Ohio statute expressly names two instances in which the patient may waive the privilege. It is difficult to reconcile the holding that the widow could waive the privilege with the peculiar terms of the Ohio statute. If other exceptions were intended it would seem that they would have been specifically stated. The majority opinion in the principal ease reaches a desirable result from a social standpoint, but the reasoning seems strained.

CARL R. BULLOCK.

LEASES

REAL PROPERTY—LEASES—ACKNOWLEDGMENT OF LEASE—ATTACHMENT OF CERTIFICATE OF ACKNOWLEDGMENT

A lease agreement was typewritten upon ten separate pages and firmly bound and fastened together by brass rivets. It was contended that the lease agreement was ineffective to convey the leasehold estate recited in the agreement because the acknowledgment was upon a separate page, contrary to the requirements of Section 8510, Gen. Code. This section provides that a qualified officer "shall certify the acknowledgment *on the same sheet* on which the instrument is written or printed, and subscribe his name thereto." In this lease, the beginning of the certificate of acknowledgment appeared on the ninth page of the instrument following part of a sentence of the lease and the signatures of the parties and witnesses. The remaining portion of the certificate of acknowledgment with the notary's signature appeared on the tenth and last sheet. *Held*, that the instrument in question constituted a valid lease. *Rollman & Sons Co.* v. *The Alaska Realty Co.*, 52 Ohio App. 166, 4 Ohio Op. 386 (1936).

It was the opinion of the court that the object of Section 8510 is to prevent mistake and fraud, and to give greater certainty to titles within the state. The court placed considerable emphasis upon the fashion in which the ten sheets comprising the instrument were bound together by brass rivets, so constructed that when once drawn through the paper and compressed they presented a fastening which must be destroyed if removed and which could not be detached without leaving evidence of mutilation. The court also emphasized the fact that a page could not be inserted in the collection without first removing the rivets and referred to these sheets as forming "one instrument of ten pages."

One of the earliest cases in point is *Winkler* v. *Higgins*, 9 Ohio St. 599 (1859). In that case the court held that a certificate of acknowl-

edgment written upon a separate strip of paper attached to the deed by a wafer bearing the official's seal was not a compliance with the statute. The court expressed apprehension at the possibility of fraud if such a practice were permitted, because of the ease with which such a certificate of acknowledgment might be removed from one instrument and attached to others. There was apparently no evidence of actual fraud in the case.

In the case of *Norman* v. *Shepherd*, 38 Ohio St. 320 (1882), a mortgage deed written upon two separate sheets of paper, attached by two brass paper-fastenings, the first page containing the granting clause and the description of the property, and the second sheet containing the testatum clause, the signature of the parties, and the certificate of the officer receiving the acknowledgment, was held to satisfy the requirement of the statute. The court distinguished this situation from that in the Winkler case, not only upon the permanency of the binding, but also upon the presence of the certificate of acknowledgment upon a sheet containing essential portions of the body of the deed itself. In the latter respect, the court emphasized the impossibility of separation without mutilation, thus eliminating opportunity for fraud.

In *Schlaeger* v. *Title Guarantee Trust Co.*, 37 Ohio L. Rep. 474 (1932), a mortgage was executed in such form that the acknowledgment of the mortgagors appeared upon a separate sheet, at the top of which was written the final two words of the mortgage: "original trustee." It was held that the requirement of Sec. 8510 is satisfied. This holding indicates that the principle of the Norman case still governs in Ohio.

The cases seem to illustrate the development of a liberal construction of the statute. Surely the legislature could not have intended to set up as a rigid requirement that all instruments of this nature should be written upon one sheet of paper only. It is more probable that the legislature intended primarily that this requirement should act as a deterrent to fraud. The courts have adopted a practical attitude and kept pace with changing economic conditions and commercial requirements by construing the statute in a liberal fashion.

The courts have applied this rule of liberal interpretation of statutory requirements as to certificates of acknowledgment to analogous fields, carrying over the same test of permanency of binding. Efforts to invalidate chattel mortgages and conditional sales contracts under a statute similar to Section 8510, *supra*, have failed. Ohio Gen. Code, Sec. 8565. *Columbus Merchandise Co.* v. *Kline*, 248 Fed. 296 (D.C. Ohio, 1917); *Voss* v. *Shayton*, 38 Fed. (2d) 475 (C.C.A. 6th, 1930);

Oglesby v. *National Box Board Co.*, 25 Ohio C.C. (N.S.) 61 (1913). See 10 Cinn. L. Rev. 338.

There are a relatively small number of states which have statutes corresponding to Sec. 8510, and they have followed liberal constructions. *Schramm* v. *Gentry*, 63 Tex. 583 (1885) is an extreme case where the court went so far as to hold valid a deed on which the certificate of acknowledgment had been pasted.

In Ohio, we may say that the courts have definitely refused to require that the lease or deed and the certificate of acknowledgment be upon a single sheet. They have held, as in the cases *supra*, that where the certificate of acknowledgment is upon one of several sheets which cannot be separated without mutilation, there is sufficient compliance with the statute. Cases which comply with the statute under this permanency test are further strengthened when the certificate of acknowledgment or a part thereof appears on a sheet containing essential portions of the deed or lease, as in the Norman case, *supra*.

It is to be noted that the court in the Norman case, *supra*, remarked, "Undoubtedly, where fraud is alleged, the fact that such an instrument is not drawn upon a single sheet might be a significant, or, under certain circumstances, an all-important factor in the determination of the issue." The presence of an allegation of fraud or some evidence of such would undoubtedly direct a much closer scrutiny to the point of compliance with the statute. Would the courts follow the same liberal construction of the statute in the presence of some evidence of collusion in other respects? Let us suppose that in addition to this, there was the further circumstance of sheets containing openings for fastening and the type of fastener quite commonly used in commercial transactions which is thrust through the openings and then spread outward. We have weakened the permanency factor and have added some evidence of collusion in other respects. In such a situation, would the courts use the elastic construction of Sec. 8510 which has prevailed in recent years?

In the Rollman case, it is pointed out that there was no evidence of fraud, and that the instrument in question was adequately protected against fraud, since, although the signature of the acknowledging officer appeared on a different sheet from that of the signature of the parties, the instrument could not be materially altered without evidence of such alteration or mutilation appearing on the face of the instrument. The decision of the Rollman case represents both a practical and logical conclusion in the application of a liberal interpretation of the statute.

CHARLES L. GRAMLICH.