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MOTOR VEHICLE — CERTIFICATE OF TITLE — REPOSSESSION—DEFAULT, TERMS OF CHATTEL MORTGAGE — TRANSFER OF TITLE — FOREIGN STATE, INDICIA OF TITLE—APPLICATION FOR CERTIFICATE IN OHIO—SECTION 6290-5 G. C.

SYLLABUS:

A person who acquires the right to title to a motor vehicle by repossession thereof upon default in the performance of the terms of a chattel mortgage, for which motor vehicle no certificate of title was previously issued in this state, is required to have the title thereto transferred to his name in the state wherein indicia of title to such motor vehicle was last issued and then make application for a certificate of title in Ohio in accordance with the terms of Section 6290-5, General Code.

Columbus, Ohio, May 21, 1940.

Hon. Cylon W. Wallace, Registrar, Bureau of Motor Vehicles,
Columbus, Ohio.

Dear Sir:

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

“With reference to the question of repossessing motor vehicles as set forth in Section 6290-10 G. C. will you please give us your opinion as to whether or not a County Clerk of Courts has the authority to issue an Ohio certificate of title in a case where the owner is a non-resident of this state and the mortgage contract was entered into in the state of his residence. The motor vehicle was actually repossessed in Ohio. There has been no Ohio certificate of title previously issued for this vehicle. Application

is made for an Ohio certificate of title and all that is presented is an affidavit and a copy of the mortgage contract.

This bureau has been advising that it is compulsory in such cases for the reposessor to apply for title in the state where the previous title was issued which is the practice in certificate of title states. What procedure should be followed in the situation presented herein?"

Section 6290-10, General Code, provides:

"In the event of the transfer of ownership of a motor vehicle by operation of law as upon inheritance devise or bequest, order in bankruptcy, insolvency, replevin or execution sale, or whenever the engine of a motor vehicle is replaced by another engine, or whenever a motor vehicle is sold to satisfy storage or repair charges, or repossession is had upon default in performance of the terms of a chattel mortgage trust receipt, conditional sales contract or other like agreement, the clerk of courts of the county in which the last certificate of title to said motor vehicle was issued, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof and right of possession to such motor vehicle, and upon payment of the fee prescribed in this chapter, and presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. Only an affidavit by the person, or agent of the person to whom possession of such motor vehicle has so passed, setting forth facts entitling him to such possession and ownership, together with a copy of the journal entry, court order or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession. If the applicant can not produce such proof of ownership he may apply directly to the registrar and submit such evidence as he may have, and the registrar may thereupon, if he finds the evidence sufficient, authorize the clerk of courts to issue a certificate of title. If, from the records in the office of said clerk of courts, there appear to be any lien or liens on said motor vehicle, such certificate of title shall contain a statement of said liens unless such application is accompanied by proper evidence of their satisfaction or extinction."

The above section provides that when repossession is had upon default in the performance of the terms of a chattel mortgage, conditional sales agreement or other similar instrument application shall be made to the clerk of courts of the county in which the last certificate of title was issued. It will be noted throughout said section the words "said clerk of courts" and "the clerk of courts" are used obviously referring to the clerk of courts of the county in which the last certificate of title was issued.

In view thereof, I am inclined to regard Section 6290-10, supra, as applicable only to cases where a certificate of title has previously been issued in this state.

Section 6290-5, General Code, provides in part as follows:

“Application for a certificate of title shall be made upon a form hereinafter prescribed by this chapter; and shall be sworn to before a notary public or other officer empowered to administer oaths; and shall be filed with the clerk of courts of the county in which the applicant resides if the applicant be a resident of this state, or if not such resident, in the county in which the transaction is consummated; and shall be accompanied by the fee prescribed in this chapter; and if a certificate of title has previously been issued for such motor vehicle in this state, shall be accompanied by said certificate of title duly assigned, unless otherwise provided for in this chapter. If a certificate of title has not previously been issued for such vehicle in this state said application, unless otherwise provided for in this chapter, shall be accompanied by a manufacturer’s or importer’s certificate as provided for in this chapter; or by a proper bill of sale or sworn statement of ownership, the originals of which have been duly filed with the clerk of courts, or a duly certified copy thereof; or by a certificate of title, bill of sale or other evidence of ownership required by the law of another state from which such motor vehicle was brought into this state. The clerk of courts shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. The clerk of courts shall use reasonable diligence in ascertaining whether or not the facts in said application are true by checking the application and documents accompanying same with the records of motor vehicles in his office; and if satisfied that the applicant is the owner of such motor vehicle and that the application is in the proper form, the clerk of courts shall issue a certificate of title over his signature and sealed with his seal, but not otherwise.”

An examination of the above section reveals that if no certificate of title has previously been issued in this state for the motor vehicle involved, the application for the certificate of title must be accompanied by certain evidence of ownership, the kind of evidence depending upon the type of transaction involved. If the transaction involves a new car, then the application must be accompanied by a manufacturer’s or importer’s certificate. Said section further provides that if a car is brought into the state from another state, the application for a certificate of title must be accompanied by a certificate of title, bill of sale or other evidence of ownership required by the law of such other state. It clearly appears that the situation involved in your question is governed by the provision last above cited. Consequently,

the applicant must file with his application a certificate of title, bill of sale or such other evidence of ownership required by the state from which the motor vehicle was brought into this state. In other words, the applicant must go back to the state in which indicia of title to such vehicle was last issued, have the title to the vehicle transferred to his name and then apply for an Ohio certificate of title.

In view of the above and in specific answer to your inquiry, I am of the opinion that a person who acquires the right to title to a motor vehicle by repossession thereof upon default in the performance of the terms of a chattel mortgage, for which motor vehicle no certificate of title was previously issued in this state, is required to have the title thereto transferred to his name in the state wherein indicia of title to such motor vehicle was last issued and then make application for a certificate of title in Ohio in accordance with the terms of Section 6290-5, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.