

1870.

CERTIFICATE OF TITLE — WHEN LIEN HOLDER REFUSES TO SURRENDER SUCH CERTIFICATE — CLERK OF COURTS MUST ISSUE NEW CERTIFICATE—PURCHASER OF MOTOR VEHICLE AT EXECUTION SALE — PROOF OF OWNERSHIP AND POSSESSION — SECTIONS 6290-6, 6290-10 G. C. — DUTY CLERK OF COURTS TO EXAMINE RECORDS — LIEN — LIEN HOLDER NOT REQUIRED TO SURRENDER CERTIFICATE PRIOR TO SATISFACTION OR EXTINCTION OF DEBT — JUSTICE OF PEACE—NO JURISDICTION OR AUTHORITY IN REPLEVIN ACTION TO ORDER CLERK OF COURTS TO ISSUE SUCH CERTIFICATE.

SYLLABUS:

1. *When a lien holder refuses to surrender a certificate of title which is in his possession, a clerk of courts must issue a new certificate of title to the purchaser of a motor vehicle at execution sale upon the furnishing by such purchaser of the satisfactory proof of ownership and possession as provided in Section 6290-10, General Code.*
2. *The clerk of courts issuing a certificate of title to the purchaser at execution sale must examine his records, and if any lien or liens appear thereon against the motor vehicle involved, such clerk shall enter a notation of the same on the new certificate of title as provided in Section 6290-10, General Code, and shall deliver the certificate to the holder of the first lien as provided in Section 6290-6, General Code.*
3. *There is no provision in the statute requiring a lien holder to surrender a certificate of title properly in his possession prior to the satisfaction or extinction of the obligation owing to him.*
4. *A justice of the peace has no jurisdiction or authority to order a clerk of courts, as a part of the relief granted in a replevin action, to issue a certificate of title and such an order is a nullity and of no effect.*

Columbus, Ohio, February 19, 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:

"We respectfully request your opinion regarding the following questions pertaining to certain provisions under the Certificate of Title Law.

There are three cases in which executions have been levied against motor vehicles which were owned under Ohio certificates of title and a lien registered on the face of each of these titles. One of these cars has been sold by the Municipal Court, the second car sold by a Justice of the Peace Court and the third car was sold by the Sheriff. None of these three liens under which executions were had were under the liens registered on the face of the title, in two of the three cases, application has been made by the purchaser of the vehicle to the clerk of courts for a title. The certificates of title covering these motor vehicles as required by law are in the possession of the holders of the liens noted on the titles.

The questions on which we request your opinion are:

First, to what extent is the holder of a lien which is noted on the previous certificate of title protected in the case of an execution sale when he is not a party in the legal proceedings?

Second, must the Clerk of Courts issue new titles to the purchasers on execution sales without the surrender of the previous certificate of title?

Third, if so, must the liens as noted on the previous certificates of title be noted on the new certificate of title?

Fourth, if the answer to the second is in the affirmative what action or procedure should be followed relative to the outstanding previous certificates of title in possession of the lienholders?

Fifth, should a Clerk of Courts recognize an order from a magistrate's court in a replevin action to issue a new certificate of title? If not, what is the effect of such an order? If the Clerk must recognize such an order what procedure should be followed as to the matters presented in the first four questions?"

The questions you have asked will be discussed in the order of their presentation.

Your first question involves the interpretation of Section 6290-10, General Code, which 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 to the said clerk of courts of ownership 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 cannot 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.”

It will be noted that the above section provides that in the event of the transfer of ownership of a motor vehicle upon execution sale, when application for a certificate of title is made by the purchaser, the clerk shall examine his records, and if there appears to be a lien or liens upon such motor vehicle, he shall note the same upon the certificate of title. Consequently, the lien holder would have the same status after execution sale as he had prior thereto.

Section 6290-10, *supra*, also provides that in such a situation the application for the new certificate of title shall be filed with the clerk of courts of the county in which the last certificate of title was issued. Consequently, the clerk’s records would show the true situation as to liens.

Section 6290-10, *supra*, also definitely furnishes the answer to your second question. It is provided therein that upon the surrender of the prior cer-

tificate of title or the manufacturer's or importer's certificate, *or when that is not possible*, upon presentation of satisfactory proof of ownership and right to possession and payment of the fee, the clerk may issue a certificate of title.

It is clear that the Legislature contemplated that in some situations it would not be possible for the applicant to present the prior certificate of title. Consequently, the submission of other evidence has been authorized. It appears that the instant situation falls within such provision and that upon the submission of the other evidence, a certificate of title may be issued to the applicant without the presentation of the prior certificate of title. There is no specific provision requiring the surrender of such prior certificate of title by the lien holder. Section 6290-6, General Code, hereinafter discussed, directs the clerk of courts to deliver the certificate of title to the lien holder and he may retain the same until his lien is satisfied.

Your third question has been answered in the discussion of your first inquiry. Section 6290-10, *supra*, provides that the clerk shall examine the records of his office, and if there appears to be any lien against such motor vehicle, the same shall be noted on the new certificate of title unless the application for the certificate of title is accompanied by proper evidence of the satisfaction or extinction of such liens.

With reference to your fourth inquiry, an examination of the law relating to certificates of title reveals, as hereinbefore stated, that no procedure is provided for the recovery of outstanding certificates of title in the situation you have presented. It appears, therefore, that there may be two certificates of title outstanding covering the same motor vehicle. However, both certificates of title are issued by the same clerk of courts and the true situation can be seen from an examination of his records.

Furthermore, Section 6290-6, General Code, should be considered. It provides in part:

"The clerk of courts shall issue the certificate of title in triplicate. One copy shall be retained and filed by him in his office and the other copy shall be transmitted on that day to the registrar of motor vehicles at Columbus. The clerk of courts shall sign and affix his seal to the original certificate of title and, if there are no liens on said motor vehicle, shall deliver said certificate to the applicant. If there are one or more liens on said motor vehicle said certificate of title shall be delivered to the holder of the first lien."

By virtue of the above provision, the certificate of title issued to the pur-

chaser at the execution sale, must be delivered by the clerk of courts to the first lien holder. Thus, in the instant situation, he will have in his possession two certificates of title, one in the name of the mortgagor and the other in the name of the purchaser, both certificates bearing notation of the lien.

I assume in your fifth inquiry that you are raising the question as to whether a justice of the peace has the authority to order a clerk of courts to issue a new certificate of title as a part of the relief granted in a replevin action.

An order by a justice of the peace directing a clerk of courts to issue a certificate of title is an exercise of equitable jurisdiction. It is stated in 35 C. J. at pages 527 and 528:

“Justices have no jurisdiction to administer equitable relief, either in those states which still retain the distinction between actions at law and suits in equity or in those in which the distinction has been abolished, unless such jurisdiction is expressly granted by statute.”

An examination of the Ohio statutes reveals that no equitable or chancery jurisdiction is conferred upon justices of the peace. This fact is stated in 24 O. J. at page 371, as follows:

“It is well settled that a justice of the peace has no chancery jurisdiction.”

It is clear, therefore, that a justice of the peace has no authority to order a clerk of courts to issue a certificate of title and an order to such effect would be a nullity and of no effect.

However, it should be stated that the finding of the justice of the peace in a replevin action may be submitted by an applicant for a certificate of title, under Section 6290-10, supra, in support of his request for the issuance of such certificate where such finding determines the title to the motor vehicle.

In view of the above and in specific answer to your inquiry, I am of the opinion that:

1. When a lien holder refuses to surrender a certificate of title which is in his possession, a clerk of courts must issue a new certificate of title to the purchaser of a motor vehicle at execution sale upon the furnishing by such purchaser of the satisfactory proof of ownership and possession as provided in Section 6290-10, General Code.

2. The clerk of courts issuing a certificate of title to the purchaser at execution sale must examine his records, and if any lien or liens appear thereon against the motor vehicle involved, such clerk shall enter a notation of the same on the new certificate of title as provided in Section 6290-10, General Code, and shall deliver the certificate to the holder of the first lien as provided in Section 6290-6, General Code.

3. There is no provision in the statute requiring a lien holder to surrender a certificate of title properly in his possession prior to the satisfaction or extinction of the obligation owing to him.

4. A justice of the peace has no jurisdiction or authority to order a clerk of courts, as a part of the relief granted in a replevin action, to issue a certificate of title and such an order is a nullity and of no effect.

Respectfully,

THOMAS J. HERBERT,
Attorney General.