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1. CHATTEL MORTGAGE — MOTOR VEHICLE — ASSIGNEE MAY BE ISSUED NEW CERTIFICATE OF TITLE WHEN HE HAS ACQUIRED OWNERSHIP AND RIGHT TO POSSESSION OF VEHICLE UPON DEFAULT IN PERFORMANCE OF TERMS OF MORTGAGE — APPLICATION — PROOF TO CLERK OF COURTS OF OWNERSHIP AND RIGHT TO POSSESSION—AFFIDAVIT—COPY OF INSTRUMENT OF ASSIGNMENT—SECTION 4505.10 RC.
2. FORM OF CERTIFICATE — NOTATIONS THAT MAY BE MADE — SPACE — STAMPED NOTATION — SECTIONS 4505.07, 4505.08, 4505.13 RC.

SYLLABUS:

1. Where the assignee of a chattel mortgage on a motor vehicle has acquired the ownership and right to possession of such vehicle upon a default in performance of the terms of such mortgage, such assignee may be issued a new certificate of title, upon application therefor, as provided in Section 4505.10 Revised Code, upon presentation of satisfactory proof to the clerk of courts of such ownership and right of possession, and such proof may be had upon (a) an affidavit of such assignee or his agent, together with (b) a copy of the instrument of assignment involved.

2. The form of certificate of title, as prescribed in Section 4505.07, Revised Code, may be altered by the registrar of motor vehicles as provided in such section so as to provide a space for the notation on such certificate of the assignment of a lien by the lien holder in possession of a certificate of title by virtue of the provisions of Section 4505.08, Revised Code; and such notation may be made by the clerk of courts on such certificate of title upon the application of the assignee concerned as provided in Section 4505.13, Revised Code, either in the space thus provided or in any convenient space on such certificate by the use of a stamped notation.

Columbus, Ohio, March 16, 1954

Hon. R. E. Foley, Registrar of Motor Vehicles
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“If a note is secured by a chattel mortgage on a motor vehicle and said chattel mortgage is noted as a lien upon the certificate of

title in the manner prescribed under Section 4505.13, Revised Code, and if said chattel mortgage contains provision for repossession under default, can this provision be effected after negotiation, or is it necessary that the original payee on the note participate in the repossession. In other words, can a certificate of title be issued through repossession, when there has been a default, in a name other than that of the lien holder that has been noted by the clerk of the court of common pleas on the original copy of the certificate of title, said lien holder's name being the same as that recorded on the copy of the title on file in the clerk's office."

As to your first question there can scarcely be any doubt that the assignee of a note or notes and a chattel mortgage on a motor vehicle securing such note or notes has the right to repossess the vehicle upon default of the terms of such mortgage. This right has not been seriously questioned in Ohio since the decision in *Robinson v. Fitch*, 26 Ohio St., 659, the second paragraph of the syllabus in which is as follows:

"The assignment of a note and the chattel mortgage securing it, by the mortgagee, prima facie transfers his interest in the property mortgaged to the assignee."

I perceive nothing in the statutes pertinent to the situation here involved which would avoid the application of the rule thus stated and for this reason I conclude that the assignee of a note secured by a chattel mortgage on a motor vehicle acquires such right as the assignor had to repossess such vehicle upon default of the terms of the mortgage.

In your second question, however, you indicate that you are primarily interested in the procedure necessary to perfect such right of repossession by the acquisition by the assignee of such mortgage of a merchantable title to the repossessed vehicle under the provisions of the certificate of title law, Section 4505.01, et seq., Revised Code. In Section 4505.10, Revised Code, I find the following provision relative to the issuance of a certificate of title where a change of ownership has been effected by operation of law:

"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 similar agreement, the clerk of the court of

common pleas 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 clerk of ownership and right of possession to such motor vehicle, and upon payment of the fee prescribed in section 4505.09 of the Revised Code, and presentation of an application for certificate of title, may issue to the applicant a certificate of title to such motor vehicle. Only an affidavit by the person or agent of the person to whom possession of such motor vehicle has passed, setting forth the 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, is satisfactory proof of ownership and right of possession. * * *

It may be helpful at this point to observe the following provision in Section 4505.08, Revised Code :

“The clerk of the court of common pleas shall issue certificates of title in triplicate. One copy shall be retained and filed by him in his office, and the other copy shall be transmitted on the day it is issued to the registrar of motor vehicles. The clerk 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.”

I am informed that it is the trade practice where a note and chattel mortgage on a motor vehicle is negotiated by the payee and the mortgagee, to indorse such note and to assign the mortgage and deliver the original certificate of title to the purchaser of the obligation thus negotiated.

Referring again to the provisions of Section 4505.10, Revised Code, it will be noted from the provisions therein, above quoted, that the clerk may issue a certificate of title to the applicant (1) “upon the surrender of the prior certificate of title,” or (2) “*when that is not possible*, upon presentation of satisfactory proof to the clerk of ownership and right of possession to such motor vehicle.”

The meaning of the first provision above, i.e., the “surrender provision,” is not readily apparent when it is recalled that the provisions of Section 4505.10, quoted above, appear to relate only to those cases in which a transfer of ownership is effected by operation of law, that is to

say, in a situation where the effect of such operation of law will not be recorded on the certificate of title itself. Not being so recorded, it seems logical to suppose that something more than the mere "surrender of the prior certificate of title" would be required in such a case for the purpose of satisfying the clerk that a transfer of ownership had in fact been effected by operation of law.

However this may be, it does not appear that the "surrender provision" would be applicable where there has been an assignment of a chattel mortgage by the original mortgagor; and we may conclude that in such case it will become necessary for the applicant for a new certificate of title to present "satisfactory proof to the clerk of ownership and right of possession" to the vehicle concerned. This could be done, as provided in Section 4505.10, *supra*, by (1) an affidavit and (2) the instrument upon which the claim to ownership and possession is founded, i.e., either the assignment of the certificate of title made by the lien holder or the assignment of the chattel mortgage, or both. For these reasons I conclude, in specific answer to your second question, that a certificate of title may properly be issued, as provided in Section 4505.10, Revised Code, to the assignee of a lien holder where such lien holder has a valid claim to ownership and possession by operation of law by reason of a default in performance of the terms of the chattel mortgage involved.

In reaching this conclusion I am not unmindful of the fact that the statutory form of the certificate of title does not provide a space for noting thereon an assignment of a lien by the holder thereof; and this leads to the suggestion that such procedure, where the form of certificate of title prescribed by Section 4505.07, *supra*, is used, would be inconsistent with the policy of the certificate of title law, one of the purposes of which is to make the certificate "a complete statement of the title of any motor car with notations of all liens and claims against it." See *Union Commercial Corp. v. Schmunk Co.*, 30 O. L. A. 116. If such be the policy and aim of the law, however, it becomes necessary to conclude, in view of the plain statutory provisions noted and discussed hereinbefore, that the act in this respect falls short of the intended result, and that the defect, if any, lies in the inadequacy of the detailed form prescribed in the statute.

Such defect, however, is readily susceptible of correction, for in Section 4505.07, Revised Code, we find the following provision:

"In addition to the information required by the forms prescribed in this section, each form of certificate of title which may

be used in transferring title from a dealer or seller who is required to collect the tax imposed in section 5739.02 of the Revised Code, shall contain the total price for which the motor vehicle was sold and delivered, the name of the dealer and his vendor's license number, and the amount of taxes paid on the transaction by the purchaser. *The registrar shall prescribe the manner in which the information shall be stated on the certificate of title, and he may, by regulation, require additional information and may, with the approval of the attorney general, alter the certificate prescribed in this section in any manner consistent with the theory of the sections of the Revised Code relating to certificates of title.*"

(Emphasis added.)

In view of the decision in the Union Commercial case, supra, we may readily conclude that "the theory of the sections of the Revised Code relating to certificates of title" justify the alteration of the form in question, so as to provide a space on the certificate of title for the notation of the assignment of a lien on a motor vehicle by the holder thereof. The notion that statutory provision for the notation of such assignment on the certificate of title has been made is supported by the following language in Section 4505.13, Revised Code:

"The holder of a chattel mortgage, trust receipt, conditional sales contract, or similar instrument, upon presentation of said instrument to the clerk of the county in which the certificate of title was issued, together with such certificate of title and the fee prescribed by section 4505.09 of the Revised Code, may have a notation of such lien made on the face of such certificate of title. * * *"

In view of the effect of the rule stated in the Fitch case, supra, it cannot be doubted that the assignee of a chattel mortgage, having acquired the rights of the original mortgagee, must be deemed the "holder" of such mortgage. If, however, there could be any doubt on this point it would appear quite clear that such assignee is the holder of a "similar instrument" in the form of an assignment of the chattel mortgage as originally executed, for under the rule of ejusdem generis an assignment of a chattel mortgage is clearly an instrument of such similarity to the mortgage itself as to be within the same class of instruments. It may be concluded, therefore, that the notation of such an assignment on the certificate of title is authorized under the provisions of Section 4505.13, Revised Code.

Moreover, in view of the conclusion just stated as to the effect of this provision in Section 4505.13, supra, I perceive no reason why, until such

revised forms are put into general use, the use of a stamped notation on some convenient part of the certificate, similar to that authorized in connection with the issuance of license tags as provided in Section 4503.10, Revised Code, should not be utilized by the clerk to enter such notation of the lien assignment.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. Where the assignee of a chattel mortgage on a motor vehicle has acquired the ownership and right to possession of such vehicle upon a default in performance of the terms of such mortgage, such assignee may be issued a new certificate of title, upon application therefor, as provided in Section 4505.10, Revised Code, upon presentation of satisfactory proof to the clerk of courts of such ownership and right of possession, and such proof may be had upon (a) an affidavit of such assignee or his agent, together with (b) a copy of the instrument of assignment involved.

2. The form of certificate of title, as prescribed in Section 4505.07, Revised Code, may be altered by the registrar of motor vehicles as provided in such section so as to provide a space for the notation on such certificate of the assignment of a lien by the lien holder in possession of a certificate of title by virtue of the provisions of Section 4505.08, Revised Code; and such notation may be made by the clerk of courts on such certificate of title upon the application of the assignee concerned as provided in Section 4505.13, Revised Code, either in the space thus provided or in any convenient space on such certificate by the use of a stamped notation.

Respectfully,

C. WILLIAM O'NEILL

Attorney General