

2030

MORTGAGE, CHATTEL—ON MOTOR VEHICLE—IN ABSENCE OF “AFFIDAVIT OF CLAIM,” “AFFIDAVIT OF GOOD FAITH,” OR “SWORN STATEMENT”—ENTITLED TO BE NOTED AS A LIEN ON CERTIFICATE OF TITLE TO MOTOR VEHICLE, THE SUBJECT OF THE MORTGAGE.

SYLLABUS:

A chattel mortgage on a motor vehicle lacking an “affidavit of claim,” “affidavit of good faith” or “sworn statement” is entitled to be noted as a lien on the certificate of title to the motor vehicle which is the subject of the mortgage.

Columbus, Ohio, July 3, 1947

Hon. Edward T. Fogo, Registrar, Bureau of Motor Vehicles
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“Calling your attention to the provision of the Certificate of Title Law it has been the practice of the Registrar upon inquiry to advise the several County Clerks of Court that when a chattel mortgage is presented to record a lien on the certificate of title that such chattel mortgage can not be recognized unless the same bears the affidavit of claims.

There has been some contention concerning this requirement and we were referred to the case of the Morris Plan Bank of Cleveland vs. Knott, 25 Ohio Opinions, 220.

Specifically, is a chattel mortgage used to record a lien on an Ohio certificate of title to a motor vehicle required to have the affidavit of claim in order to be valid?”

After considering in its entirety your request for my opinion, together with the fact that your official duties extend neither to passing upon nor giving advice concerning the validity of chattel mortgages, I feel that your specific question may properly be restated as follows: Is a chattel mortgage on a motor vehicle lacking an “affidavit of claim” en-

titled to be noted as a lien on the certificate of title to the motor vehicle which is the subject of the mortgage?

Section 8560, General Code, reads as follows:

“A mortgage, or conveyance intended to operate as a mortgage, of goods and chattels, which is not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, subsequent purchasers, and mortgagees in good faith, unless the mortgage, or a true copy thereof, be forthwith deposited as directed in the next succeeding section.”

The “next succeeding section,” Section 8561, General Code, reads as follows:

“The instruments mentioned in the next preceding section must be deposited with the county recorder of the county where the mortgagor resides at the time of the execution thereof, if a resident of the state, and if not such resident, then with the county recorder of the county in which the property so mortgaged is situated at the time of the execution of the instrument.”

The duties of the county recorder, which arise from the deposit with him of a chattel mortgage, as required by Section 8561, General Code, supra, are set forth in Section 8562, General Code, which reads in part as follows:

*“The county recorder upon receiving such instrument shall endorse thereon the time of receiving it and its consecutive number, and enter in a book or on cards, (which shall be known as the chattel mortgage index) to be provided by the county, the names of all parties thereto, alphabetically arranged, with the number of the instrument, its date, the date on which it was so received, and the amount secured thereby as set forth in the sworn statement to be furnished therewith, which entry must be repeated, alphabetically, under the name of every party thereto. He also shall file the instrument in his office to be there kept for the inspection of all persons interested, unless deposited for recording under Section 8563, General Code. * * *”* (Emphasis added.)

It will be noted that under the terms of the above section, it is the duty of the county recorder, upon presentation to him for deposit and filing of a chattel mortgage, among other things, to enter in the chattel mortgage index the amount secured by such mortgage. This is to be

obtained from a "sworn statement" to be furnished with the mortgage. Section 8564, General Code, relates to this "sworn statement," also denominated "affidavit of good faith" or "affidavit of claim," and reads as follows:

"The mortgagee, his agent, or attorney, before the instrument is deposited for filing or recording, shall furnish therewith a sworn statement placed thereon or attached thereto setting forth the amount of the claim and that it is just and unpaid, if given to secure the payment of a sum of money only. If given to indemnify the mortgagee against a liability as surety for the mortgagor, such sworn statement shall set forth the liability and that the instrument was taken in good faith to indemnify against loss that may result therefrom."

It clearly appears from this section that the mortgagee, his agent or attorney must furnish a "sworn statement" before a chattel mortgage is deposited for filing with the county recorder. Unless such statement is furnished the county recorder will be unable fully to perform the duties assigned to him by Section 8562, General Code, *supra*.

A chattel mortgage on a motor vehicle, however, in order for it to be valid as against the creditors of the mortgagor, subsequent purchasers, mortgagees and other lien holders or claimants, is no longer deposited for filing with the county recorder, but instead is noted on the certificate of title of such motor vehicle in accordance with the provisions of Section 6290-9, General Code, which reads as follows:

"The provisions of Sections 8560 to 8572, inclusive, of the General Code shall never be construed to apply to or permit or require the deposit, filing or other record whatsoever of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument, or any copy of same, made hereafter and covering a motor vehicle. Any mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument made hereafter and covering a motor vehicle, if such instrument is accompanied by delivery of said manufacturer's or importer's certificate and followed by actual and continued possession of same by the holder of said instrument, or in the case of a certificate of title if a notation of same has been made by the clerk of courts on the face thereof, shall be valid as against the creditors of the mortgagor whether armed with process or not, and subsequent purchasers, mortgagees and other lien holders or claimants but otherwise shall not be valid against them. All liens, mortgages and encumbrances noted upon a certificate of title

shall take priority according to the order of time in which the same are noted thereon by the clerk of courts. Exposure for sale of any motor vehicle by the owner thereof, with the knowledge or with the knowledge and consent of the holder of any lien, mortgage or encumbrance thereon, shall not render the same void or ineffective as against the creditors of such owner, or holders of subsequent liens, mortgages or encumbrances upon such motor vehicle.

The holder of a chattel mortgage, trust receipt, conditional sales contract or similar instrument, upon presentation of said instrument to the clerk of courts of the county where such certificate of title was issued, together with the certificate of title and the fee prescribed by this chapter, may have a notation of such lien made on the face of such certificate of title. The clerk of courts shall enter said notation and the date thereof over his signature and seal of office, and he shall also note such lien and the date thereof on the duplicate of same in his files and on that day shall notify the registrar who shall do likewise. The clerk of courts shall also indicate by appropriate notation on such instrument itself the fact that such lien has been noted on the certificate of title.

When such lien is discharged, the holder thereof shall note a cancellation of same on the face of the certificate of title over his signature and shall deliver it to the owner. Said owner may, upon presentation of said certificate of title to the clerk of courts, have the clerk of courts note the cancellation of said lien on the face of said certificate of title. The clerk of courts, if such cancellation appears to be genuine, shall note said cancellation on said certificate of title and he shall also note said cancellation on his records and notify the registrar who shall do likewise.

The provisions of Sections 8560 to 8572, inclusive, of the General Code shall continue to apply to the deposit, filing, re-filing, or other record whatsoever of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument, or any copy of same, made prior to the effective date of this act and covering a motor vehicle."

This section, unlike that which prescribes the duties of the county recorder upon presentation to him of a chattel mortgage, makes no reference to a "sworn statement" or to the amount secured by a chattel mortgage. It directs the clerk of courts of the county where was issued the certificate of title to a motor vehicle upon presentation of a chattel mortgage on that motor vehicle by the holder thereof, together with such certificate of title, and the prescribed fee, to note on the face of the

certificate of title not the amount secured by the mortgage or the extent of its lien, but the lien or the mortgage itself.

This procedure, outlined in Section 6290-9, General Code, *supra*, has been aptly described as "a completely new procedure for giving notice of the existence of a chattel mortgage and for the recording thereof," in the case which you have noted in your inquiry, *The Morris Plan Bank of Cleveland, Petitioner v. G. L. Knott, Trustee, Respondent*, 25 O. O. 220.

That case was decided in the District Court of the United States, Northern District of Ohio, Eastern Division, and turned upon one question: whether or not an affidavit of good faith is essential to the validity of a claimed lien arising from the execution of a chattel mortgage on a motor vehicle. In the course of its opinion in that case, the court said:

"* * * The requirements of a sworn statement of the mortgagee's good faith before the filing of a chattel mortgage, as provided by Section 8564, General Code, was a step in the former recording process whereby notice of the existence of a lien and the holder thereof was served upon the world. But, although it was a prerequisite to filing, the affidavit was not made a part of the mortgage itself, and it has been authoritatively held that the instrument was complete without such affidavit and good between the parties. *Cross, Trustee v. Carstens*, 49 Ohio St., 548."

It was pointed out in the case under discussion, before it was concluded that "a good faith affidavit no longer is necessary in order to obtain a valid lien on a motor vehicle" and that "failure to incorporate a good faith statement in a chattel mortgage on a motor vehicle is no longer a ground for invalidating a lien, notation of which has been made on the certificate of title," that Section 6290-9, General Code, *supra*, expressly provides that Sections 8560 to 8572, inclusive, of the General Code, shall never be construed to apply to the procedure for registering liens covering motor vehicles.

As I have indicated hereinbefore, the "sworn statement" with which your inquiry is concerned is required by virtue of the provisions of Sections 8562 and 8564, General Code. These sections are among those sections which, by the express terms of Section 6290-9, General Code, *supra*, are not now applicable to a chattel mortgage covering a motor vehicle. The section which is applicable to such a mortgage, Section 6290-9,

General Code, supra, does not require a "sworn statement" or an "affidavit of claim" as a prerequisite to the notation of a chattel mortgage on a certificate of title, but clearly provides that the holder of a chattel mortgage on a motor vehicle may have such mortgage noted on the certificate of title to that motor vehicle upon presentation of such mortgage, together with the certificate of title and the prescribed fee, to the clerk of courts of the county where such certificate of title was issued. As indicated hereinbefore, a chattel mortgage is complete without a "sworn statement" and failure to incorporate such a statement is no longer a ground for invalidating a lien, notation of which has been made on the certificate of title.

In view of all this, it is my opinion that a chattel mortgage on a motor vehicle lacking an "affidavit of claim," "affidavit of good faith" or "sworn statement" is entitled to be noted as a lien on the certificate of title to the motor vehicle which is the subject of the mortgage.

Respectfully,

HUGH S. JENKINS,
Attorney General.