

## No. 498

**MOTOR VEHICLES—REGISTRAR OF MOTOR VEHICLES—ATTACHMENT—DEPOSITS, Effect of—TRANSFER OF TITLE**

- Held: 1. Where no liens against a motor vehicle registered are of record with the Registrar of Motor Vehicles, he may legally affect a transfer of title, unless he has knowledge of an attachment against the motor vehicle.
2. Where a deposit is made with the Registrar of Motor Vehicles by an attaching creditor, the Registrar may not legally thereafter transfer title to such vehicle until judgment and sale under execution, or dismissal of the suit.
3. When title to a motor vehicle is transferred by operation of law, as on execution sale, the Registrar of Motor Vehicles must issue certificate of title in accordance with Section 1738.2 (f), as amended by the provision of Chapter 72, laws of 1937.

October 7, 1942.

Mr. Dudley Jones  
Registrar of Motor Vehicles  
Deer Lodge, Montana  
Attention: Mr. M. P. Trenne, Deputy

Dear Mr. Trenne:

You have requested the opinion of this office whether you may legally refuse to effect a transfer of ownership to a motor vehicle involved in attachment proceedings unless a writ of attachment or copy thereof is served upon you.

Attachment proceedings are purely statutory and depend for their validity upon compliance with statutory requirements. (Duluth Brewing & Malting Co. v. Allen, 51 Mont. 89, 149 Pac. 494; Jenkins v. First National Bank, 73 Mont. 110, 236 Pac. 1085; Keith v. Ramage et al., 66 Mont. 578, 214 Pac. 326.)

I am unable to find any provisions of our statute which require service of a writ of attachment or notice of garnishment on the Registrar of Motor Vehicles. Section 9256 to 9300, Revised Codes of Montana, 1935, deal with attachment proceedings. Paragraphs 3, 4 and 5 of Section 9362, provide how personal property may be attached. This procedure must be followed in order to give validity to the attachment.

Section 1758.2, Revised Codes of Montana, 1935, as amended by Chapter 72, Laws of 1937, provides the procedure for transfer of title or interest in a motor vehicle. It requires that, when such procedure is complied with, the Registrar "shall" transfer the title.

Section 1758.3, Revised Codes of Montana, 1935, was amended by Chapter 72, Laws of 1937, by adding several new paragraphs, among which was paragraph (g) which provides:

"(g) Upon receipt of any liens, notice of liens, attachments, etc., against the record of any motor vehicle registered in this state, the registrar shall, within twenty-four (24) hours, mail to the legal owner, conditional vendor, mortgagee or assignee of any thereof, and also to the registrant and assignee, a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor."

While this provision of the Motor Vehicle Act does not directly require service of a writ of attachment or copy thereof upon the Registrar, it would seem it contemplates such service is necessary to give the Registrar

notice of the lien. Having such notice of the lien, it is my opinion, the Registrar would not be authorized to effect a transfer of the title thereafter until such a lien is satisfied or released.

It is therefore my opinion that, unless the Registrar has actual notice of the lien of attachment or is served with a writ of attachment or copy thereof, he may legally effect a transfer of title upon presentation to him of evidence of compliance with the provisions of Section 1758.2, Revised Codes of Montana, 1935, as amended by Chapter 72, Laws of 1937; mere notice to the Registrar that a creditor intends to attach is not sufficient.

What is said above applies only in cases where no lien such as mortgage, conditional sales contract, etc., appears of record in your office.

However, I am advised by Mr. Horace J. Dwyer, the attorney referred to in your request, of the following facts which appear in the fact case giving rise to your request.

On March 10, 1942, Mr. Dwyer, as attorney for the attaching creditor, deposited with you a sum sufficient to satisfy the amount due record lien holders. On March 12, 1942, a writ of attachment was duly and regularly issued and the automobile was taken into custody by the constable. The deposit was returned to Mr. Dwyer with the advice the record lien holder had released his lien on March 11, 1942, the day following the deposit. On March 20, 1942, a transfer of the title from the defendant to a third party, dated March 10, 1942, was filed for record with your office. On March 25, 1942, judgment was entered in the action, and thereafter upon execution the car was sold. The purchaser at execution sale presented the Certificate of Sale to have transfer effected, which was refused on the ground that no Writ of Attachment was served on the Registrar.

Section 1758.3, Revised Codes of Montana, 1935, as amended by Chapter 72, Laws of 1937, provides:

"(d) . . . in case of attachment of motor vehicles, all the provisions of Section 8283 shall be applicable except that deposits must be made with the registrar of motor vehicles instead of the county treasurer."

Section 8283, Revised Codes of Montana, 1935, provides in part:

"Personal property mortgaged may be taken on attachment or execution issued at the suit of a creditor of the mortgagor; but before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the same with the county treasurer of the county in which the mortgage is filed, payable to the order of the mortgagee; and when the property then taken is sold under process the officer must apply the proceeds of the sale as follows: . . ."

The statute then provides the manner in which the proceeds shall be distributed by the officer making the attachment.

Our Supreme Court has held, in the case of *Degenhart v. Carter, et al.*, 52 Mont. 102, 108, 157 Pac. 637:

" . . . a right in the nature of subrogation does vest in the attachment creditor who pays the amount of a prior mortgage, and if his attachment should fail, he still has recourse to the property."

Being subrogated to the rights of the mortgagee, the attaching creditor then stands in the position of the mortgagee until judgment and execution, or dismissal of the suit. The court in the case cited, *supra*, further says:

"As that right is a property right, he cannot be justly deprived of it by anyone, let alone the debtor, who has paid nothing, or the mortgagee to whose claim against the property he has, in legal effect, succeeded. In our opinion, therefore, to destroy that right . . . was a wrong, whether done by all the defendants, or by Power alone, and for it recovery can be had against the guilty party."

As stated heretofore, while the statutes do not require service of a writ of attachment on the Registrar, if the latter has actual knowledge of the attachment, he may not legally effect a transfer of the certificate, I think the deposit, under the circumstances here, is sufficient notice to the Registrar to authorize him to refuse to effect a transfer. By effecting the transfer, under these circumstances, in effect, may be a party to a wrong. As a public officer, he should not place himself in such position.

It is therefore my further opinion that, when a deposit is made with the Registrar in accordance with the provisions of Section 1758.3, Revised Codes of Montana, 1935, as amended by Chapter 72, Laws of 1937, and of Section 8283, Revised Codes of Montana, 1935, he may not legally thereafter effect a transfer of title to the motor vehicle in question. In the event of transfer of title by operation of law, as upon execution sale, the Registrar must issue certificate of transfer in accordance with the provisions of Section 1758.2 (f), as amended by Chapter 72, Laws of 1937.

Sincerely yours,

R. V. BOTTOMLY  
Attorney General