

are special statutory provisions which are not applicable to cases; * * *.

Where an action for divorce or alimony is brought in the proper county against a defendant who is a resident of the state, summons and a copy of the petition shall be issued to any county of the state for service upon the defendant * * *."

There is no reference in the chapter relating to divorce, alimony and custody of children which in any way adopts or refers to the civil code sections as to service in other actions.

Coming then specifically to the answer to your inquiry as to whether or not General Code Sections 11983 and 11286 may be considered together as governing the manner of service in divorce actions, I am of the opinion that Section 11286, General Code, does not and cannot be made to apply in any manner as to such service. The statutory safeguard as to service in a divorce action is for the plain purpose that opportunity be afforded for defense, so that a full and fair hearing may be assured and to prevent the granting of unwarranted divorces and the same must be literally complied with. Therefore, when the defendant is a resident of the State, residential service in a divorce action is not sufficient. It is mandatory that service on the person only is sufficient in such case.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

146.

CLERK OF COURT OF COMMON PLEAS—FEES—INDEXING
PENDING SUITS—INDEXING LIVING JUDGMENTS—
DOCKETING AND INDEXING CERTIFICATE OF JUDG-
MENT.

SYLLABUS:

Section 2901, General Code, requires the Clerk of the Common pleas Court to charge a fee of five cents for indexing each plaintiff or defendant in pending suits, and five cents for indexing each plaintiff or defendant in living judgments; in addition Section 2901-1, General Code,

requires the Clerk to charge a fee of ten cents for filing, docketing and endorsing a certificate of judgment and a fee of five cents for each plaintiff or defendant for indexing a certificate of judgment.

COLUMBUS, OHIO, February 18, 1937.

HON. ELLIS W. KERR, *Prosecuting Attorney, Miami County, Troy, Ohio.*

DEAR SIR: I acknowledge receipt of your communication of recent date, as follows:

“The Clerk of the Common Pleas Court has requested our opinion as to what fees to charge for indexing a Certificate of Judgment made necessary under Section 11656. Specifically, there is a particular question as to whether or not for indexing a Certificate of Judgment under this law 5c for each plaintiff and defendant may be charged for the indexing in the alphabetical index as required by Section 2884, and whether an additional 5c for each plaintiff and defendant may be charged for indexing the same certificate in the judgment docket required under Section 11656.”

Section 2884, General Code, provides:

“Each clerk of the common pleas, circuit and superior courts shall make an alphabetical index of the names of all plaintiffs and defendants to pending suits and living judgments, showing therein in separate columns the names, court and number of the suit or execution, and when there is more than one suit or judgment, for or against the same party, it shall be sufficient to index the name but once and make entries opposite thereto, of the court and the number of the suit or execution. No such index shall be made in counties where it has already been done.”

You will note that the foregoing section requires that all pending suits and living judgments be indexed in the proper form by the Clerk of the Court of Common Pleas. The necessity for providing a quick search method for determining the existence of pending suits and living judgments was recognized as early as 1878, when this statute was originally enacted. The fees for indexing the names of all plaintiffs and defendants to pending suits and living judgments as required in Section 2884, General Code, are provided for in Section 2901, General

Code, enacted shortly after Section 2884, General Code, and which provides in part, as follows:

“For indexing pending suits, each plaintiff or defendant, five cents; for indexing living judgments, each plaintiff or defendant, five cents.”

Section 11656, General Code, became effective in its present form on August 30, 1935, and it seems that the general purpose of this section is to provide for the perfection of judgment liens against lands and tenements in the State of Ohio. This section also provides the machinery for the recording of certificates of judgment, in the following language pertinent to the present inquiry:

“When any such certificate of any judgment of any such court shall be delivered to the clerk of the court of common pleas of any county in this state, the same shall be filed by such clerk, and he shall cause the same to be docketed and indexed under the names of the judgment creditor or creditors and of the judgment debtor or debtors in a judgment docket, which shall show as to each judgment all of the matters set forth in such certificate as herein required.”

The foregoing provision of Section 11656, General Code, requires the clerk to perform three distinct operations:

- (1) File the certificate of judgment;
- (2) Docket the certificate of judgment;
- (3) Index the certificate of judgment;

and for each of these operations Section 2901-1, General Code, enacted as a part of the same Act, provides a schedule of fees in part, as follows:

“For filing, docketing and endorsing certificates of judgment, ten cents; for indexing certificates of judgement, five cents for each plaintiff and defendant.”

Since the docketing and indexing provision of Section 11656, General Code, is obviously designed to afford an easy means of locating certified judgments, this section is readily distinguishable from Section 2884, which section mandatorily requires the Clerk of the Common Pleas Court to make an alphabetical index of the names of all plaintiffs and defendants to pending suits and living judgments. There is no

mandatory requirement in Section 11656, General Code, for anyone to file a certificate of judgment in the office of the Clerk of the Common Pleas Court. It would seem that the filing of a certificate of judgment pursuant to Section 11656, General Code is dependent entirely upon the pleasure and common business sense of a judgment creditor. Consequently, the conclusion is inescapable that the index provided for in Section 11656, General Code, does not replace the index required by Section 2884, General Code, rather, the certified judgment index is merely supplementary. These two indexes, as a matter of fact, are maintained separately, and serve entirely distinct and separate purposes.

Referring to the term of limitation, "and no more", as used in Section 2901-1, General Code, these words undoubtedly refer only to the fees mentioned in this section; that is, the clerk is strictly limited to the maximum charges fixed therein, and has no power to increase the fee for any particular service provided for in Section 2901-1, General Code.

Coming now to a specific answer to your inquiry, I am of the opinion that the Clerk of the Common Pleas Court of Miami County must charge a fee of five cents for indexing the name of each plaintiff or defendant in pending suits; and for indexing living judgments, a fee of five cents for each plaintiff or defendant must be charged. In addition to the foregoing fees, the clerk must also charge, pursuant to Section 2901-1, General Code, a fee of ten cents for filing, docketing and endorsing a certificate of judgment, and for indexing a certificate of judgment, a fee of five cents for each plaintiff and defendant.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

147.

DUTY OF RECORDER TO RECORD ALL ASSIGNMENTS AND
CANCELLATIONS OF ASSIGNMENTS OF MORTGAGE—
FEES—VALIDITY OF PASTED ADDITIONS.

SYLLABUS:

1. *It is the duty of a Recorder to record all assignments and cancellations of assignments appearing upon the face of any mortgage presented to him before satisfaction or release of the said mortgage*