

1897

1. CERTIFICATE OF JUDGMENT—FILED WITH CLERK OF COURTS—COUNTY OTHER THAN WHERE JUDGMENT RENDERED—CLERK OF COURTS WHO ISSUED CERTIFICATE OF JUDGMENT ENTITLED TO FEE OF TWENTY CENTS TO NOTE RETURN OF CERTIFICATE OF JUDGMENT—SECTIONS 2901-1, 11656 G. C.
2. CLERK OF COURTS—ENTITLED TO FEE OF TWENTY-FIVE CENTS TO MAKE ENTRY OF RELEASE OR SATISFACTION OF A JUDGMENT LIEN — SECTIONS 8552, 8554 G. C.

SYLLABUS:

1. Where a certificate of judgment is filed with the clerk of courts in a county other than the county in which the judgment was rendered pursuant to Section 11656, General Code, the clerk of courts issuing the certificate of judgment is alone entitled to the fee of 20¢, authorized by Section 2901-1, General Code, for "noting return of certificate of judgment."

2. A clerk of courts making an entry of release or satisfaction of a judgment lien, pursuant to Section 8552, General Code, is entitled to a fee of 25¢, as authorized by Section 8554, General Code.

Columbus, Ohio, September 29, 1952

Hon. Harold D. Roth, Prosecuting Attorney
Wyandot County, Upper Sandusky, Ohio

Dear Sir :

I am in receipt of your letter of recent date, reading as follows :

“I have received the following communication from the local Clerk of Courts of Wyandot County, Ohio :

‘Section 2901-1 fees charged and collected by clerk of courts has caused some misinterpretation on the part of some clerks. The last part of this section reads: “For noting return of Certificate of Judgment, 20 cents.”

‘It is my interpretation that the only clerk that is entitled to charge the 20c for noting the return of Certificate of Judgment is the office that issues said certificate.

‘Just recently I issued a number of certificates in cases that originated in Wyandot County Common Pleas Court and sent them to foreign counties to be filed in their Certificate of Lien Judgment dockets and several of the counties charged the 20c for noting the return. I interpret this section, as far as fees are concerned, the same as any other writ issued by any Common Pleas Court, that the only office entitled to the return fee, is the office that issued the original writ or certificate.’

“I would like to have your interpretation of General Code Section 2901-1 as it relates to General Code Section 11656 in connection with the above question. One foreign county also requested a fee for cancellation of a Certificate of Judgment Lien. No authority has been found for this charge.”

Section 11656, General Code, to which you refer, sets out the procedure to be followed in order to perfect a judgment lien on lands and tenements within any county of this state, of a judgment debtor. It is provided therein :

“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 purpose 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. Such certificate of any such judgment shall be made by the clerk of the court in which the same was rendered, under the seal of said court, upon the order of any person in whose favor such judgment was rendered or upon the order of any person claiming under him, and shall be delivered to the party so ordering the same; and the fee therefor shall be taxed in the costs of the action. 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 fee for such filing, docketing and indexing shall be taxed as increase costs of such judgment upon such judgment docket and shall be included in the lien of the judgment.

“When the clerk of any court, other than that rendering the judgment, in whose office any such certificate is filed, shall have docketed and indexed the same as herein provided, he shall indorse upon such certificate the fact of such filing with the date thereof and the volume and page of the docket entry of such certificate and shall return the same so indorsed to the clerk of the court in which the judgment was rendered, who shall note upon the original docket the fact of the filing of said certificate, showing the county in which the same was filed and the date of such filing; or when such certificate is filed, docketed and indexed in the office of the clerk of the court which rendered the judgment, such clerk shall likewise indorse the certificate and make like notation upon the original docket.”

“Each such judgment shall be deemed to have been rendered in the county in which is kept the journal of the court rendering the same, in which journal such judgment is entered.

“Certificates or certified copies of judgments or decrees of any such courts of general jurisdiction (including district courts of the United States) within this state may be filed, registered, noted and memorials thereof entered, in the office of the recorder of any county in which is situated land the title whereof, is registered under sections 8572-1 to 8572-118 inclusive of the General Code, for the purpose of making such judgments liens upon such registered land according to law.” (Emphasis added.)

I think the provisions of this section are self-explanatory and no elaboration need be made here. As to the fees provided for the services rendered in pursuance of this statute, Section 2901-1, General Code, provides:

“For the following services when rendered the clerk shall charge and collect the fees provided in this section and no more, namely: For making certificate of judgment, thirty-five cents; for filing, docketing and endorsing certificate of judgment, fifteen cents; for indexing certificate of judgment, five cents for each plaintiff and defendant, for noting return of certificate of judgment, twenty cents.”

It will be seen that this section provides for a 20¢ fee for noting a return of a certificate of judgment. I think it is clear from the language emphasized in Section 11656, that the clerk charged with the duty of noting the return is the clerk of the court issuing the certificate of judgment. Thus, the return is to be noted on the original docket. This notation is evidence to the judgment creditor and all concerned that a judgment lien has been perfected in the foreign county against lands of the judgment debtor, and that no further steps are necessary. The only notation of return required under Section 11656, is the notation on the *original* docket. Thus it would appear that clerks in counties other than the county of judgment, in which a certificate of judgment is docketed, are not entitled to recover the twenty cent fee for “noting return of certificate of judgment.”

You have also stated in your request that a fee has been charged in one county for cancellation of a certificate of judgment lien. While you have given no details in this particular, I call your attention to Section 8552, General Code, which provides for the cancellation of mortgages or

other liens, satisfied by foreclosure proceedings, by an entry on the record by a clerk of courts. It is provided therein :

“The court in which proceedings are commenced, relative to a mortgage or other lien, change of title, or partition of lands, the final judgment, order, or decree in which is to release or declare such mortgage or other lien void, in whole or part, or require the judicial sale of property included in the mortgage or other lien, in case of failure to pay the amount secured thereby, or when the title has been changed by judgment or decree, or partition made and confirmed between tenants in common, at the rendition of such final judgment, order, or decree, shall make the necessary order for the proper entry of a memorandum, release, or satisfaction, by the clerk, on the record of such mortgage or other lien; and in cases of change of title, or partition, for the record of so much of the decree in the proper records in the office of the recorder, as is necessary to show such change of title or partition.”

It is clear that a judgment lien is encompassed within the provisions set out above for they embrace a mortgage “or other lien,” without exception. The fee for entering a release or satisfaction on the record is provided for by Section 8554, General Code, as follows :

“In all cases heretofore determined, wherein the costs have been taxed and paid, the clerk is not required to make the entry of the release or satisfaction provided in this chapter, until some party in interest first pays the proper costs thereof. In all other cases the clerk may tax in the bill of costs the fees or the recorder provided by law for the entry of such memorandum, release, satisfaction, or record, including also a fee of twenty-five cents to himself for making such entry, and the fees provided by law for official copies of records.”

A clerk making an entry of release or satisfaction of a judgment lien, pursuant to Section 8552, would, under Section 8554, be entitled to a fee of twenty-five cents.

Respectfully,

C. WILLIAM O'NEILL
Attorney General