

No. 215

**AUTOMOBILE REGISTRATION—REGISTRAR OF
MOTOR VEHICLES, duty of—CONDITIONAL SALES
VENDOR—MORTGAGEE—MOTOR VEHICLES**

Held: When a conditional sales vendor or first mortgagee is paid and files a release and satisfaction with the Registrar, it then becomes the Registrar's duty to request from the "owner," if there be no second mortgage, or from said second mortgagee, if there be one, the necessary affidavit so as to enable the Registrar to issue a duplicate certificate to said "owner" or second mortgagee.

August 20, 1941.

Mr. Dudley Jones
Registrar of Motor Vehicles
Deer Lodge, Montana

Attention: Mr. M. P. Trenne, Deputy Registrar.

Dear Mr. Jones:

Mr. Trenne upon his recent visit to Helena recited to me this state of facts:

On February 7, 1941, a bank filed with the Registrar of Motor Vehicles a chattel mortgage and was issued a certificate of title which showed the bank was the legal owner. On April 25, 1941 the International Harvester Company filed with the Registrar a mortgage which was a second mortgage. On June 17, 1941, the bank filed with the Register a release and satisfaction of its mortgage. On July 5, 1941 the bank filed with the Registrar a new chattel mortgage.

Mr. Trenne has stated your office is confronted with numerous cases analogous to this one and has asked whom should the certificate of title show to be the legal owner?

Section 1758.3(a), Revised Codes of Montana, 1935, as amended by Chapter 72, Laws of 1937, 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."

It is my opinion that—although the word "mortgage" is used before the words "or conditional sales vendor"—this is a misprint and the correct word to be used is "mortgagee."

Thus reading the statute it would appear at first blush the bank—when it took the mortgage for the second time on July 5, 1941—was an encumbrancer subsequent to the mortgage of the Harvester Company and, since the Harvester Company was never registered as the legal owner, its mortgage is invalid as between itself and the bank.

However, I do not believe any section of the law relating to the registration and licensing of motor vehicles can be read alone and given a narrow and strict interpretation. Neither do I believe the legislature by the passage of such laws intended in any way to alter or change the law

as it pertains to the rights of a mortgager and first and second mortgagees. In *Anderson v. Commercial Credit Co.*, 110 Mont. 333, 101 Pac. (2nd) 367, the Supreme Court said:

"The purpose of automobile registration being a police regulation, is to provide a method to deter automobile thefts, and to apprehend thieves. Better had it not been enacted if it is construed in such a fashion as to place onerous burdens on honest men and prevent those lawfully entitled to registry from accomplishing their objects through technicalities or official caprice."

That was a case wherein the plaintiff (conditional sales vendee) was seeking to collect the penalty provided by Section 1758.3, Revised Codes of Montana, 1935, against the defendant (assignee of conditional sales vendor) for failure to turn certificate over to plaintiff. The Supreme Court in its opinion said:

"Certainly when the defendant released its interest in the automobile as legal owner, then the plaintiff, who was owner as defined by statute, became both the owner and the legal owner of the automobile. (p. 339.)

"Having received the release of the conditional sales contract from the defendant, the registrar of motor vehicles was then advised that it no longer had a lien upon the automobile and rightly required the plaintiff, as owner and legal owner of the automobile, to execute the necessary affidavit in order to procure a duplicate." (p. 340.)

In *Rigney v. Swingley*, 112 Mont., 104, 113 Pac. (2nd) 344, our Supreme Court held the registration of an automobile is not the only way of proving the legal title to an automobile, but such registration is merely a circumstance to consider in establishing the fact.

It is therefore my opinion that, when the bank on June 17, 1941, filed with you a release and satisfaction of the mortgage, it then released all its interest in the automobile. The bank then should have sent the certificate of title. Having failed to do so, it became your duty to advise the International Harvester Company to execute the necessary affidavit so as to procure a duplicate. Your having failed to do so cannot put the International Harvester Company in the position where it was not registered as the legal owner and therefore its mortgage void as against the mortgage of the bank which was filed on July 5, 1941.

In other words, it is my opinion that, when the conditional sales vendor, or first mortgagee is paid and files a release and satisfaction with you, it becomes your duty to request from the "owner," if there be no second mortgagee, or from said second mortgagee, if there be one, the necessary affidavit so as to enable you to issue a duplicate certificate.

Sincerely yours,

JOHN W. BONNER
Attorney General