

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*

shall be recorded. Fees for these services shall be those allowed under Section 8549, General Code.

2. *It is the duty of the County Recorder to accept for record papers with pasted additions since such additions, in the absence of circumstances indicating bad faith, are presumed to be legal and valid.*

COLUMBUS, OHIO, February 18, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: I acknowledge receipt of your recent communication requesting an opinion on two questions submitted by the Mahoning County Recorder. The questions are stated as follows:

"1st. A Real Estate Mortgage is presented to this office properly signed for cancellation, but typed or written upon this paper (the originally recorded paper) is one, two or more Assignments, which have never been recorded in this office, but across the Assignment or Assignments is stamped or written (cancelled or void) or in any manner the Assignment or Assignments is crossed out or marked void or cancelled, should this office accept for cancellation without first recording the Assignment or Assignments and charging therefore.

"2nd. If any legal paper presented to this office has in addition to the original paper, portions added by PASTING thereunto additional things desired to be recorded, is this pasted portion a legal part of the original paper?"

Your inquiries will be discussed in the order stated.

1. Authorities on the subject agree that the recording laws are designed primarily to prevent fraud in certain transactions. In accordance with this purpose the interpretation and construction of recording laws have been so made as to stimulate confidence in them rather than suspicion and uncertainty. (53 Corpus Juris, 607, 35 Ohio Jurisprudence, pages 48-49.)

The question at hand involves a mortgage and an assignment or assignments which have been written upon the face of the mortgage. Section 8542, General Code, provides for the recording of mortgages and states that they shall take effect from the date of recording. Sections 8546 and 8546-3, General Code, provide for the recording of assignments and releases as follows:

Sec. 8546. "When the moragagee 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.*" (Italics the writer's.)

Sec. 8546-3. "1. A mortgage may be assigned or partially released by the holder thereof, by writing such assignment or partial release on the original mortgage, or upon the margin of the record thereof, and signing the name. Such assignment or partial release need not be acknowledged or witnessed, but if written upon the margin of the record the signing thereof must be attested by the county recorder. Such assignment, whether it be upon the mortgage, or upon the margin of the record thereof, or by separate instrument, shall have the effect of transferring not only the lien of said mortgage, but also all interest in the land described therein. For entering such assignment or partial release upon the margin of the record, or for attesting the same, the county recorder shall be entitled to the same fee as is provided by section 8549 of the General Code."

When an instrument is presented for record, it must be recorded by the recorder as provided by the law. The duty of executing the protection intended by the recording laws falls upon the recorder and under them, it is his duty to record all deeds, mortgages and other instruments in writing required by law to be recorded which are presented to him for that purpose.

The provisions of Section 8546, General Code, above in italics, expressly provide for the duties of the recorder when an assignment or assignments have been written on a mortgage. The statute reads:

"In all cases when a mortgage has been assigned in writing thereon, the Recorder must copy the assignment or assign-

ments 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."

This language is specific, definite and entirely related to the subject with which it deals.

Under the terms of the law as stated, the recorder must record all assignments and necessarily all indications of cancellation which appear upon the face of any mortgage presented to him for which satisfaction or release is to be recorded. To permit the recorder to ignore obvious changes effecting title which appear on an original instrument and not to include them in a record on the said instrument, would surely defeat the purpose of the recording laws whose object is to furnish the best and most easily accessible evidence of title in order that subsequent purchasers or those who acquire liens may be informed. (*Weir, et al. vs. Saw Mill Company*, 88 O. S. 424).

Entirely related to the statute discussed are the provisions of Section 8546-3, supra, which gives further instructions as to the recording of assignments and partial releases and the fees authorized to be charged for such recording services.

It is therefore my opinion that the county recorder must record all assignments and cancellations of assignments appearing upon the face of any mortgage presented to him before any satisfaction or release of said mortgage can be recorded; and further that the fees for said services shall be those allowed under Section 8549, General Code.

2. To permit the recorder to change and determine the legality of instruments would clearly result in many difficulties which would in turn defeat the real purpose of recording laws. The duties of the recorder were long ago clarified by a decision given in the case of *Ramsey vs. Riley*, 13, Ohio 157. In this case the court held that a county recorder was not bound to determine the validity of an instrument or to ascertain whether or not the instrument was genuine or forged. It is solely his duty to record as provided by law any deed, mortgage or instrument in writing presented to him. The law with regard to alterations appearing on the face of an instrument permits a presumption that all such alterations were made in good faith, at or before the time of the instrument's execution, and as such are a proper part of the instrument. (*Frank vs. Baker*, 48 O. S. 296) In view of this no inference of fraud or bad faith can be drawn from an alteration standing alone, however apparent upon the face of a paper.

It is therefore my opinion that any legal paper on which pasted additions have been made when presented to the recorder under circum-

stances showing no bad faith should be accepted as one entire complete legal paper.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

148.

APPROVAL—BONDS OF CUYAHOGA COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, February 18, 1937.

Industrial Commission of Ohio, Columbus, Ohio.

149.

APPROVAL — BONDS OF CUYAHOGA COUNTY, OHIO,
\$5,000.00.

COLUMBUS, OHIO, February 18, 1937.

Industrial Commission of Ohio, Columbus, Ohio.

150.

APPROVAL—NINE GRANTS OF EASEMENT TO LAND IN
CASS TOWNSHIP, MUSKINGUM COUNTY, OHIO.

COLUMBUS, OHIO, February 18, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval certain grants of easement executed to the State of Ohio by several property owners in Cass Township, Muskingum County, Ohio, conveying to the State of Ohio, for the purposes therein stated, certain tracts of land in said township and county.

The grants of easement here in question, designated with respect to the number of the instrument and the name of the grantor, are as follows:

Number
449

Name
Elizabeth Welsh