INDEX.

WRIT OF CERTIORARI.

New Jersey, to wit:

(Seal) The State of New Jersey to Franklin A. Ward, Abram B. Lane and the District Court of the City of Camden:

We being willing for certain reasons to be certified of the judgment, order and proceedings given or made before the District Court of the City of Camden, in a certain action, plaint or proceeding brought by Milton Stern, trading as Auto Transit Co., against Franklin A. Ward and Abram B. Lane, in which as appears, judgment was rendered against Milton Stern, trading as Auto Transit Co. and in favor of Abram B. Lane on the fifth day of May, 1919, for the possession of automobile therein referred to.

We do command you, the said District Court of the City of Camden that the judgment, order and all proceeding in the aforesaid action brought in the District Court of the City of Camden by the said Milton Stern, trading as Auto Transit Co. and against Franklin A. Ward and Abram B. Lane together with all papers and things touching and appurtaining to the same as fully and entirely before the said District Court of the City of Camden they remain to our Justices of our Supreme Court of Judicature at Trenton on the twenty-fourth day of June, 1919, you shall certify and send, under the hand of the Judge thereof, and the seal of said court, together with this writ, that thereon may be done what would be right and according to the laws of this state should be done.

Witness, William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton this fourth

day of June, in the year of our Lord one thousand nine hundred and nineteen.

ENOCH L. JOHNSON,
Clerk.

JOSEPH BECK TYLER,
Attorney for Prosecutor.

I allow this writ. Let it be sealed.

THOMAS W. TRENCHARD, *J. S. S.*

June 4th, 1919.

SUMMONS.

CAMDEN COUNTY, ss:

THE STATE OF NEW JERSEY,

To any Constable of the County of Camden.

GREETING:

(L. S.) We command you, that if Milton Stern, trading as Auto Transit Company, shall make you secure, you cause to be replevied and delivered to him, one used Willys-Knight touring automobile, bearing maker's No. 1919, which Frank A. Ward and Abram B. Lane, took and unjustly detain-as is said: And that you summon the said Frank A. Ward and Abram B. Lane to appear before the District Court of the City of Camden, to be held at the Court Room, in the Camden County Court House, third floor, Sixth and Market Streets, in said City, on Thursday, the fourteenth day of November, nineteen hundred and eighteen at ten o'clock in the forenoon, to answer unto Milton Stern, trading as Auto Transit Company, of a plea of taking and unjustly detaining said goods and chattels aforesaid.

And have you then and there this writ, with your proceedings thereon.

Witness, Garfield Pancoast, Esquire, Judge of said court, at Camden aforesaid, the fourth day of November, nineteen hundred and eighteen.

EDWIN HILLMAN, *Clerk.*

HARRY H. TEITELMAN, *Attorney.*

AFFIDAVIT.

MILTON STERN, trading as AUTO TRANSIT COMPANY,
vs.
FRANK A. WARD and ABRAM B. LANE.

In Replevin.
Affidavit.

THOMAS J. HAMM being duly sworn on his oath, says that he is familiar with the goods set forth in the Writ of replevin, issued at the instance of the plaintiff in the above stated action; that he has personally examined said goods and knows the value thereof; that he is entirely disinterested in the above stated action, and that the value of said goods, to the best of his knowledge and belief, is the sum of five hundred dollars.

THOMAS J. HAMM.

Sworn and subscribed to before me this fourth day of November, 1918.

Samuel M. Roberts,
M. C. C. of N. J.

CLAIM OF PROPERTY.

DISTRICT COURT OF THE CITY OF CAMDEN.

MILTON STERN, trading as AUTO TRANSIT COMPANY, *Plaintiff*, vs. FRANK A. WARD and ABRAM B. LANE, *Defendants*.	Action at law. Claim of Property.

To Clifford K. Deacon,
Sergeant at Arms of the District Court of the City of Camden.

Abram B. Lane, one of the defendants in the above stated action claims as his property the following goods and chattels, to wit: one used Willys-Knight touring automobile, bearing maker's No. 1919, taken by you by virtue of a writ of replevin issuing out of the District Court of the City of Camden in the above stated action on the fourth day of November, A. D. 1918.

Yours respectfully,
Abram B. Lane.

Dated November 4, 1918.

WAIVER.

CAMDEN CITY DISTRICT COURT.

MILTON STERN, trading as AUTO TRANSIT COMPANY, *Plaintiff*, vs. FRANKLIN A. WARD and ABRAM B. LANE, *Defendants.*	Waiver.

The defendants having filed a claim of property and counter bond in this matter and retained possession of the property replevined, the plaintiff herein waives any claim for damages or value of the property replevined in access of $500.00.

JOSEPH BECK TYLER,
Attorney for Plaintiff.

MINUTES.

CAMDEN CITY DISTRICT COURT.

MILTON STERN, trading as AUTO TRANSIT COMPANY, *Plaintiff*,
vs.
FRANK A. WARD and ABRAM B. LANE, *Defendants*.

Action at Law.
Minutes.

Harry H. Teitelman, Esq., and Joseph Beck Tyler, Esq., Attys. for plaintiff.
Patrick H. Harding, Esq., Attorney for defendant.
Issued Writ November 4th, 1918.
Writ returnable November 14th, 1918.
November 4th., Bond and Affidavit filed.
November 14th., 1918, Complaint filed.
November 26th., 1918, Waiver of excess filed.
November 14th, 1918, Case adjourned until November 21st., 1918.
November 21st, 1918, Milton Stern sworn on part of plaintiff, lease offered marked P1, Mary Quigley, Maxwell Peascoe, sworn for plaintiff. Plaintiff rests. John A. Ward, Howard P. Justice, and A. B. Lane sworn on part of defendant. Defendant rests. Case closed. Court took matter under advisement.
Dec. 23rd, 1918, Case reargued and question as to whether court had jurisdiction on account of auto possibly being worth more than $500.00 was waived by defendant.
May 5th., 1919, Judgment in favor of defendant Abram B. Lane.

NOTICE.

CAMDEN CITY DISTRICT COURT.

MILTON STERN, trading as AUTO TRANSIT COMPANY, *Plaintiff*,

vs.

FRANKLIN A. WARD and ABRAM B. LANE, *Defendants*.

In Replevin.
Notice.

TAKE NOTICE I shall apply to his honor, Garfield Pancoast, Judge of the Camden City District Court on Monday the twenty-third day of December, nineteen hundred and eighteen, at the hour of ten o'clock in the forenoon of said day or as soon thereafter as counsel can be heard for judgment in the above stated cause.

Respectfully,
JOSEPH BECK TYLER,
Attorney for Plaintiff.

To Wm. P. Walsh,
Attorney for Defendant.

State of New Jersey, }
County of Camden, } *ss.*

Augusta Allen, being duly sworn upon her oath deposes and says that on the 19th day of December, 1918, she served a copy of the above notice upon Wm. P. Walsh, attorney for the defendant, by leaving a copy thereof at his office, 19 Broadway, Camden, N. J., with Minnie Schule and informing her of the contents.

Augusta Allen.

Sworn to and subscribed before me this 19th day of December, 1918.

A. Moulton McNutt,
M. C. C. of N. J.

REASONS.

NEW JERSEY SUPREME COURT.

MILTON STERN, trading as AUTO TRANSIT COMPANY, *Prosecutor,*

vs.

FRANKLIN A. WARD and ABRAM B. LANE, *Respondents.*

On Certiorari.
Reasons.

The said prosecutor, Milton Stern, by Joseph Beck Tyler, his attorney, prays that the judgment of the District Court in the above matter may be set aside, reversed and for nothing holden for the following reasons:

1. The defendant, Abram B. Lane, upon the facts proven does not have a lien upon the car of the plaintiff.

2. The right of lien if any of the said Abram B. Lane should have been decided upon the facts as proven and according to the laws of the State of Pennsylvania.

3. There is no right of lien of a garage keeper as against the lessor.

4. The judgment is contrary to law and the facts.

Very truly yours,
JOSEPH BECK TYLER,
Attorney for Prosecutor.

To Patrick H. Harding, Esq.,
Attorney for respondents.
Dated Camden, N. J. July 3d, 1919.

EXHIBIT P1.

This Lease is to be Governed by the Laws of Pennsylvania

THIS AGREEMENT, Made this 30th day of August A. D. 1917.

Between Auto Transit Company, 1422 Vine Street, Philadelphia, Pa., of the first part, and Franklin A. Ward—524 Fenton Ave; Camden, N. J. of the second part, WITNESSETH, That the said party of the first part, for a consideration hereinafter mentioned, DOES hereby lease, rent and demise unto the said party of the second part, as bailee.....
.....Name of car Used Willys Knight Touring
.....Car No. .....
.....Motor No. ...1919.....
.....Cylinder ...Four .....
....Car to be stabled at Camden Auto Supply Co
.....Haddon Ave; & Line St; Camden N. J.....
.....
.....
.....
for and during the full term of Ten Months for which said articles the said party of the second part hereby agrees to pay for the use of the same as follows: $498.35 to be paid at the signing of this lease as rental in advance.....
.....Then $50 to be paid on the 15th & 1st of each month for 9 months in succession commencing September 15th; 1917. Then $40 to be paid on the 15th & 1st of the 10th month.

It is distinctly understood that this is a contract of renting only, and not a sale, conditional or otherwise.

If any default does occur and the party of the first part does not forthwith exercise its rights such

extension or indulgence shall not be considered in fact or in law as a waiver of any rights.

No determination of this lease, nor taking, nor recovering possession of the said property, shall deprive the party of the first part of any action against the party of the second part for rent, nor shall the recovering possession of the property or the institution of any other suit for the recovery of rent or both, be construed as a waiver by the party of the first part to any of the rights of forfeiture herein reserved and granted.

And the said party of the second part hereby agrees that he will use said leased property in a careful and prudent manner; that he will not sublet or in any way dispose of the same to any one during the continuance of this lease without the written consent of the said party of the first part; that he will not remove, or attempt to remove the said leased property from the limits of Camden County, without the consent of the said party of the first part endorsed in writing hereon; that he will surrender up the same to the said party of the first part upon default or at the expiration of this lease in as good condition as when he took the same (natural wear excepted); and if upon surrendering the same as aforesaid, the said instalment of rent having been fully paid as herein provided, said party of the second part desires to purchase said leased property, said party of the first part agrees to sell the same for the sum of Fourteen hundred seventy nine & 35/100 Dollars, and the amount received for the rent of the same shall be applied upon the purchase price of the same at that date.

AND IT IS FURTHER PROVIDED, That in case said party of the second part shall fail to pay rent as herein set forth, or shall remove or attempt

to remove the said leased property from the limits of Camden County without the consent of the said party of the first part, or shall fail to surrender up said leased property upon default or at expiration of said lease, or shall fail to perform any of the covenants herein specified for him to perform, then in either case said party of the first part shall have the right to declare this lease void, so far as the rights of the said party of the second part are concerned, and the said party of the first part shall have the right to take immediate possession of said property wherever they may find the same, or to commence criminal proceedings when party of first part deems same necessary, in which case, and in any proceeding with or without recourse to law, to obtain possession of said leased property as aforesaid, said party of the second part waives and releases any and all claims and rights to bring any action or actions whatever against said party of the first part or their duly constituted agent or agents. It shall be optional with said party of the first part in case said party of the second part fails to comply with any of the covenants aforesaid, to proceed as above set forth, or to procure judgment to be entered upon this lease for the whole amount of rent unpaid, and for that purpose said party of the second part hereby authorizes the Prothonotary or Clerk or any Attorney of any Court of Record to appear for and confess judgment against him in favor of said party of the first part for the whole amount of rent unpaid and costs, whether the same shall have become due and payable under the conditions of this lease or not, and the said party of the second part hereby waives stay of execution, exemption laws, right of inquisition on real estate, errors and appeals, right to proceed to open judgment, or

open judgment, and further authorizes the Prothonotary to tax a commission of 20 per cent. as Attorney's commission in case execution issues thereon, said Attorney's commission to accrue also when account is handed to Attorney. An attorney's fee of at least $35 shall be chargeable in case replevin issues, and at least $5.00 fee for bond.

1. No repairs shall be made to this car without the written consent of the lessor first had and obtained.

2. The right to enter judgment shall include also the right to enter judgment for the cost required to put the car in the same condition as when leased, said cost to be proved by the lessor's affidavit filed, and to be conclusive.

3. Overdue payments accepted from the lessee are accepted on condition that no rights whatever are waived by the lessor.

4. No subsequent agreement shall be recognized unless endorsed in writing on this lease. In order to provide against the contingency of any claim which may be made that this lease was altered or changed in any respect by subsequent verbal understanding, it is expressly understood and agreed that no change can be made in the said lease or any of the terms and conditions hereof unless the said change be put in writing and signed by both parties hereto. It is further agreed that no waiver by word, conduct or otherwise, shall change this stipulation.

5. It is agreed that this lease and all covenants herein contained shall be binding upon the parties hereto, their and each of their heirs, executors, administrators, successors and assigns, and shall be construed as made in the State of Pennsylvania and subject to the laws of Pennnsylvania. This agreement of lease shall be governed by the laws of Pennsylvania.

6. The remedies to the lessor are cumulative, not alternative.

7. The attorney's fee as above provided shall be $35, and together with the fee for the bond, shall be taxed as legal costs. An attorney's fee of $35 shall be chargeable in the event of suit against the lessee for conversion of the leased car.

8. The lessee hereby agrees to return the leased car to the lessor at the lessor's place of business immediately upon lessee's failure to comply with any of the terms and conditions of this agreement without any previous demand by the lessor upon the lessee so to do. The failure of the lessee to return the car as aforesaid shall be deemed a conversion of the leased property by the lessee without any demand and refusal.

9. It is hereby agreed that in the event of default the whole unpaid rental shall become due and payable at once without any notice or demand.

10. The issuance of execution for the entire unpaid rental or any part thereof, or action for conversion, shall not in any manner affect the lessor's right to replevin the leased automobile. This stipulation shall not be effective where the unpaid rental in full with attorney's fees and costs as herein provided have been paid to the lessor.

This car is positively not guaranteed by this Company.

This agreement constitutes the entire contract between both parties, and there are no understandings, verbal promises or representations of any kind not printed or written on this sheet.

WITNESS, our hands and seals the day and year aforesaid.

x Auto Transit Company
By Milton Stern (L. S.)
Franklin A. Ward (L. S.)
524 Trenton Ave
Camden N. J.

This car has been examined thoroughly by me and I am satisfied with the condition of the car as it now is in every detail.

I have been advised that the Auto Transit Co. has no connection whatever with any other automobile company or concern.

Franklin A. Ward (L. S.)

I acknowledge delivery of car to me, and I have received a copy of the above agreement, and have no understanding, verbal or otherwise, differing from it.

Sign here Franklin A. Ward

TESTIMONY.

CAMDEN CITY DISTRICT COURT.

MILTON STERN, trading as AUTO TRANSIT COMPANY, *Plaintiff*,
vs.
ABRAM B. LANE and FRANK A. WARD, *Defendants*.

In Replevin.

November 21, 1918.

APPEARANCES:
For the Plaintiff, HARRY H. TEITELMAN, ESQ., JOSEPH BECK TYLER, ESQ.
For the Defendants, WILLIAM P. WALSH, ESQ.

Before PANCOAST, J., without a Jury.

THE CASE FOR THE PLAINTIFF.

Mr. Tyler opens the case to the Court as follows: May it please the Court, in the case of Milton

Stern, trading as the Auto Transit Company vs. Abram B. Lane and Frank A. Ward, In Replevin, the facts are that a Willys-Knight automobile was leased on the 30th of August, 1917, by the Auto Transit Company to Franklin A. Ward. The lease will be put in evidence showing the terms upon which it was leased and all the terms controlling the dealing between Ward and the Auto Transit Company. Among those terms it provides for installment payments, a rental, part of which has been paid and part of which has not been paid, so that the defendant Ward is in default, and the plaintiffs exercised their right under the lease to retake the car, which they have done. Now, the defendant, A. B. Lane, is made a party defendant because of the fact that the car was in his possession, he claiming a right to hold the car under our Garage-keeper's Act, and claiming a charge against the car, claiming that under our Act of 1915, which your Honor is very familiar with. Now, we propose to put this lease in evidence, show a default and show that the Garage-keeper's Act under the circumstances of this case has no application, and they have no right to the lien.

The Court: That is your defence, is it, as stated by Mr. Tyler, that Abram B. Lane claims a lien?

Mr. Walsh: We claim a lien on the car for repairs, storage, accessories and supplies furnished.

Mr. Tyler: Mr. Walsh, is that the only defence? You admit the lease and the default under the lease?

The Court: Well, he cannot admit the lease very well for Mr. Ward.

Mr. Walsh: I can't admit that or deny it; I don't know anything about it.

Mr. Tyler: Don't you represent Mr. Ward?

Mr. Walsh: Yes, but I haven't seen it and I would rather have it proved formally.

MILTON STERN, sworn.

By Mr. Tyler:

Q. Mr. Stern, you are the plaintiff in this case?
A. I am, sir.
Q. Trading as the Auto Transit Company?
A. Yes, sir.
Q. I show you a lease between the Auto Transit Company and Franklin A. Ward, dated August 30th, 1917, for a Willys-Knight touring car which appears to be signed by the Auto Transit Company by Milton Stern. Is that your signature?
A. It is, sir.
Q. It also appears to be signed by Franklin A. Ward. Did you see him sign that?
A. I did, sir.
Q. He signed it in your presence?
A. In my presence.
Q. And that is his signature?
A. That is his signature.

Mr. Tyler: I offer that in evidence.

(Said paper is marked Exhibit P1.)

Q. That car was delivered to Mr. Ward, was it, under that lease?

A. Yes, sir, in my presence.

Cross-examination.

By Mr. Walsh:

Q. Where was the car delivered, Mr. Stern?

A. In front of my place of business at 1422 Vine Street, Philadelphia.

Q. Did you see the car afterward?

A. After the car was leased to Mr. Ward?

Q. Yes.

A. Oh, yes, once.

Q. Where did you see it?

A. Saw it in Camden in this garage.

Q. In Mr. Lane's garage?

A. Yes.

Q. What was its condition when you saw it there at that time?

A. I couldn't tell you that, unless I heard it run, and I didn't hear it run.

Q. Don't you remember it had a broken crankcase, at the time?

A. No, sir, in fact it didn't; it didn't seem so to me.

Q. Did you have the crankcase repaired?

A. Never, never knew anything about the crankcase.

By Mr. Tyler:

Q. Mr. Stern, did you ever direct Mr. Lane to make any repairs to this car?

A. No, sir, I never knew that he made any until he had sent an enormous, ridiculous bill.

Q. You had never been advised that he intended to make it or consented to it in any way?

A. No, sir, none whatever.

Q. Did you ever sign any consent of any kind in writing authorizing anyone to make repairs?

A. No, sir.

By Mr. Walsh:

Q. Mr. Ward was the lessee of this car, wasn't he?

A. He was, yes.

Q. He had the car in his possession?

A. Well, it seems as though he did not take it in his possession.

Q. Well, he had it in his possession originally, didn't he?

A. Yes.

Q. And he had it in his possession at the time the repairs were made on it?

A. I don't know—you can't prove that by me, because I don't know who had it, because I didn't see the car for probably eight months afterwards, seven months.

By Mr. Tyler?

Q. What is your bookkeeper's name, Mr. Stern?

A. I brought my stenographer with me who has charge of the index cards, and my bookkeeper, I let her stay at the office.

Q. What is her name?

A. Miss Quigley.

By Mr. Walsh:

Q. What kind of a car is this?
A. Willys-Knight touring car.
Q. What model?
A. 1917 or 1918.
Q. What is its value?
A. Its value at least is five hundred dollars.
Q. Isn't it worth a thousand dollars?
A. No.
Q. How much did you get for it, or at least sell it for?
A. We didn't sell it.
Q. Lease it then,—what amount were you to receive for it?
A. Well, I think the lease is in evidence, if I may look at it.
Q. Can't you answer the question?

Mr. Tyler: I object to that; the lease is the best evidence.

A. I can't carry that in my mind; I would have to refer to the lease itself.
Q. Will you kindly look at the lease—you were present when it was executed.
A. Oh, yes; the total amount of rentals were fourteen hundred and seventy nine dollars and thirty-five cents.
Q. And what model is it, a 1917 model?
A. A 1917 or '18.
Q. 1917 or '18?
A. Yes.
Q. What condition is it in now?
A. I don't know; I am not seeing it now.
Q. Well, when did you see it last?

A. I haven't seen it for probably three or four weeks.

Q. What condition was it in then?

A. I don't know, I didn't hear it run.

Q. Did you see it?

A. Yes.

Q. If you had it in your possession now, how much would you sell it for, what would you take for it?

Mr. Tyler: I object to that as not material.

The Court: No, it is immaterial.

Mr. Walsh: I think it is material, if the Court please, to determine the question whether or not this Court has jurisdiction in this matter. It appears to me that this is a proceeding which is without the jurisdiction of this Court inasmuch as the value of the goods replevied is considerably in excess of the amount of the jurisdiction of this Court, and to determine that value I don't know anybody better to ask than the man who is an expert in his knowledge of the value of automobiles, who is engaged in the automobile business.

Mr. Tyler: That should have been attacked directly.

The Court: I wouldn't want to take his testimony along that line, after having heard him say that he don't know what the condition of the car is; I think he would make a very poor witness.

Mr. Walsh: All right; that is all.

MARY QUIGLEY, sworn.

By Mr. Tyler:

Q. Are you employed by Milton Stern?
A. Yes, sir.
Q. Did you have charge of the record of the lease payments on the Franklin A. Ward lease?
A. Yes.
Q. Have you the record here of those payments?
A. On the card, yes.
Q. Is that the card?
A. Yes.
Q. Does that show what payments he has made?
A. Yes, sir.
Q. Does it show all the payments?
A. Yes.
Q. What payments has he made?
A. On September 7th, 1917, one hundred dollars, October 15th, 1917, fifty dollars, November 2nd, 1917, fifty dollars, November 17th, fifty dollars, December 4th, fifty dollars, December 22nd, fifty dollars, March 8th, 1918, fifty dollars, May 10th, two hundred dollars, May 21st, fifty dollars and August 19th, ten dollars.
Q. Are they all the payments that have been made?
A. Yes, sir.

No cross-examination.

MAXWELL PESTCOE, sworn.

By Mr. Tyler:

Q. Mr. Pestcoe, are you a member of the bar of Pennsylvania?

A. Yes, sir.

Q. A practicing attorney there?

A. Yes, sir.

Q. And a graduate of what school?

A. University of Pennsylvania Law School.

Q. When did you graduate?

A. Nineteen hundred and eleven.

Q. Been practicing since that time?

A. Yes, sir.

Q. And are at present practicing?

A. I am.

Q. Have you seen the lease that was executed and been offered in evidence in this matter, marked Exhibit P1?

A. I have.

Q. Have you read that lease over?

A. Very carefully.

Q. Under the laws of Pennsylvania, that lease, has it been interpreted by the Courts of Pennsylvania?

A. It has.

Q. Is it a lease or a conditional sale?

A. It is a lease; they call it a bailment lease.

Q. Has the right of a garage keeper under the laws of Pennsylvania to assert a lien for repairs been adjudicated?

A. It has.

Q. On that particular lease?

A. Exactly.

Q. Do your courts hold——

Mr. Walsh: I object.

Q. Wait a minute, pardon me; have the Courts of Pennsylvania decided whether or not a garage keeper can assert a lien against a lessor?

Mr. Walsh: I object.

The Court: Why?

Mr. Walsh: Upon the ground that the law of Pennsylvania does not apply to the contract created between the lessee of the automobile and the defendant in this case, that contract having been created in New Jersey.

The Court: I will hear it for what it is worth. As I understand it, the question goes now to a lessee in the State of Pennsylvania.

Mr. Tyler: We are simply proving the law of Pennsylvania upon the transaction of this case, that is all.

The Court: Under the terms of the lease, yes.

Mr. Tyler: Yes, under the terms of our lease.

(Question repeated.)

A. Yes, sir, the exact question has been ruled upon by the Superior Court of Pennsylvania.

Q. And what did it hold?

A. It held that the garage man cannot assert a lien against a leased automobile as against the owner.

Q. Is that the law of Pennsylvania.

A. That is the law of Pennsylvania today.

Q. And has been for some time past?

A. It is, sir; I argued the case in the Superior Court of Pennsylvania myself.

Q. And that was the decision?

A. That was the decision.

Q. Was that upon this particular lease or one just like it?

A. It was upon the lease, exactly upon that.

Q. With those same terms and conditions?

A. The same terms and conditions; I drew that one.

Q. And in that case it involved a claim of a garage keeper for materials or repairs made to a car which was asserted against the lessor?

A. Exactly, the claim there was for repairs to a car leased to a lessee under similar circumstances as here by the Auto Transit Company.

No cross-examination.

PLAINTIFF RESTS.

THE CASE FOR THE DEFENDANT.

FRANKLIN A. WARD, sworn.

By Mr. Walsh:

Q. Mr. Ward, you are one of the defendants in this case?

A. Yes.

Q. You are the person who obtained this car from the Auto Transit Company, are you?

A. Yes.

Q. You remember the circumstances under which it was bought?

A. Yes.

Q. And you executed an agreement at the time to make certain payments?

A. Yes.

Q. Did you read the agreement thoroughly at the time?

Mr. Tyler: I object to that as immaterial and irrelevant.

Q. Did you read the agreement thoroughly at the time that you signed it?

A. I did so, yes, sir.

Mr. Walsh: Do you withdraw your objection?

Mr. Tyler: I withdraw the objection, yes, that is all right.

Q. You made certain payments upon that car, Mr. Ward, did you?

A. Yes.

Q. Now, where did you take that car?

A. When I got the car from the Roman people through the Auto Transit, I took it to A. B. Lane's garage on Haddon Avenue.

Q. Did you tell him it was your car?

A. I did, yes, sir.

Q. You placed it in there on storage?

A. Yes, sir.

Q. At what rental?

A. Well, on the start it was twelve dollars, then when we got up to the war business it got up to fifteen dollars.

Q. Were any repairs made to that car?

A. Yes, sir.

Q. At your direction?

A. Yes, sir.

Q. By Mr. Lane?

A. Yes, sir.

Q. Are you familiar with the amount due by you for repairs and storage?

A. Well, repairs and storage and supplies, and such as that—I was in there sometime in June and Mr. Lane and I had quite a little argument about the bill; the bill was over four hundred dollars at that time.

Q. Did you go over the account?

A. I did, yes.

Q. Did you agree upon the amount which was due?

A. After going over it, I did, yes, sir.

Q. And do you recall just what the amount is now, Mr. Ward?

A. Well, no, I can't exactly, no.

Q. You had stated to Mr. Lane that you were the owner of this car?

A. Yes, sir.

Cross-examination.

By Mr. Tyler:

Q. Mr. Ward, are you employed by Mr. Lane?
A. I was at one time, yes, sir, for two weeks, I think, two or three weeks.
Q. When were you employed?
A. I can't just exactly tell just what month it was, I don't just remember.
Q. Well, tell me as nearly as you can?
A. I have got to think a little on that; I will tell you, on that, because I have been down to the New York Shipyard—

By Mr. Walsh:

Q. You can place it by when you went to the shipyard; when did you go to the shipyard?
A. I think in August I went to the shipyard sometime.

By Mr. Tyler:

Q. What did you do when you were employed by Mr. Lane?
A. Just simply looking after the fore part of his place for him; he was back in the back part with his men. The war business stopped me, and I had to do something.
Q. You were there in the fore part of August before you went to the shipyard?
A. I think it was, yes.
Q. And you were only there two weeks?
A. Two or three weeks, I can't tell you exactly when it was.

Q. And your duties were what?

A. Attended to the front part of the garage.

Q. That is, looking after cars going in and out?

A. Attending to the oil and gas and such things as that, making charges.

Q. Did you have a bookkeeper?

A. At that time?

Q. Yes.

A. No, only what I did for him at that time; just previous to that he did have.

Q. The account that you made up to the Camden Auto Company against yourself was written up by you, wasn't it?

A. I don't think so; I don't think that I ever wrote it up at all.

Q. The Camden Auto Company is Mr. Lane, isn't it?

A. Yes.

Q. He trades as the Camden Auto Company?

A. Yes, sir.

Q. Isn't this bill that you made up made up in your handwriting?

A. We can soon tell. (After examining paper) No, sir, I don't think it is.

Q. Don't you know whether it is or not?

A. I don't never remember making a thing up like it, never made it.

Q. Did you make this one up? (showing witness another paper.)

A. Did I make this one up?

Q. Yes.

A. No, sir, I did not.

Q. Is that your writing?

A. No, sir.

Q. Is this one your writing?

A. No, sir.

Q. Do you know whose writing it is?

A. I know nothing at all about it; there are two or three bookkeepers there.

Q. You just said he didn't have any at the time, didn't you?

A. I said just previous to my going there he had a bookkeeper; he had two or three bookkeepers before I ever went there.

Q. This Exhibit P1, that was signed by you, wasn't it?

A. Yes, sir, that was signed by me; I signed that over in Mr. Stern's office. I don't remember making that at all. (Referring to another paper.)

Q. You say that is not your handwriting?

A. I don't remember making that at all, no, sir. I didn't, because I wasn't there at the time when that was made. I don't remember making it, now, that is all there is to it.

Q. It might have been made by you, mightn't it?

A. That I can't tell, because I don't remember.

Q. Look at your name written at the top, "F. A. Ward," and look at your signature?

A. That is all right, that is true, too.

Q. Aren't they exactly the same handwriting?

A. No, they are not exactly the same, no, not by a whole lot.

Q. Look at the "W," isn't that exactly the same?

A. No, not by a whole lot. These two W's are alike.

Q. How about the "a," isn't that the same? Look at the top, isn't that the same as that?

A. No, it isn't exactly the same.

The Court: What difference does it make anyhow?

The Witness: That is what I would like to know.

By Mr. Walsh:

Q. Now, Mr. Ward, were you present at Mr. Lane's garage when Mr. Stern or one of these gentlemen representing him came over there to see you and Mr. Lane?

A. I was, yes, sir.

Q. Mr. Lane telephoned for you and got you to come around?

A. Yes, sir.

Q. What conversation was had between you at that time?

A. Well, we talked over the car business, and there was some kind of agreement come to that I could use the car with Mr. Lane's permission to make some money, and Mr. Lane was to see that they received the money that this car derived—

Mr. Tyler: I object to that; under the terms of our lease which he signed it is absolutely immaterial and irrelevant.

The Court: Well, I don't know.

Mr. Walsh: It may be a new contract.

(Question and answer repeated.)

Mr. Tyler: That is immaterial because it does not affect our title in any way; it is contrary to the lease, it wouldn't have any consideration for it anyway, and has no bearing upon their rights on the defense, it is immaterial and irrelevant on any phase of the plaintiff's case or the defendant's case and would be without consideration.

The Court: Do you mean to say now, Mr. Tyler, that they would not have a right to vary the terms of an instrument under seal with the forbearance on the one side in consideration of money that would be obtained from the use of the automobile, where at the time this agreement was made there had been default under the terms of the lease?

Mr. Tyler: The lease expressly provides that no subsequent agreement shall be recognized unless indorsed in writing on this lease. Now, that lease is admitted by the parties and they are trying to vary it, and they can only vary it in one way, because they have agreed that is the only way they can do it, is to vary it by written agreement. That is their engagement. Now then, it is just like a building contract where they say, "We shall not be responsible for any alterations or additions except they are written down and signed by the parties;" unless they do it, they can't get them, that is all there is to . Now, here they have expressly agreed how they shall change this if they want to change it, and it is not admissible as evidence to show any other kind of an agreement. It is just exactly like where an agreement provides that no collateral agreements, undertakings or promises exist except as contained in this agreement.

The Court: All right; where would Mr. Lane be under that proposition? He is not a party to this lease. Wouldn't he have a right to make an agreement with Mr. Stern? This man goes to see Mr. Lane, and Mr. Lane telephones—

Mr. Tyler: Then you are coming back to the main question in the case. The title to the car depends on this lease.

The Court: As far as Mr. Ward is concerned—

Mr. Tyler: As far as anybody is concerned the title of the car depends on this lease.

The Court: As I read the lease, there hasn't been any title passed out of the company yet, but we are not dealing here with the title, we are dealing with the right of possession.

Mr. Tyler: Even this testimony does not go to the right of asserting this lien for repairs, so it is immaterial on that ground.

The Court: All right; I sustain the objection.

HOWARD T. JUSTICE, sworn.

By Mr. Walsh:

Q. Mr. Justice, where is your place of business?
A. 312 Market Street and Pine and Walnut Street.
Q. You know where Mr. Lane's garage is?
A. I do.
Q. Frequently go there?
A. Every day.
Q. You get your service there?
A. Yes, sir.
Q. Are you familiar with Mr. Ward's car?
A. I am.
Q. The car in question here—are you familiar with the value of it?
A. Why, I had been down to see Mr. Mackintosh with regard to—I had sold my other touring car and

was looking for another seven passenger, and Mr. Mackintosh offered me—

Mr. Tyler: I object to anything he told you, because he is not qualified as an expert in cars and is not qualified to testify as to the value of the car.

The Court: Do you doubt that he isn't? Suppose you examine him just on the question of his qualifications; you examine him.

By Mr. Tyler:

Q. Mr. Justice, how many cars have you ever bought and sold?
A. About seven.
Q. You have bought about seven?
A. I have bought seven.
Q. And how many have you sold?
A. Sold six of them.
Q. Are you in the car business?
A. Well, no.
Q. Are you a dealer in cars?
A. Not a dealer, no.
Q. How many of these cars that you bought were new?
A. Three of them.
Q. And the other four were second-hand cars?
A. They were, sir.
Q. And how many of the cars that you sold were second-hand cars when you bought them?
A. Why, all of my cars I have sold, including new ones and second-hand ones, except the one I have got now, which was a second-hand car.
Q. Was that second-hand when you bought it?
A. It was, sir.

Q. So you bought and sold three second-hand cars?
A. Yes.
Q. And that is all?
A. Yes, sir.
Q. When was the last time that you sold a second-hand car?
A. In March.
Q. Of this year?
A. Yes, sir.
Q. Did you ever buy or sell a Willys-Knight car second-hand?
A. Not a Willys-Knight, no, sir, an Overland.
Q. Do you know what a Willys-Knight car costs new?
A. Only from what Mr. Mackintosh told me when I was down to see him.
Q. You don't know of your own knowledge?
A. No, sir.
Q. And what is your business, Mr. Justice?
A. Building material.
Q. You are not in the business of dealing in second-hand automobiles, are you?
A. If I can buy one and make a dollar, yes, sir.
Q. But you don't make a business of that—that is not your principal business, is it?
A. Well, I would say no, it is not my principal business.
Q. And never has been?
A. No, not as a second-hand dealer.
Q. How long have you been in the building material business?
A. About seventeen years.
Q. Do you own a garage?
A. A public garage?
Q. Yes.
A. No, sir.

Q. You operate one?

A. A public garage? No, sir.

Q. Do you have a place where you make it a business to buy and sell cars, a place of business for that purpose?

A. No, sir.

Q. And never have had?

A. No, sir.

Q. You simply buy one the same as I or any one else would do if you find you can make a dollar on it, is that the idea?

A. That is the idea, yes.

Q. But you are not in that business particularly?

A. I am in business for anything I can make a dollar out of, in my own personal business, because that goes into my own pocketbook.

Q. And that you would do with anything?

A. Yes.

The Court: What is the purpose of this testimony?

Mr. Walsh: To prove the value of the car.

Mr. Tyler: I object to the witness—in the first place I object to the materiality of the offer of the evidence; I object to the offer on the ground that it is immaterial.

The Court: How would the defendant show that this Court hasn't jurisdiction if he did not show it in that manner? What is your idea what the practice ought to be?

Mr. Tyler: It should have been attacked on a direct proceeding, and not on a question of title. The

only thing at issue at this hearing today, is the title, the right of possession of this car. If they wanted to attack the jurisdiction, it should have been done before they appeared. They have entered an appearance here, and re-replevined the car and appeared in the proceedings, recognized it.

The Court: They haven't re-replevied.

Mr. Tyler: Oh, yes, they have, they put up a counter-bond and have taken the car back again.

The Court: Well, but they are only doing that on a notice claiming property in the car.

Mr. Tyler: Yes, they have done that; they didn't have to do that if they didn't want to.

The Court: No, but they chose that method.

Mr. Tyler: Yes, they chose the method of filing a claim of property asserting their title in contradiction to ours and filing a bond and taking the car back again, which is a recognition of the proceeding and not an attack; you can't have a collateral attack of that kind after appearing.

Mr. Walsh: If it please your Honor, there wouldn't be any other remedy at hand, it appears to me, for the defendant, because unless a claim of property had been filed and a bond had been filed by the defendant we would have been out of court altogether. As I take it, the proceedings in this court being more or less informal, and no pleadings usually being required except in special statutory proceeding such as replevin, any question over which the

Court has jurisdiction can be raised at the trial without the necessity or formality of a special pleading for that purpose.

The Court: My notion would be that as far as any defendant is concerned he could move to dismiss at any time before the case went to the jury. Now, whether or not he would be permitted to put in this kind of proof or not, that is a question here, having filed a bond.

Mr. Walsh: We would have been out of court if we did not file a bond; we had to do that to protect ourselves. If we did not come in on the return day or did not file our bond within the statutory time, the plaintiff would simply walk in here and discontinue his case, and away goes the machine. We had to do that as a matter of protection, and I don't think that we forfeited any rights by doing that. We had to meet the situation which they presented at the time, and had to do it hurriedly. We put up the bond; that is the theory of a replevin proceeding, to put up a bond—

The Court: Mr. Walsh thought he had to put up that bond and he did if he wanted to retain possession, and he didn't, as I view it, have to do anything more than you did. Now, if he did something that he has, as he claims, a right to, and didn't overstep the mark, namely, gave a bond for no greater amount than you did, in order to put himself in right, retain the possession of his goods, and filed the same amount of bond that you filed, why can't he show—

Mr. Tyler: He joins issue on a claim of property, but what he should have done would have been a

special appearance and a motion to dismiss, the same as on a question of service; it is always a preliminary matter, but he didn't do that.

The Court: You could not have obtained your original writ in this matter had not the affidavit of value been correct.

Mr. Tyler: No, we stand on that; of course, that could be attacked.

The Court: Well, he is going to attack it; he says this affidavit is all wrong.

Mr. Tyler: He can't attack it now, because he has joined issue on the question of title.

The Court: No, he has joined issue on the question of the right of possession.

Mr. Tyler: Well, that is title.

The Court: Not necessarily.

Mr. Tyler: It is a good part of the title.

The Court: It is true, I agree with you if the matter involved was between the plaintiff and Ward, but unfortunately there is a third party here.

Mr. Tyler: And all he can do—he can't come in, if he is appearing as a third party and attack the other proceedings—all he can do is to assert his lien and stand on it as far as Mr. Lane is concerned.

The Court: Mr. Walsh says he represents both parties.

Mr. Tyler: I know, he switches from one to the other just as it suits, that is all right.

The Court: Mr. Lane is definitely named as a defendant in this proceeding.

Mr. Tyler: Yes, because it is in his possession; he can only claim possession to the extent of his claim, which is less than the five hundred dollars. His claim is within the jurisdiction of this Court.

The Court: (After further argument) Well, in the first place, I should hear any testimony which the defendant or either of them wish to put in regarding the value of this car which will go to the Court's jurisdiction to determine the matter. Now, as far as Mr. Justice is concerned and his knowing the value of this particular machine, I think I would say he is competent to tell the value of it.

(Exception noted for the plaintiff.)

Mr. Tyler: Did I understand you to rule that you would receive testimony on the jurisdictional question?

The Court: Yes.

Mr. Tyler: I ask an exception to that, too.

The Court: Yes, I will give you an exception to the general matter.

By Mr. Walsh:

Q. Now Mr. Justice, what in your judgment is this car worth?

Mr. Tyler: I object to that because it fixes no time.

The Court: Yes, just fix the time of his examination of the car itself and as to what extent he has examined it, then let him answer the question.

By the Court:

Q. When did you examine the car, Mr. Justice?

A. Now, just the exact time I can't say, during the fishing season at Fortescue; now, just what date it was or in what particular week I can't answer.

Q. Well, how long ago has that been?

A. Well, I should judge that was—this is November—I should judge July some time.

Q. Well, that is too far away.

By Mr. Walsh:

Q. When have you seen it last, Mr. Justice?

A. Why, this morning.

Q. Well, what is its condition now with relation to its condition when you examined it carefully in July or August—is there any difference?

Mr. Tyler: First, did you examine it this morning?

The Witness: Why, I have looked at it every day when I went in there, because I go in the garage every day.

By Mr. Tyler:

Q. Have you run it—do you know what its running condition is today?

A. I did not, sir.

Q. The value of a car depends upon its running condition, doesn't it?

A. Most assuredly, that is it, it depends on it's running condition.

Q. And you don't know what that condition was either this morning or within the last three or four weeks?

A. No, sir.

By Mr. Walsh:

Q. Have you seen it run within the last three or four weeks, Mr. Justice?

A. I have not.

(Witness withdrawn.)

ABRAM B. LANE, sworn.

By Mr. Walsh:

Q. Mr. Lane, what is your business?

A. Automobile repair and garage.

Q. Do you buy and sell machines?

A. Sometimes.

Q. How long have you been engaged in the automobile business?

A. About eight years.

Q. How many machines in your judgment have you handled, bought and sold, in that time?

A. Oh, I suppose about two hundred.

Q. Are you familiar with the values of various kinds of automobiles?

A. Well, as a rule.

Q. Do you know the value of the Willys-Knight automobile which is the subject of this controversy?

Mr. Tyler: That is objected to for the same reason that I said before, that the purpose of the testimony should be indicated first, whether it goes to the question of damages or whether it is the jurisdictional question.

The Court: My understanding is that this testimony goes to the question of jurisdiction.

Mr. Tyler: Then I object to the question.

The Court: Because you say it does?

Mr. Tyler: Yes.

The Court: You say, "I object to it, because it goes to the jurisdiction"?

Mr. Tyler: Yes.

The Court: I will allow the question.

(Exception noted for the plaintiff.)

Q. What is the present value of this Willys-Knight car?

A. Not over seven hundred dollars.

Mr. Tyler: I object to that; the present value is not the question at all.

Q. What was this machine worth in June?

A. I had an offer for it—

Mr. Tyler: That is objected to; it is immaterial and irrelevant.

The Court: No, the only question is, what was the machine worth when it was replevied?

A. I had an offer for it—

Mr. Tyler: Wait a moment; that is not the way to prove value either.

Mr. Walsh: I think that is the best way to prove it, the bona fide value.

Q. Have you had an offer for this machine down there?

Mr. Tyler: I object to that as not—

The Court: The objection is sustained; that is immaterial.

Q. What was the machine worth at the time the replevin papers were served on you?

Mr. Tyler: I object; it is not a question of what it is worth; that is not what we are after.

Mr. Walsh: I urge that question. What was its value at the time these proceedings were begun?

The Court: That was not your question, Mr. Walsh.

Mr. Walsh: That was not my question?

The Court: No. (To the stenographer) Read the question to him.

(Question repeated.)

Mr. Tyler: I object to that.

The Court: That is objectionable.

Q. What was the value of this car a month ago, Mr. Lane?

Mr. Tyler: That is objected to as immaterial and irrelevant.

The Court: It is immaterial what the value was a month ago.

Q. What is the present value of this car?

Mr. Tyler: I object to that as immaterial and irrelevant.

The Court: It is immaterial.

Mr. Walsh: May it please your Honor, I sincerely believe that I have a right to prove the value of this car at the time the affidavit was taken by the plaintiff, establishing a value, to attack the accuracy and correctness of that, for the purpose of determining whether or not this Court has jurisdiction.

Mr. Tyler: I am only objecting to the questions as they are asked, that is all.

The Court: I think you have a right to prove that, Mr. Walsh.

Q. What is the value of this car now, Mr. Lane?

Mr. Tyler: I object to that as immaterial.

The Court: It is immaterial what the value is now.

Q. Well, what was the value the first of January?

Mr. Tyler: I object to that as immaterial and irrelevant.

Mr. Walsh: It seems to me I have a right to determine whether it has depreciated in value as time has gone along. Has the Court ruled that I cannot ask the value of the car at the time the proceedings were brought?

Mr. Tyler: No, there is a question here; what was the question.

Mr. Walsh: The Court has ruled on that question.

Mr. Tyler: It has ruled it out; is that your understanding?

Mr. Walsh: Yes.

Q. Do you recall the time when the writ of replevin was served upon you, Mr. Lane?

A. Somewhere about two weeks ago, I don't just remember the day. It wasn't served on me; it was left at my place. I never seen it until I came in; it was served on a boy.

Q. The car was in your possession at that time?

A. It was; it is still there.

Q. What was the value of the car at that time, Mr Lane?

Mr. Tyler: I object to that; it is not the value that we are concerned with; it is a peculiar kind of value which the law recognizes and no other, and, "value" is a word which does not fit the situation at all. There is only one particular kind of value which the Courts recognize and its value is not covered by this question.

Mr. Walsh: I just don't recall the exact language of the statute, but it appears to me that the word "value" actually enters into this section giving the Courts jurisdiction where the value of goods involved shall not exceed five hundred dollars.

The Court: That is correct.

Mr. Walsh: When these proceedings were begun, if the value of the goods in dispute exceeded five hundred dollars, the proceedings are improperly brought, they are brought in the wrong court, and on account of the fact that this is a special statutory proceeding, there being only a very few in this court, which requires any special pleading, it became necessary to do certain things, namely, claim property and file a bond within a very short time, twenty-four hours. If that had not been done, the defendant would have been out of court, would have lost any rights which he might have had in the matter. In order to protect his rights he had only to accept at its face value the original declaration, the estimate of value made by the plaintiff in this case. He is not obliged and was not obliged to raise the question of value at that time by any special plea.

The Court: Well, we will let you raise the question of value, we will let you go ahead and prove it, only Mr. Tyler wants you to prove it the way you should prove it; he is technical about it, so go ahead and do it.

Mr. Walsh: If I am not proving it I don't know how to prove it.

Q. You are familiar with the value of automobiles, are you, Mr. Lane?

A. As a rule.

Mr. Tyler: That has all been covered; I object to it; it is a repetition.

The Court: Let him proceed, Mr. Tyler.

Q. And you are familiar with the value of this particular Willys-Knight automobile?

A. I am.

Q. And how long have you been familiar with its value?

A. I make it a business of following up the market, keeping in touch with the market prices on cars.

Q. What was the value of that car two weeks ago, Mr. Lane?

Mr. Tyler: I object to that as immaterial and irrelevant.

The Court: I will admit it.

Mr. Tyler: I object to it on the ground that it does not prove the particular kind of value that is material to this issue.

Q. What is the money value of this car two weeks ago?

Mr. Tyler: That is objected to for the same reason.

The Court: I will hear it.

The Witness: Shall I go ahead?

The Court: Yes.

A. About seven hundred dollars.

Q. Has it been worth less than seven hundred dollars at any time it has been in your garage?

A. No, sir.

Q. Now, Mr. Lane, you did some repairs to this car?

A. I did.

Q. And furnished some supplies. Have you an account which shows what you have done?

(Witness produces paper.)

Q. What is the amount due you?

A. Well, I haven't totalled it up there, it is something over six hundred dollars.

Q. Over six hundred dollars?

The Court: Well, we are not interested in the amount, just so he has a lien and how he gets it.

Q. And you have seized this car under what is known as the Garage-keeper's lien law of 1915, April 14th, and you instructed me to proceed—

A. Two weeks ago last Friday night I directed you to advertise this car.

Q. To advertise in the "Courier"?

A. Yes, which you failed to do.

Q. Has any part of this bill been paid you?

A. Not this present bill; the items previous to this has been settled, up to January 1st; there was a balance struck on January 1st, 1918, which Mr. Ward —I had him around there, and he had his bill—when I rendered it, sent it to him, he came around there to look the items all over and he was perfectly satisfied that the bill was correct; there was a balance of a hundred and nine dollars and some cents due at the end of December, and from that time on I wasn't aware that the car was not paid for or was on a lease, it was never under my notice that the car was on lease until June when I notified Mr. Ward there would have to be some money coming or I would have to seize it; I was getting tired waiting for the money.

Q. And that is the first—

A. Then the man from over at the Auto Transit Company—I don't know just what his name was, couldn't say his name, only know what he tells me his name is—he came in there and asked me to send him a statement, and I sent him a statement.

Q. You didn't know up to that time that the car was on lease?

A. I didn't know up to that time that the car was on lease; I supposed Ward had bought the car out-right; I didn't know Ward was up against it that tight, and I kept letting the bill run; I had done lots of business with his father, and I had him as Aaron Ward & Son, my bills and the checks always came through very promptly, not over two months at a time, but since Mr. Ward and I have been doing business it has run all the time, he hasn't been able to pay it.

Q. Do you know why he hasn't been able to pay it?

A. Only from what he tells me, that he has city contracts that he can't go on with on account of the war work.

Q. And you depended on him?

(Objected to.)

A. I depended on him getting the money to clean it up.

Mr. Tyler: I object to that as immaterial.

Cross-examination.

By Mr. Tyler:

Q. Now, you say you were advised in June that Mr. Ward was buying this car on lease?

A. Through a man calling himself by the name of Stern; I don't know what Stern it was.

Q. And he advised you that Mr. Ward was buying it on a lease?

A. He did.

Q. In June?

A. Yes.

Q. What time in June?

A. I think it was somewhere around the twentieth or something like that, very close to that date, Mr. Tyler.

Q. And notwithstanding that, you kept on letting Mr. Ward have supplies and making repairs to the car?

A. On an agreement with Mr. Stern at that time in my office.

Q. Even though you knew it was on a lease—did you see the lease?

A. I never saw the lease.

Q. Did you ever ask to see it?

A. No, sir.

Q. But you knew one existed?

A. I knew one existed at that time, and I had then seized the car previous to that time, tied it up, and wouldn't allow Mr. Ward to go out with the car until this man Stern told me—

Q. You say you had seized the car previous to that?

A. I had put the car up and told Mr. Ward he could not use it any more until I got some money.

Q. When was that?

A. That was about the second week in June.

Q. As a matter of fact, he did use the car after that?

A. On an agreement with the man that came over from the Auto Transit.

Q. Answer my question; he did use the car after that?

A. Not until this man from the Auto Transit came over there and had a talk with me.

Q. Won't you answer my question?

A. I am answering your question; what more do you want?

Q. Listen to me; did Mr. Ward after that use the car?

A. Not personally.

Q. He didn't drive the car?

A. He did not.

Q. Hasn't the car been used in the last few weeks?

A. It was not.

Q. When was it last used?

A. It was last used during the epidemic.

Q. When?

A. During this epidemic of influenza.

Q. How long ago since it has been used?

A. I could tell by the record of my book of Arthur Holl's account.

Q. Do you know about how long?

A. It was in October last it was used; it hasn't been used since October. The car was hired to Arthur Holl, the undertaker, and his account shows it.

DEFENDANT RESTS.

BOTH SIDES REST.

To the Honorable, the Chief Justice and Associate Justices of the New Jersey Supreme Court:

The judgment, order and proceedings herein, with all things touching and concerning the same as fully and entirely as they remain in the Camden City District Court I do hereby certify under the seal of the court in the schedule hereto annexed, as within I am commanded.

(SEAL) GARFIELD PANCOAST,
Judge.

MEMORANDUM.

NEW JERSEY SUPREME COURT.

MILTON STERN, trading as Auto Transit Company,
Prosecutor,

vs.

FRANKLIN A. WARD and ABRAM B. LANE,
Respondents.

Argued July 28, 1919; decided September 26, 1919.

On certiorari to Camden District Court.

Before a single Justice pursuant to Sec. 5 of the Certiorari Act.

For the prosecutor, Joseph Beck Tyler.

For the respondent, Abram B. Lane, Patrick H. Harding.

TRENCHARD, *J*:

The plaintiff in the District Court below (the prosecutor here) sued out a writ of replevin and took possession of an automobile. The defendants put in a bond, retained possession of the car, and filed a claim of property, and in that way the matter proceeded to trial and judgment, for the defendant, Abram B. Lane, in the District Court.

At the trial it appeared, as will hereinafter be shown, that the plaintiff leased the automobile to the defendant, Franklin A. Ward; that the defendant, Lane, was a garage keeper and had possession of the car on a claim for repairs and supplies which he had furnished at the request of Ward, the lessee.

The prosecutor contends that such claim could not be asserted as a lien against the car in the circumstances of this case, and hence that the judgment was wrong.

I am of the opinion that the prosecutor's contention is sound.

Our Garage Act (P. L. 1915 p. 556) provides for a lien where the repairs or supplies are furnished "at the request or with the consent of the owner or his representative, whether such owner be a conditional vendee or a mortgagee remaining in possession or otherwise."

But these repairs and supplies were furnished at the request or with the consent of Ward alone and without the knowledge or consent of the plaintiff. The paper writing under which Ward held possession of the automobile was a lease. It was in that form. It was made in Pennsylvania, the car was delivered in Pennsylvania, and was to be returned to the lessor in Pennsylvania at the end of the term or upon default under the lease. The lease itself provided expressly that it should be construed subject to and be governed by the laws of Pennsylvania. Under the law of Pennsylvania, as proved at the trial, it was in fact a lease. Ward was therefore the lessee of the car and not the owner or conditional vendee or mortgagor remaining in possession.

The question remains, was Ward, the lessee, the owner's representative? I think not. The lease expressly provided that no repairs should be made without the consent of the lessor first had and obtained. Moreover, it appears that in Pennsylvania the lessee under a lease quite like that now under consideration has been held to be not the representative of the owner for the purpose of creating a lien for repairs and supplies. See Stern vs. Sica, 66 Superior Ct. (Pa.) 84.

The judgment below must be reversed and a new trial awarded.

Filed September 26, 1919.

ENOCH L. JOHNSON,
Clerk.

RULE REVERSING JUDGMENT OF CAMDEN DISTRICT COURT.

NEW JERSEY SUPREME COURT.

MILTON STERN, trading as Auto Transit Co., *Prosecutor,* vs. FRANKLIN A. WARD and ABRAM B. LANE, *Respondents.*	On Certiorari Rule reversing judgment of Camden City District Court.

The Court having inspected the transcript and proceedings of the District Court of the City of Camden, returned with the certiorari in this cause, and the reasons for reversng the judgment below and heard the argument of counsel thereon and having duly considered the same;

It is, on this twenty-ninth day of September, 1919, ordered that the judgment of the District Court of the City of Camden, be reversed, set aside, made void, and for nothing holden, and that the said plaintiff in certiorari be restored in all things wherein he has lost by reason of said judgment and a new trial be and it hereby is awarded.

JOSEPH BECK TYLER,
Attorney for Prosecutor.

NOTICE.

NEW JERSEY SUPREME COURT.

MILTON STERN, trading as Auto Transit Co.,
Prosecutor,

vs.

FRANKLIN A. WARD and ABRAM B. LANE,
Respondents.

On Certiorari.
Notice.

To Joseph Beck Tyler, Esq.,
Attorney for Prosecutor.

TAKE NOTICE:

That the respondent, Abram B. Lane, hereby appeals to the Court of Errors and Appeals from the whole and every part of the judgment of the Supreme Court, rendered in this cause.

Dated September 30, 1919.

Respectfully,
PATRICK H. HARDING,
Attorney for Respondent,
Abram B. Lane.

Service acknowledged, Oct. 1, 1919.
JOSEPH BECK TYLER.

REASONS.

NEW JERSEY COURT OF ERRORS AND APPEALS.

MILTON STERN, trading as Auto Transit Co., *Appellee,*

vs.

FRANKLIN A. WARD and ABRAM B. LANE, *Appellants.*

On Certiorari. Appeal.

The appellant, Abram B. Lane, by Patrick H. Harding, his attorney, prays that the judgment of the Supreme Court in the above matter, may be set aside, reversed and for nothing holden, and that the judgment of the District Court may be sustained, for the following reasons:

1. The apppellant, under the Garage Lien Act of this State, has a lien under the facts and evidence in this cause.

2. The contract or agreement of sale offered in evidence should not be construed, according to the law of the State of Pennsylvania, as between the lessor and a third party.

3. Under the law of this State, the contract or so-called lease, is in fact a conditional bill of sale.

4. Under the Garage Lien Act of this State, respondent in certiorari, Franklin A. Ward was the representative of the lessor and the conditional vendee of the property specified in the so-called lease, and should be so held.

5. The judgment is contrary to law and the facts.

Very respectfully yours,
PATRICK H. HARDING,
Atty. for Appellant,
Abram B. Lane.

To Joseph Beck Tyler, Esq.,
Atty. for Appellant.

Service acknowledged Oct. 1, 1919.
JOSEPH BECK TYLER.

NEW JERSEY COURT OF ERRORS AND APPEALS

MILTON STERN, trading as
AUTO TRANSIT CO.,
Appellee,
vs.
FRANKLIN A. WARD and ABRAM
B. LANE,
Appellants.

ON CERTIORARI.
BRIEF
FOR APPELLEE.

JOSEPH BECK TYLER,
Attorney.

The plaintiff issued a writ of replevin in the above matter for, and the sergeant-at-arms took possession of, a Willys-Knight automobile.

The defendants then put up a counterbond and retained possession of the car, as provided in section 127 of the District Court Act.

The defendants at the same time filed a claim of property and in that way the matter proceeded to trial, and judgment was entered for the defendant, Abram B. Lane.

The facts are that the plaintiff leased an automobile to Franklin A. Ward in accordance with lease. Exhibit P1, state of case, pages 10 to 15.

The defendant, Abram B. Lane, was a garage keeper and had possession of the car on a claim for repairs and supplies which he had furnished to said Franklin A. Ward, the lessee.

The prosecutor contends that the claim of said Abram B. Lane could not be asserted as a lien against the car for two reasons. First, our Garage Keepers Act does not give to a garage keeper a right of lien against the lessor; second, the whole matter should be decided in accordance with the laws of the State of Pennsylvania, which are that under the circumstances of this case the said garage keeper has no lien against the car.

Our Garage Act, P. L. 1915, page 556, provides for a lien where the repairs or supplies are furnished at the request or with the consent of the owner or his representative, whether such owner be a conditional vendee or a mortgagor remaining in possession, or otherwise.

The repairs must have been furnished at the request or with the consent of the owner. Of course this request or consent could have been given by a conditional vendee or a mortgagor in possession, but this is not that case. In the present case the owner was a lessor and had not given any consent or authorized any repairs or supplies furnished to the car. This was expressly covered by the testimony (pages 19-20), and it was not claimed by the garage keeper that the plaintiff ever authorized or assented to the work done or the materials furnished to the car.

This situation is analogous to the right of execution against goods in the hands of a lessee as distinguished from goods in the hands of a conditional vendee.

The distinction was pointed out in *Singer Manufacturing Co. vs. D. Wolff & Co., 65 Atl., 147,* in which it was held that where goods are sold on a lease it is different from where they are sold on conditional sale, and that goods sold on a lease are not subject to levy or execution against the lessee, and that where a lessee is bound to return the machine at the end of the term of the lease then it is a lease and not a conditional sale, but where the purchaser is under no obligation to return the machine at the end of the term, and upon payment of the full value of the goods the title is vested in the vendee, then it is a conditional sale.

In the present case the lessee was bound to return the goods at the end of the term and had no right under the circumstances to retain them beyond the term of the lease. The law of both Pennsylvania and New Jersey under these circumstances is that it is a relation of lessor and lessee and not of conditional vendor and vendee.

It is submitted that the Garage Keepers Act was not meant to cover the relationship of the lessor and lessee. If it had been so intended it could have very easily been so stated as it is a very common relationship in dealing with automobiles. This has been so held in the State of Pennsylvania.

It is submitted that the legislature did not intend to and could not have, if it so intended, bind the owner of an automobile for debts incurred by some one without his authority or who could not be held to be his representative. For instance, the possessor of a stolen car could not create liens under the Garage Lien Act as against the owner, yet if the contention of the defendant, Lane,

should prevail, then all that would be necessary is to have possession in order to create a lien. This plainly is untenable and inasmuch as the act expressly defines who can create a lien it should be limited to the persons therein designated until it may be changed by the legislature. The act refers to ownership and not possession.

The other point is that the law of Pennsylvania, which was proven in this case, as a matter of fact controls. The lease was made in Pennsylvania, the car was delivered in Pennsylvania, and the car was to be returned to the lessor in Pennsylvania upon default under the lease. Also the lease provided that it should be governed by the laws of Pennsylvania, as above set forth in this memorandum. See state of case, page 13, lines 30-40.

The law of Pennsylvania was proven by a member of the bar of Pennsylvania (state of case, pages 24-26). The said attorney testified that the exact question had been ruled upon by the Superior Court of Pennsylvania, and that the law in Pennsylvania was that a garage keeper could not assert a lien against a leased automobile as against the claim of the owner. The said case was argued by the attorney testifying before the Superior Court of Pennsylvania, and the decision was based upon a lease of the ~~prosecutor~~ appellee in this case identical in terms with this lease (Exhibit P 1). It had the same terms and conditions, and the case decided by the Superior Court of Pennsylvania involved a claim of a garage keeper for materials and repairs made to a car of the ~~prosecutor~~ appellee. (State of case, page 26).

Judgment was entered for the defendant, Abram B. Lane, for possession of the car on his claim of property, based upon the lien given by the Garage Keepers Act and

upon the theory that the matter in dispute was decided upon the laws of New Jersey and not under the laws of Pennsylvania.

Even if the matter was to be decided under the laws of New Jersey still the Garage Act does not give a lien as against a lessor. The repairs must be incurred by the owner, conditional or otherwise. This direct question has not been decided in the State of New Jersey, but it has been decided in Pennsylvania.

Milton Stern vs. Sica and Rynone, 66 Sup. Court, 84, a copy of which opinion is hereto annexed.

Also copy of *P. L. 1915, page, 556, Sec. 1,* is annexed.

It is submitted that the matter in dispute must be decided under the laws of Pennsylvania as proven. (State of case, pages 24-26). *Thompson vs. Taylor, 49 Atl., 544.* That being true there can be no doubt that the prosecutor was entitled to judgment. There was no dispute as to what the law of Pennsylvania is. The defendants offered no proof to contradict the prosecutor's proofs as to the laws of Pennsylvania.

It is respectfully submitted that the judgment ~~should~~ was properly be reversed and set aside and a new trial ordered.

JOSEPH BECK TYLER,
Attorney for Appellee.

P. L. 1915, page 556, section 1:

All persons or corporations engaged in the business of keeping a garage or place for the storage, maintenance, keeping or repair of motor vehicles, and in connection therewith stores, maintains, keeps or repairs any motor vehicle or furnishes gasoline, accessories or other supplies therefor at the request or with the consent of the owner or his representative, whether such owner be a conditional vendee or a mortgagor remaining in possession or otherwise, has a lien upon such motor vehicle or any part thereof for the sum due for such storage, maintaining, keeping or repairing of such motor vehicle or for furnishing gasoline, accessories or other supplies therefor, and may, without process of law, detain such motor vehicle at any time it is lawfully in his possession until such sum is paid.

SUPERIOR COURT.

OCTOBER TERM, 1915. No. 404.

APPEAL FROM JUDGMENT OF THE COURT OF COMMON PLEAS No. 4, PHILADELPHIA COUNTY, JUNE TERM, 1915. No. 4717.

OPINION OF KEPHART, J.:

Plaintiff leased to Sica and Rynone, an automobile for a definite term at a weekly rental. At the expiration of the lease it was to be surrendered "in as good condition as when they took the same (natural wear excepted)". The lessees having defaulted in the payment of rent, the plaintiff seeks to recover the machine through this action of replevin. It was found in the possession of the intervening defendant, who claims a lien for repairs made at the instance of the lessees.

As a general rule it appears to be well settled that in the absence of a statute, or express agreement, a bailor is responsible for extraordinary repairs which enure to his benefit, and which are not caused through the acts or neglect of the bailee, but the bailee must bear the expense of the repairs which are ordinary and incidental to the use of the thing bailed; *6 Corpus Juris, 1113.* Where the agreement provides that the bailee shall return the article in as good condition as it was when hired, ordinary and natural wear excepted, the expense of necessary repairs made by the bailor after its return may be recovered from the bailee; *Woodward vs. Cutter, 33 Vt., 49.* The lessees cannot recover the expenses of a repair; *Pacific Bridge Co. vs. Riverside Rock Co., 141 Pac., 751.*

The appellant claims that it, as a repair man, is in no matter affected by these rules, and its right to lien is predicated on the common law, which holds that per-

sons have a right to detain goods on which they have bestowed labor until reasonable charges therefor are paid, although such persons are not obliged to receive the goods for that purpose; *2 Kent., 635.* It attaches only where the skill and labor extended improves the chattel, thereby conferring additional value on it. Such lien arises out of the employment of workmen and belongs to the person who has contracted with the owner to do the work. "In order to charge a chattel with this lien, the labor for which the lien is claimed must have been done at the request of the owner, or under circumstances from which his assent can be reasonably implied. It does not extend to one not in privity with the owners;" *Meyer vs. Bratespiece, 174 Pa., 119.*

There was no express authority from the lessor to the bailee to charge the property for the repairs made, nor was there any contractual relations between the bailor and the defendant in this action. The appellant could not hold the plaintiff personally liable for the bill thus incurred. In seeking to establish its lien, it urges that from the use that was to be made of the machine, the lessor knew that to keep the machine in running order, repairs would be necessary, and knew it must, as its property, go into the hands of a repair man, so that whatever may have been the contract right between the bailor and bailee, it would not affect the repairman's right to lien. For these reasons, the lessor's assent to the subject of this property to lien for ordinary repairs can reasonably be implied.

The title to the property was securely lodged in the lessor, and it could not be taken away without its consent. The lease expressly provided that the car was to be returned at the expiration of the term. There is nothing in the language of the lease, nor any fair inference from the language used, which would support any authority in the bailee to impair the bailor's title by handing the property to a repairman, who imposes a lien thereon.

The use of the car cannot be made the foundation for authority to subject the property to a lien; there should be more definite evidence of authority coming from the owner. It may arise by implication but the facts from which an inference is to be drawn should be such as to reasonably lead to but one conclusion.

The legal relation of lessor and lessee of personal property would take on an aspect not thought of by the parties, if the bailee could create a lien for repair charges against the property of which the owner would have no knowledge, and could not in any way control. If this is one of the incidents to chattels for hire, the title to such property would be held subject to a very unsatisfactory condition into which fraud and imposition might easily find their way.

It is true, in this case, the machine might need repairs, but the owner, if its property is to be charged, should be the judge of where, when and how the repairs should be made. A repair man cannot say that it is an innocent third party, and the loss should fall on him who made this transaction possible. It stands in no better position than the person who innocently buys, leases, sells or temporarily pledges the property that has been stolen.

The owner can follow and reclaim it no matter where it may be found.

There was nothing to prevent the repairman from demanding and receiving its charges before it entered upon the repair of the machine.

Estey Co. vs. Dick, 41 S. C., 610:

We are not convinced that the authorities cited by the learned counsel for the appellant controlled the question before us. Without discussing whether the quotation from *McIntyre vs. Carver (1841) 2 W. & S., 392*, was obiter, the Court says that the bailee "had power by virtue of his contract." We take it to mean from what follows that authority was contained in the instrument. We cer-

tainly did not think the Court intended that the bailee of a chattel for hire or otherwise should have an unlimited right to charge that chattel with repairs, to the undue prejudice of the owner of the chattel. As the authorities cited where the chattel mortgage was no consideration and the title transferred by virtue of the statute to the mortgagee: "The mortgagor who retained the possession and use of the chattel left it at a repair shop for repairs; he had, at all times, a substantial interest in the subject matter himself. As was said by Chief Justice Gray in *Hammond vs. Danielson, 126 Mass., 294,* "A means of earning a wherewithal to pay off a mortgage debt" and the increased value of the property by the repair enured to the mortgagor's benefit. When the mortgagor paid his mortgage, he was again the owner of the property. Authority to charge the property with a lien in such case may be inferred. We think these cases are easily distinguishable on their facts from the present case. It is not necessary to discuss all the authorities cited from other jurisdictions.

From the admitted facts in this case, considering all the circumstances surrounding it, we do not think that the appellant had such right in the bailor's property as would empower it to subject it to the lien of the repairman.

Judgment affirmed.

NEW JERSEY COURT OF ERRORS AND APPEALS.

MILTON STERN, Trading as Auto Transit Company, *Appellee,* vs. FRANKLIN A. WARD and ABRAM B. LANE, *Appellants.*	On Certiorari. Appeal.

BRIEF OF APPELLANT, ABRAM B. LANE.

This appeal is taken from a judgment of the Supreme Court reversing a judgment of the Camden City District Court, which latter Court rendered a judgment in favor of defendant, Lane, in an action of replevin brought by Milton Stern, trading as Auto Transit Co., to recover an automobile, described in contract set out in printed book pages 10 and 11.

The automobile was purchased from appellee by one Franklin A. Ward, at Philadelphia, in the State of Pennsylvania. The automobile was subsequently brought to Camden, New Jersey and the appellant, Lane, furnished storage, supplies and made certain repairs which were not paid for. Under the act of the Legislature of 1915, known as The Garage Man's Lien Act, Lane seized the car for the unpaid bills.

The car was in the State of New Jersey, with the knowledge and consent of the vendor, as may be ascertained from the contract, page 10, printed book lines 19 and 20. After the seizure of the car by Lane, the appellee brought an action of replevin. Lane filed a claim of property and on these pleadings the parties went to trial.

The appeal from the judgment of the Supreme Court raises four important questions:

1. Whether the appellant, Abram B. Lane, has a lien under the act referred to.

2. Whether the contract or agreement of sale should be construed according to the laws of the State of Pennsylvania, as between the lessor and a third party.

3. Whether the contract is in fact a conditional bill of sale.

4. Whether under the garage lien act, Ward, the custodian of the automobile was the representative of the lessor.

Mr. Justice Trenchard, for the Supreme Court, in his memorandum and judgment reversing the Camden City District Court, holds that Ward, the so-called lessee under the agreement of sale, was not the owner's representative, and holds further that the lease, having expressly provided that no repairs should be made without the consent of the lessor, first had and obtained, was binding on Lane, the appellant, and intimates that a lease of this kind, having been construed by the Pennsylvania Superior Court as a lease, that a different construction could not be put on the paper by the courts of this State.

LAW.

The appellant undoubtedly is entitled to a lien for the supplies and labor he performed under the act referred to. This act reads as follows:

> "All persons or corporations engaged in the business of keeping a garage or place for the storage, maintenance, keeping or repair of motor vehicles and in connection therewith stores, maintains, keeps or repairs any motor vehicle or furnishes gasoline, accessories or other supplies therefor at the request or with the consent of the owner or his representative, whether such owner be a conditional vendee or a mortgagor remaining in possession or otherwise, has a lien upon such motor vehicle or any part thereof for the sum due for such storing, maintaining, keeping or repairing of such motor vehicle or for furnishing gasoline, accessories, or other supplies therefor, and may without process of law detain such motor vehicle at any time it is lawfully in his possession until such sum is paid."

Under a fair interpretation of the act, the word "owner" therein, if extended to include a representative of the owner or a conditional vendee or a mortgagor remaining in possession or otherwise, undoubtedly means that the person in custody of the property who holds any of these designations, comes within the scope of the act. The word "owner" in the act, certainly does not mean the holder of the title, because if such an interpretation were to be given to the word "owner" the act would not have used the other qualifying words. If, then, the act referred to, legally and properly

includes a conditional vendee, who has custody of the property, and is therefore within the terms of the act, the owner thereof is Franklin A. Ward, the lessee under the agreement of sale, a representative of the owner or a conditional vendee or both.

The wording of the act was evidently made intentionally broad to include all possible holders of the property described in the act, for the express purpose of preventing the very situation that has arisen in this case, and it was no doubt with the view to hold any person in possession of property who has come to possession lawfully and properly a representative of the owner, because the act not only uses the words "representative", "conditional vendee" and "mortgagor", but goes further and says "or otherwise" evidently intending to cover every possible custodian of the property specified in the act.

Was Franklin A. Ward a Lessee or a Conditional Vendee?

Whether one is a lessee or a conditional vendee depends on each individual case, but our Supreme Court and our Court of Chancery, in construing leases similar to the one in this case, has laid down the doctrine that a contract evidenced by an instrument purporting to be a lease and providing for stipulated rentals, with a further proviso that at the termination of the period of rental payments, a receipt is to be given by a further nominal payment, that such contract is a contract of conditional sale, and not one of lease. This doctrine was laid down

by our Supreme Court in the case of *Lauter Co. vs. Isenreath,* 72 Atl. page 56, and the doctrine was lately sustained and elaborated on by Vice-Chancellor Lane in the case of *Rapoport vs. Rapoport Express Co.,* 107 Atl., page 822. In this latter case the Vice-Chancellor holds that "a contract evidenced by an instrument purporting to lease an automobile truck at a monthly rental, and providing that at the termination of the period, the lessee is to return the machine to the lessor, and that the lessor will then sell the machine to the lessee for a consideration of one dollar, is that of a conditional sale."

The clause of the so-called lease, in that controversy, is almost identical with that in the present case, except that in the Rapoport agreement the language for purchase reads: "* * * * * * * the said lessor agrees to sell same for the sum of One dollar." In the Stern-Ward agreement, the language is (page 11, printed book, line 25) "* * * * * and if, upon surrendering the same, as aforesaid, the said installments of rent having been fully paid as herein provided, said party of the second part desires to purchase said leased property, the said party of the first part agrees to sell same for the sum of Fourteen hundred seventy-nine and 35/100 dollars, and the amount received for the rent of same shall be applied upon the purchase price of the same at that date."

The Court's attention is respectfully called to the terms and conditions of payment under the lease in this case (printed book, page 10, line 24 to line 32). From an examination of these terms, it will be noted that the first payment is $498.35, then $50 to be paid on the 15th, and 1st of each month for nine

months, then $40 to be paid on the 15th and 1st of the 10th month, which makes exactly $1478.35. The party of the first part then agrees to sell the automobile for the sum of $1479.35 (printed book, page 11, line 30) and the purchaser is given credit for the payment of $1478.35, showing that the nominal payment of One dollar as the balance due is required in order to give possession. The retention by the party of the first part of the title to the automobile pending this payment of one dollar is not for the purpose of effecting a recovery as under a rent agreement, but is purely for the purpose of preserving title until the full terms of the contract and conditional sale have been complied with.

It seems that under the contract, there was paid the sum of $670 by Ward to the Auto Transit Co. At the time that Ward signed the contract and took possession of the car, it was stipulated in the contract that the car was to be stabled at Camden Auto Supply Co., Haddon Avenue and Line Street, Camden, New Jersey. It is under this name that appellant Lane traded (see testimony of Franklin A. Ward, printed book, page 30, line 16 to 20). The party of the first part to the agreement, therefore, had knowledge of where the car was to be stabled, and could hardly plead ignorance to any claim that might arise therefrom, and could have put Lane on notice if it were so disposed, as to the existence of the so-called lease. Lane in his testimony, page 53, line 7, said that he did not know of the existence of the so-called lease until Stern told him, which was after Lane had seized the car.

The party of the first part anticipated that the location of the property described in the agreement would be Camden, New Jersey. It may be a ques-

tion as to whether this lease, if construed to be a conditional bill of sale, should not, under our act, have been recorded in the county where the property was located, although the further question would then arise as to whether Lane, under the lien act, assuming that he had a right of lien, is a judgment creditor within the terms of the act for conditional sale of goods and chattels, P. L. Laws of 1898, page 699, Compld. Statutes, page 1561, Sec. 71.

As it was held in the case of *Loom Works vs. Vacher,* 57 Law, 490, that a contract of sale made outside this State, of property to be delivered to and held by the purchaser within this State, is subject to the act.

It is true that according to the testimony of Mr. Stern (page 19, printed book, line 10), the automobile was delivered in the City of Philadelphia, but it was within the contemplation of the parties and so specified, in the agreement, that the automobile was to be located or stabled in Camden, New Jersey.

Outside our own State, there have been some decisions construing acts somewhat similar to our garage lien act. One of these cases is that of *Weber Implement & Automobile Co. vs. Pearson,* an Arkansas case, reported in 200 S. W. 273, L. R. A. 1918-D, 327. In this case it was held "the statutory lien of blacksmiths and wheelwrights on the product of their labor and the wagons, etc. repaired by them, is superior to that of a conditional vendor of the article on which the labor is performed, who retains title to it."

Section 1, of the act referred to, reads "Blacksmiths and wheelwrights who performed work for labor for any person, if unpaid for the same, shall

have an absolute lien on the product of their labor, and upon all wagons, carriages, farm implements and other articles repaired by them for such work or labor and for all materials furnished by them and used in such products or repairs."

Another case is that of *White Auto Co. vs. Collins,* reported in 2 L. R. A, page 1594, in which case it was held that even where one sells an automobile on credit, retaining title as security, the automobile cannot be recovered after seizure by the public, because used for illegal transportation of intoxicating liquor. This case was decided September 23, 1918, by the Supreme Court of Arkansas, in construing the language of an act of 1917 of that State, prohibiting the shipment of intoxicating liquors into the State, the relative part of which reads: "That no property rights of any kind shall exist in the liquors mentioned in Sec. 1 of this act,* * * * * or in any vessel, fixture, furniture, implements or vehicles when the said liquors or other property mentioned are kept stored or used for the purpose of violating any law of this State, nor in any such liquors, bitters and drinks when received, possessed, kept or stored at any forbidden place, and in all such cases the liquors, bitters and drinks aforesaid and said property herein named, are forfeited to the State of Arkansas and may be seized or stored for and seized under the laws of this State, etc."

The case of *Shaw vs. Webb,* 131 Tenn. 173, 174 S. W. 273, L. R. A. 1915-D, page 1141, the prior lien of the vendor under his conditional bill of sale was sustained, based on the wording of the statute which reads "that there shall be a lien upon any vehicle for any repairs or improvements made or fixtures or machinery at the request of the owner or his agent

in favor of the mechanic contractor, founder or machinist who undertakes the work, etc.''

The word ''owner'' under this act was undoubtedly construed to mean the holder of the title or his agent, but it may be mentioned that our act goes much farther and includes within its scope the conditional vendee or the representative of the owner.

Should the Contract or Agreement of Sale be Construed According to the Law of Pennsylvania?

If this controversy were one between the Auto Transit Co. and Franklin A. Ward, the contract under the lex loci contractus should undoubtedly be determined according to the law of Pennsylvania, but the contract out of this action is one between Ward, the so-called lessee, and Lane, a garage man. Lane's right, if any, accrues under the statute. What interpretation the laws of Pennsylvania would give to the agreement in question certainly could have no bearing in determining the rights of Lane as against the automobile described in the contract. Lane had no notice of the existence of the so-called lease, and irrespective of the statute, under the common law would have probably had a lien for the work he had performed on the chattel, provided the chattel remained in his possession, and it is respectfully submitted in this case that the chattel was all the time in Lane's possession, and is still in his possession.

The garage man's lien act was passed to protect mechanics of this State, who performed the work or rendered the service enumerated in the act, and it is obvious that no State will give effect to

the laws of any State on the principal of comity when the effect would be injurious to the State or its own citizens. In *Flag vs. Baldwin,* 38 N. J. Eq., 219, and *Bentley vs. Whittemore,* 19 N. J. Eq., 462, it was said "it belongs exclusively to each sovereignty to determine for itself whether it can enforce a foreign law without at the same time neglecting the duty it owes to its own citizens or subjects."

And in the case of *Hill vs. Spear,* 50 N. H., 253; 12 Corpus Juris, 440, it was stated, "While the comity of nations and States will always regard with respect and consideration the laws and customs of other communities, still its own interests and the welfare of its own citizens will be held by every State in paramount consideration."

Under these decisions, it is apparent that the statute law of this State should not bow or be subordinate to a contract made in another State, for the use of goods and chattels in this State, and which was drawn for the express purpose of evading the laws of this State. The mere fact that this agreement contained the language, "It is distinctly understood that this is a contract of renting only and not a sale conditional or otherwise", was undoubtedly for the purpose of escaping the direct consequences of their acts, and it is very doubtful indeed if under this contract the property in question had been delivered in the State of New Jersey and judgment secured against the person who had custody under the contract, whether the Courts would not sustain the judgment creditor as against the holder of the title, if it appeared that this so-called lease had not been recorded, as under the cases already decided this lease would undoubtedly have been construed as a conditional bill of sale.

Was Franklin A. Ward the Representative of the Lessor?

Whether Ward was or was not the conditional vendee of this property would still leave the question open as to whether he did not represent the owner by having possession thereof legally. If he were the representative of the owner, undoubtedly the act applies, and Lane is entitled to his lien; but the act even goes further and uses the language, "Whether such owner be a conditional vendee or a mortgagee remaining in possession or otherwise," evidently contemplating any possible claimants of ownership of the property.

There was no denial at the trial, but what Ward was the owner of the property in question, or at least the possessor under the agreement. True he did not hold the title, but the very wording of the garage man's lien act indicates that the statute is not concerned with the title holder, but with the person who has possession or owns for any purpose the property described in the act.

While it is true a clause of the contract (page 13, printed book) says: "No repairs shall be made to this car without the written consent of the lessor, first had and obtained," the purpose of this, was, no doubt, to safeguard the party of the first part from any claim or deduction on the part of Ward, by reason of any such repairs. Such language could not bind a third person who had no notice of it, and certainly such language could not invalidate the purpose of a statute which in effect says that if such repairs are made for the owner or his representative, the lien shall attach, for the statute is more power-

ful and overrides the language of strangers to it, and would no doubt afford its beneficence, except perhaps in such cases as where the garage man might specifically in writing waive its benefits.

In the case of *Crucible Steel Co. of America vs. Polack Tire & Rubber Co.,* in 104 Atl., page 324, the Court of Errors and Appeals held that the garage man was entitled to his lien, where the conditional vendee gave a bill of sale for the truck to the vendor, and even where the original conditional bill of sale was of record in the office of the register of Hudson County; whereas in the present case, the lease or conditional bill of sale was not recorded in the office of the registrar of Camden County.

The action of Judge Spear, in giving judgment for the garage man in the Crucible Steel case was upheld by the Court of Errors and Appeals, which also sustained the constitutionality of the act.

In the later case of *Frank vs. Daily,* in 105 Atl., page 9, this Court held that an automobile for which supplies are furnished by a garage keeper, is subject to the lien, although the automobile was never in the garage keeper's possession, and the Court further held that even though the car should be in possession of an innocent purchaser for value, who had no knowledge or notice of the lien, is subject to the act.

To put such an interpretation on the act as requested by appellee, would give an advantage to dealers in automobiles outside of this State, under contracts similar to the one in question, as against dealers in automobiles in this State for the simple reason that where the contract is made outside the State and the property delivered outside the State, even though subsequently brought into this State,

the contract would not have to be recorded, whereas if the contract is made and the sale effected in this State, under the section of the sale of goods act, above referred to, the contract would have to be recorded or the vendor would lose his property, particularly if the lien claimant reduces his claim to judgment. No such construction was ever intended, as the entire purpose of the act could be thus defeated by dealers outside the State and to the detriment of dealers within our own jurisdiction. It would certainly be giving a construction or interpretation to this act which the Legislature never intended, to say that because a person bought an automobile in a foreign jurisdiction, under private contract which no one has notice of except the parties to it, intended to except the automobile covered by the said contract, because of any phraseology in the contract itself, put there for the purpose of defeating the statute.

It is respectfully submitted that on the law, Abram B. Lane is entitled to his lien and that the judgment of the Supreme Court should be reversed.

PATRICK H. HARDING,
Atty. for Appellant.