assembly (116 O. L. 274) provides in so far as pertinent as follows:

“Any judgment or decree rendered by any court of general jurisdiction (including district courts of the United States) within this state shall be a lien upon lands and tenements of each judgment debtor within any county of this state from the time when there shall have been filed in the office of the clerk of the court of common pleas of such county a certificate of such judgment, setting forth the court in which the same was rendered, the title and number of the action, the names of the judgment creditor or creditors and judgment debtor or debtors, the amount of the judgment and costs, the rate of interest, (if the judgment provides for interest), and the date from which such interest accrues, the date of rendition of the judgment and the volume and page of the journal entry thereof; provided, however, that no such judgment or decree shall be a lien upon any lands, (whether or not situated within the county in which such judgment is rendered), the title whereof is registered under the provisions of sections 8572-1 to 8572-118 inclusive of the General Code, until a certificate under the hand and official seal of the clerk of the court in which the same is entered or of record, stating the date and purport of the judgment, giving the number of the case, the full names of the parties, plaintiff and defendant, and the volume and page of the journal or record in which it is entered, or a certified copy of such judgment, stating the above facts, is filed and noted in the office of the recorder of the county in which the land is situated, and a memorial of the same is entered upon the register of the last certificate of title to the land to be affected. * * * * .”

It is observed that the requirement of Section 8572-50, *supra*, as to perfecting a judgment lien on registered land is identical with the requirement contained in the proviso of Section 11656, *supra*, as to perfecting a judgment lien on such land. While your question is not entirely clear, I assume your inquiry is whether or not in view of the portion of Section 11656, *supra*, preceding the proviso, the recorder should insist that the certificate of such judgment should be filed in the office of the clerk of the court of common pleas before filing in his office either the certificate or certified copy of the judgment, as the case may be, as required by both Sections 8572-50 and 11656. In other words, I assume you raise the question as to whether this proviso of Section 11656 should be construed as a requirement in perfecting a judgment lien on registered land in addition to that requirement which precedes it, or whether such proviso should be construed as an exception to what precedes it.

Generally speaking, provisos are construed by the courts as being similar to exceptions and taking out of a statute that which would otherwise be included therein. It is said in *Lewis' Sutherland Statutory Construction*, 2nd Ed., Vol. 2, page 670:

"It has not been an unfrequent mode of legislation to frame an act with general language in the enacting clause, and to restrict its operation by a proviso. It is often found difficult to limit the language in the enacting clause so as to admit every exception or limitation designed to be introduced into the section in its finished state. Provisos and exceptions are similar; intended to restrain the enacting clause; to except something which would otherwise be within it, or in some manner to modify it. A proviso is something engrafted upon a preceding enactment, and is legitimately used for the purpose of taking special cases out of a general class, or to guard against misinterpretation."

An application of this principle to your question would indicate that as to registered lands there is no requirement that any certificate be filed in the office of the clerk of the court of common pleas in order that a judgment may become a lien on such land. The answer to your question, however, need not turn solely upon an application of the foregoing construction of provisos generally adopted by the courts.

Having in mind that Section 8572-50, *supra*, imposes the same requirement as that imposed in the proviso of Section 11656, *supra*, it is observed that had this proviso been left out of this last mentioned section, the first requirement as to filing a certificate with the clerk of the court of common pleas could well be contended to be applicable to the case of perfecting judgment liens on all lands, whether registered or not, and hence the filing with the recorder required by Section 8572-50, as well as the filing with the clerk required by Sec-

tion 11656, would have been required. To construe this proviso therein as imposing an additional requirement in the case of registered lands, would be to construe this part of the section as of no effect and to say that the legislature did a vain thing in having enacted it. It is well established that such a construction will not be adopted by the courts if it is possible to construe a section or part of a section as having some force and effect. 37 O. Jur., page 611, et seq.

In view of the foregoing, it is my opinion that under the provisions of Section 11656, General Code (116 O. L. 274), no requirement with respect to perfecting a judgment lien in registered lands is imposed in addition to that heretofore imposed by Section 8572-50, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4713.

APPROVAL. BONDS OF CITY OF COLUMBUS, FRANKLIN
COUNTY, OHIO, \$63,000.00.

COLUMBUS, OHIO, September 25, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4714.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY,
OHIO, \$25,000.00 (UNLIMITED).

COLUMBUS, OHIO, September 25, 1935.

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