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1. LIEN — GARAGE MAN FOR REPAIRS — POSSESSORY — NO RIGHT OF SALE.

2. CLAIM OF OWNERSHIP, APPLICANT TO CERTIFICATE OF TITLE TO MOTOR VEHICLE UPON SALE TO SATISFY STORAGE AND REPAIR CHARGES, MUST BE BASED ON COURT ORDER — SECTION 6290-10 GENERAL CODE.

SYLLABUS:

1. *The lien of a garageman for repairs is possessory only with no right of sale in connection therewith.*

2. *Under the provisions of Section 6290-10, General Code, in order to entitle an applicant to a certificate of title to a motor vehicle upon sale to satisfy storage and repair charges, such claim of ownership must be based on an order of court.*

Columbus, Ohio, October 20, 1941.

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

Dear Sir:

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

"The Bureau of Motor Vehicles is constantly confronted with the question of what procedure must be followed by a garageman to enforce his lien for repair and storage charges on a motor vehicle. This question arises when application for a certificate of title is made by a person who has purchased the vehicle upon a sale to satisfy storage or repair charges.

"We will appreciate your opinion on this question considering the further question as to whether the procedure for the enforcement of a warehouseman's lien has any application."

An examination of the laws of Ohio reveals that a garageman has no statutory lien for storage and repairs. It has been held, however, that a garageman does have a common law lien for repairs. *Acceptance Corporation v. Kuderer, et al*, 27 O. N. P. (N.S.) 416, 25 O. Jur. 356 et seq. The extent of this lien was discussed in the case of *Jones et al. v. Ironton Garage Company* 9 O. App. 431, wherein the court said at page 437:

"There is no provision by statute for the foreclosing of a common law materialman's lien and all the lienor can do is to hold the property until the owner comes for it and retain possession until payment is made, for if he sells it he is liable as for conversion. By issuing the attachment, he could furnish a vehicle by means of which the property could be sold, and he could realize his money. *Blackburn v. Peoples*, 8 Ohio App. 165."

The same proposition is set out in *Blashfield*, *Cyclopedia of Automobile Law and Practice*, Vol. VII, page 657, as follows:

"A common law lien is merely a right to detain a thing until payment of charges for services in connection therewith and a garage keeper therefore cannot, in the absence of any statute so providing, enforce such a lien upon an automobile by the sale of the car."

Obviously, therefore, the lien of a garageman for repairs is possessory

only and there is no right of sale in connection therewith. As was stated in the case of Jones, et al. v. Ironton Garage Company, supra:

“By issuing the attachment, he could furnish a vehicle by means of which the property could be sold, and he could realize his money.”

Consistent with the proposition that attachment or execution proceedings are necessary to sell a motor vehicle to satisfy storage and repair charges are the provisions of Section 6290-10, General Code, as follows:

“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 in the foregoing section a sale to satisfy storage or repair charges is mentioned. In such cases the first requirement is that the preceding certificate of title be presented by the purchaser. If that is not possible, it is provided that the purchaser may present an affidavit showing that he is entitled to possession or ownership, together with a copy of the journal entry, court order or instrument upon which such

claim of ownership is founded. It seems clear that in referring to "the instrument upon which such claim of possession and ownership is founded," reference is made to "a chattel mortgage, trust receipt, conditional sales contract or other like agreement." In other words, it appears that unless the claim of possession and ownership is based on such an instrument, court action is necessary. Of course, the section further provides, that if the applicant cannot produce such proof of ownership he may submit such evidence as he has to the registrar. However, this provision does not mean that it is not necessary to comply with the same preliminary requirements.

Therefore, it appears that although a garageman may retain possession of the motor vehicle, it is necessary both by the common law and the procedure set out in Section 6290-10, General Code, that such garageman file suit to obtain judgment for the amount due and proceed in the usual manner to collect such amount either upon execution or attachment.

I do not deem it necessary to discuss at length the provisions of the warehouse statutes, (Sections 8457 to 8508, inclusive, General Code) for the reason that they cannot apply to motor vehicles. The manner of transferring and acquiring title to a motor vehicle in this situation is set out in Section 6290-10, General Code, and such procedure must necessarily control over that outlined in the warehouse statutes.

Therefore, I am of the opinion that:

1. The lien of a garageman for repairs is possessory only with no right of sale in connection therewith.
2. Under the provisions of Section 6290-10, General Code, in order to entitle an applicant to a certificate of title to a motor vehicle upon sale to satisfy storage and repair charges, such claim of ownership must be based on an order of court.

Respectfully,

THOMAS J. HERBERT,

Attorney General.