

Opinion No. 103.**Motor Vehicles—Certificate of Ownership—Rights of Purchaser Upon Repossession.**

HELD: Where conditional sale vendor repossesses automobile and sells the same, the purchaser is entitled to certificate of ownership notwithstanding the fact that conditional sale vendee gave a mortgage thereon before repossession.

May 18, 1937.

Hon. Theo. R. Bergstrom
Registrar of Motor Vehicles
Deer Lodge, Montana

Dear Mr. Bergstrom:

You have requested our opinion as to whether the second purchaser of an automobile is entitled to receive a certificate of ownership thereof from your office, upon the following facts which have been submitted to your office:

"The Kincaid Motor Company sold a new 1935 truck to a certain Mr. Mick on a conditional sales contract. The contract was carried in default. The truck was repossessed, affidavit of repossession filed and the truck was then resold to another party. This party upon making application for license and certificate of title was informed by your office that you could not issue him a clear title because there was a second mortgage against this truck on file in your office. This second mortgage was given by Mr. Mick, the original purchaser, in favor of H. S. and G. A. Hanson and was filed after the conditional sales contract was recorded."

Since the mortgagee of the conditional sale vendee never was the "legal owner" as defined by Section 1758, R. C. M. 1935, and never became registered as such as provided by this section and Section 1758.3 Id., it is my opinion, on the facts given, that the second purchaser of the automobile (in case the sale was not a conditional one), is entitled to the certificate of ownership, as well as the certificate of registration. Section 1758.3 (a) expressly provides:

"No chattel mortgage or conditional sales contract on a motor vehicle shall be valid as against creditors or subsequent purchasers or encumbrancers

until the mortgage or conditional sales vendor therein named is registered as the legal owner thereof as herein provided.”

Moreover, the interest of the mortgagee of the vendee, if any, was lost when the car was repossessed by the conditional sale vendor.