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Record No.
FILE COPY
Supreme Court of Appeals
Richmond, Va.

# Record No. 6763

## In the Supreme Court of Appeals of Virginia at Richmond

## CHECKERED FLAG MOTOR CAR COMPANY, INC.

v.

## IVAN L. GRULKE, t/a, etc.

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

### RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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**Record No. 6763**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 3rd day of October, 1967.

CHECKERED FLAG MOTOR CAR COMPANY, INC., Plaintiff in error,

*against*

IVAN L. GRULKE, TRADING AS IVAN'S BODY SHOP, Defendant in error.

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From the Circuit Court of the City of Norfolk
Clyde H. Jacob, Judge

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Upon the petition of Checkered Flag Motor Car Company, Inc., a writ of error is awarded it to a judgment rendered by the Circuit Court of the City of Norfolk on the 6th day of March, 1967, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Ivan L. Grulke, t/a, etc., was defendant.

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of $750, condition according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, an additional *supersedeas* bond conditioned according to law is required in the penalty of $250.

## RECORD

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page 5 }

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### ASSIGNMENT OF ERRORS

1. That the Court erred in entering the Order of March 6, 1967 wherein was entered a judgment for the defendant against the plaintiff.
2. That the Court erred in determining that a storage lien has priority over a lien secured on the title of a motor vehicle.
3. That the Court erred in determining that a prior lien for storage could be assumed by the defendant and asserted against the plaintiff who had a lien on the title of the motor vehicle.
4. That the Court erred in determining that a repair lien by the defendant took priority over the lien on the title of the plaintiff.
5. That the Court erred in entering a judgment in favor of the defendant for storage against the plaintiff.

CHECKERED FLAG MOTOR
CAR COMPANY, INC.
a Virginia corporation
By MORRIS H. FINE

MORRIS H. FINE, p.q.
FINE, FINE, LEGUM & FINE
720 Law Building
Norfolk, Virginia

Filed 4-25-67. W. R. HANCKEL, Clerk

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page 17 }

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### JUDGMENT

THIS DAY came the parties in person and by counsel and

joined issue on the pleadings filed, waived trial by jury and elected and requested that all matters of fact and law be submitted to the Court for hearing and determination without the intervention of a jury, and the Court having fully heard the evidence and arguments of counsel is of the opinion that plaintiff is entitled to recover of the defendant the 1966 MG Midget, Serial Number GAN3L34629 described in the motion for judgment but at the same time the defendant is entitled to recover of the plaintiff the sum of $585.21. And it further appearing from the record that plaintiff already has acquired the property upon a writ of seizure issued upon the plaintiff posting a bond in the amount of $3,000.00 with sufficient surety, the Court doth adjudge that the plaintiff is entitled to hold the said property in its own right and that defendant shall recover of and have judgment against the plaintiff in the amount of $585.21.

Enter March 6-'67. C. H. J.

Seen and objected to
and exception taken
M. H. FINE, pq

Seen:
G. H. GRAY, p.d.

* * * * *

page 3 }

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## TRANSCRIPT OF TESTIMONY

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above-entitled case, in said court, on the 6th day of March, 1967, before the Honorable Clyde H. Jacob, Judge of said court.

APPEARANCES:

Messrs. Fine, Fine, Legum & Fine (by Mr. Morris H. Fine), Attorneys for the plaintiff.

Messrs. Outland & Gray (by Mr. George H. Gray), Attorneys for the defendant.

page 4 } (The witnesses were sworn.)

The Court: Gentlemen, you made it clear to the Court what the issues are in this case, so you waive the opening statement and I will let you proceed to put your evidence on.

EDDIE GENE FREEMAN, called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined By Mr. Fine:

Q. Would you tell us your full name, please, sir?

A. Eddie Gene Freeman.

Q. And what is your occupation, Mr. Freeman?

A. Supervisor of the Adjustment Department, First National Bank.

Q. I am going to direct your attention to November 1966 and ask whether or not you had occasion to deal with this gentleman over here, Ivan's—

A. Yes, sir.

Q. And what was that in regard to?

A. With regard to our account of Ronald Kleinman, an automobile account which we had been looking for
page 5 } the automobile for some time. The customer was a bankrupt. We received a letter from him finally at the time the account was past-due for three payments.

Q. Before we get into the matter further, is this a copy or is this the—

A. This is the original conditional sales agreement between First National and Checkered Flag and Ronald Kleinman.

Mr. Fine: I would like to enter this, if Your Honor please, as evidence.

The Court: Exhibit 1.

(Marked Exhibit 1 for the plaintiff.)

By Mr. Fine:

Q. Now, when did you have occasion to speak to the defendant here?

A. Upon receipt of a letter dated November 16 from Mr. Kleinman stating to us the location of the automobile, after several telephone conversations I and—as a representative of the bank, went out to Ivan's Body Shop and presented a

check for $75 for the automobile. At that time it was flatly refused.

Q. What conversation did you have with him?

A. The conversation consisted that we wanted the car as we held a valid lien and have a title. Mr. Ivan refused to release the automobile to us for $75 because he had
page 6 } a repair bill in excess of $700 against the automobile which was agreed upon between he and the customer.

Q. At this time did he say anything about any storage?

A. No, sir. He was just concerned over his entire bill.

By The Court:

Q. How much was the entire bill?

A. Seven sixty.

Q. $700?

A. Seven hundred sixty-some dollars.

By Mr. Fine:

Q. All right. At that time who held the title to the automobile?

A. We held it, the First National Bank.

Q. Now, thereafter what occurred?

A. After the check was refused, we obtained or took a picture of the automobile and left and returned to the bank. We then contacted our dealer, who had endorsed the paper for full recourse, asked them or explained the situation to them, asked them to pay us off.

Q. And was the paper returned to Checkered Flag Motor—

A. Yes, sir.

page 7 } Q. What was the amount of the lien on the title?

Mr. Gray: I don't think that is material, Your Honor.

The Court: The holders of the lien are not a party to this proceeding.

Mr. Fine: Yes, sir, Checkered Flag Motor Car Company is the plaintiff. This was the bank—the amount—

The Court: The bank is not a party to the proceeding here, are they?

Mr. Fine: No, sir, they are not a party but they know the amount.

The Court: Objection sustained.

Mr. Fine: All right. Well, if Your Honor please, if he knows what the lien was at the time—

*Eddie Gene Freeman*

The Court: He is the holder of the lien? He represents the bank, doesn't he?

Mr. Fine: Yes, sir, but he knew what the amount of the lien was at that time in December.

Mr. Gray: I will let it come in. I think it is irrelevant. It doesn't have any bearing on the case. I will withdraw my objection.

page 8 } By The Court:

Q. Do you know of your own knowledge?

A. The amount of the lien was $2,408.96.

Q. The repair lien or the—

A. No, sir; that was the original lien.

Q. The conditional sales contract lien?

A. Yes, sir.

By Mr. Fine:

Q. Can you identify this certificate of title for us?

A. Yes, sir. This is a repossessed title obtained after payment was received from Checkered Flag. This title was obtained from the Division of Motor Vehicles in the name of First National and endorsed over to Checkered Flag Motor Car Company.

Mr. Gray: Your Honor, that is irrelevant, too, but we will let it all come in. There is no jury to be confused by it.

Mr. Fine: I would like to introduce that.

The Court: Plaintiff's Exhibit 2.

(Marked Plaintiff's Exhibit 2.)

By Mr. Fine:

Q. Do you have that check in the sum of $75 there that you offered?

page 9 } A. (The witness handing to Mr. Fine.)

Mr. Gray: (Examining check) I thought he said he went there in November. This check is dated December 13th.

Mr. Fine: I will clear that up.

By Mr. Fine:

Q. Did you go there in December, or November?

A. In December. The letter I mentioned earlier was received in November from the customer.

*Eddie Gene Freeman*

The Court: Plaintiff's 3.

(Marked Plaintiff's Exhibit 3.)

Mr. Fine: I have nothing further, Your Honor.

CROSS EXAMINATION

By Mr. Gray:

Q. Mr. Freeman, when did Kleinman, the owner of the automobile, first go into default on his conditional sales contract?

A. He went into default for the September 20th installment, 1966.

page 10 } Q. And prior to that time his payments were up to date?

A. Yes, sir.

Q. Now, the First National Bank has no interest in this litigation at all, does it?

By The Court:

Q. Will it cost your bank any money, or not?

A. At this point, no, sir.

By Mr. Gray:

Q. In other words, the matter, so far as you understand it, is entirely between Checkered Flag Motor Car Company and Mr. Grulke, the garage man?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. So the First National Bank has been made whole? That is right, isn't it? It hasn't lost any money in this transaction?

A. Yes, sir, our lien was satisfied.

Q. All right. Now, Mr. Freeman, isn't it customary when there is a lien secured by a conditional sales contract that the vehicle have collision insurance coverage?

Mr. Fine: If Your Honor please, what possible

page 11 } relevance would that have?

The Court: I sustain your objection to the question.

Mr. Gray: Your Honor—

The Court: No, don't answer that question.

Mr. Gray: May I say this? I think it has this bearing. I am getting ahead of the evidence but Mr. Grulke will testify to this. When the man came in there with his automobile to get it repaired, the man told him that he did not have collision insurance on the automobile. And Mr. Grulke just assumed, that being the case, that there was no mortgage on the automobile, because all mortgage lenders require collision coverage on the vehicle. In other words, there was no indication whatever to Mr. Grulke to put him on notice that anybody else had a claim on this automobile, because when he asked and the man told him "I don't have any insurance on the car"—

The Court: It gives him the higher right to have the claim. It was important that he be advised or told by someone that there was no automobile insurance.

page 12 } Mr. Gray: Yes, sir. That would make a difference to the garage man that there was no automobile insurance, because he would naturally assume from this that there was no lien on the car. Otherwise, the lienor would require, as is customary—in fact, this is the first one I ever heard of where the lienor didn't require the conditional sales—

The Court: I don't think you can just presume that that was true. He could have made inquiry if he had wanted.

Mr. Gray: He could have but he didn't when the owner of the car told him, "I don't have collision insurance."

The Court: "Equity" is the word I was trying to get.

Mr. Gray: Equity would be in his favor.

The Court: If that was the custom, understood in the trade.

Mr. Gray: That is what I was trying to develop by this witness.

The Court: Go ahead. You may answer the question if you can.

By Mr. Gray:

Q. Was there any collision coverage on this

page 13 } vehicle?

A. We had in our files a policy from the Aetna Life and Casualty. Prior to that was one by American Fidelity. Prior to that was Government Employees, which was all cancelled—mostly for nonpayment of premium.

Q. Well, was there any policy in effect on this automobile in June of 1966?

*Ivan L. Grulke*

A. Policy from Aetna Casualty and Surety Company; that was July.

Q. Do you know when the car was damaged?

A. No, sir.

Q. Well, let's check for April and May there as to whether or not you had any collision coverage on the automobile.

A. Policy from Government Employees was originally taken out in December of '65 and was to expire in July of '66. On April 2nd of '66 we received the cancellation notice that was effective March 6th.

Q. In other words, that insurance was cancelled March 16th?

A. 6th; right.

Q. Now, was any new insurance taken out?

A. I also have a copy of another Government Employees insurance policy, was taken out in May of '66 and was to run until May of '67.

page 14 } Q. May what?

A. May 7th.

Q. May 7th. Now, will you agree with me that this automobile involved here was damaged at a time when there was no collision insurance on it?

A. From our—all of our records indicate this to be true.

Q. That is true. All right. And one thing further. You will agree with me that the lienor; that is, the bank, the one making the loan, requires as a condition of the loan that there be insurance, collision insurance on the vehicles?

A. Yes, sir, this is so.

Q. That is true?

A. Yes, sir.

Q. All right. That is all.

The Court: Whom will you have?

Mr. Fine: Your Honor, we rest.

page 15 } IVAN L. GRULKE, the defendant, having been first duly sworn, testified as follows:

Examined By Mr. Gray:

Q. State your name.

A. Ivan Grulke.

Q. Mr. Grulke, what business are you in?

A. I run a body repair shop.

Q. And where do you run this body repair shop?

A. It is on Westcliff Drive.

*Ivan L. Grulke*

Q. Do you run that shop there with somebody, or by yourself?
A. By myself.
Q. Do you recall a Ronald Kleinman and his automobile?
A. Yes, sir.
Q. Where was Mr. Kleinman's automobile when you first were aware of it?
A. It was at Hanks Body Shop.
Q. And what was it doing at Hanks Body Shop?
A. Just being stored there.
Q. In what condition was it?
A. It was wrecked.
Q. And Hanks was storing it?
page 16 } A. Yes, sir.
Q. What was your occasion for getting the automobile?
A. Mr. Kleinman told me to go get it, to bring it over to my place and eventually fix it.
Q. To bring it over to your place and eventually fix it?
A. Yes, sir.
Q. Was he financially able or did he indicate at that time he was financially able to have his car fixed at that immediate moment?
A. He said he didn't have insurance and he wanted it fixed and he would pick it up as soon as he got the money.
Q. Did you go get his car?
A. Yes, sir.
Q. In order to get his car did you have to pay anything?
A. Yes, sir.
Q. And, specifically, did you have to pay Hank's storage?
A. Yes, sir.
Q. How much was his storage?
A. Storage was—

Mr. Fine: If Your Honor please, I would ob-
page 17 } ject to this because the law is, as I understand it, that once the car is released by anyone who claims a lien for storage, that lien would be released. It is wiped out; and he would not be subrogated as he is indicating now, to Hanks storage lien if there be one.

Mr. Gray: Your Honor, I have authority that you can assign a storage lien. I am getting ready to develop further that this vehicle was never in the possession of Kleinman. If it had ever gotten in the possession of Kleinman, that would have been lost.

*Ivan L. Grulke*

The Court: If surrendered to the owner, he has lost his lien.

Mr. Fine: This was, in effect, surrendered to the owner.

The Court: It wasn't turned over to the owner, it was turned over to another man in the trade.

Mr. Fine: His agent, though, is the agent of the owner.

The Court: This man had to assume the obligation; otherwise, the man then in possession would not have turned it over to him.

Mr. Fine: I would object and except, Your
page 18 } Honor.

The Court: Exception noted.

By Mr. Gray:

Q. Mr. Grulke, when you went to get the automobile and paid Hanks Body Shop the $44 storage—

Mr. Fine: Now, if Your Honor please—

By Mr. Gray:

Q. How much did you pay in storage for Hanks?

A. $44 storage.

Q. All right. Was that automobile ever in the possession of Kleinman?

A. No, sir.

Q. Did you bring it from Hanks shop over to your shop?

A. Yes, sir.

Q. Did you immediately start work on the automobile?

A. No. I ordered parts is all.

Q. All right. Now, is the storage of an automobile or automobiles in your ordinary course of business?

A. Yes, it is.

Q. Did you have an express—when I say "express," I mean did you discuss it with him, have an oral contract
page 19 } or a written contract with Kleinman for storage?

A. I don't understand.

Q. Was anything said to Kleinman about how much you were going to charge him for storage?

A. No.

Q. All right. What is the usual, customary charge for storage in your business?

A. Usual—about a dollar a day.

Q. Are there any shops which charge more than that?

A. Yes, sir.

*Ivan L. Grulke*

Q. Do you recall when you got the automobile from Hanks?
A. June 6, '66.
Q. I show you your paper here. How much storage do you claim?

Mr. Fine: May I see that? (Examining)

By Mr. Gray:
Q. How much storage do you claim?
A. $242.
Q. And what is the rate, how much per day?
A. Dollar a day.

The Court: $42?
Mr. Gray: $242.
Mr. Fine: Your Honor, I would object to that
page 20 } testimony, of course, because that is the ultimate conclusion—
The Court: Overruled.
Mr. Fine: Note my exception.

By Mr. Gray:
Q. Mr. Grulke, did you proceed to make additions to that automobile, add parts to it?
A. To repair it?
Q. Yes, sir.
A. Yes.
Q. I hand you a statement there and ask you if that is a repair estimate.
A. Yes, sir.
Q. All right. Now, looking only to the parts that you added to the automobile—I am not concerned with any labor or any sublet charges, I am only interested in the parts you actually added to the car. Now, which is the first one that you added to the car?
A. The first part on the estimate was seal beam and retainer.
Q. And what was the value of that?
A. $3.15.
Q. All right. The next part that you added?
A. Right headlight door.
page 21 } Q. How much was that?
A. $3.50.
Q. The next part?
A. Right park light.

*Ivan L. Grulke*

Q. How much was that?
A. $6.20.
Q. Hood safety catch and pilot bolt, how much was that?
A. $2.29.

Mr. Fine: Please, let him read it.
Mr. Gray: I made the list from it.

By Mr. Gray:
Q. Go ahead, what is the next item you have got?
A. After the park light?
Q. Yes, sir.
A. Hood safety catch and pilot bolt.
Q. The amount?
A. $2.29.
Q. Next?
A. Front end baffle assembly.
Q. The amount?
A. $35.
Q. Next?
A. Grille assembly.
page 22 } Q. Amount?
A. $79.11.
Q. Next?
A. Left front fender and molding?
A. $65.37.
Q. Left headlight assembly, amount?
A. $15.90.
Q. Next?
A. Left park light assembly.
Q. Amount?
A. $6.20.
Q. Next?
A. Carburetor breather, $5.95.
Q. And next?
A. The last part, front bumper guards and bumper arms, $76.54.
Q. Now, can these parts that you have listed there be removed from that vehicle without damage to the vehicle?
A. Yes, sir. They are all just bolted on.
Q. All just bolted on?
A. Yes, sir.
Q. All right.

*Ivan L. Grulke*

The Court: Did you make an addition of the
page 23 } smaller parts?
Mr. Gray: I have got the addition. It is $299.21. I filed it in the pleadings. Unless my adding—
The Court: How much?
Mr. Gray: $299.21. I filed it in the special pleading, Your Honor.
The Court: $299.21. All right.

By Mr. Gray:
Q. When Mr. Kleinman brought his automobile in to you, did you know that he had a mortgage on it?
A. No, sir.
Q. What was said about his ability to pay or what was said, if anything, about insurance?
A. Well, he said he didn't have insurance, that he wanted me to fix it and he would save the money to pay for it.
Q. Did Mr. Kleinman ever come back for the car?
A. Yes, he come after it. It was ready.
Q. And when was that?
A. Well—
Q. Approximately.
A. I don't remember exactly. I would say about the middle of October.
page 24 } Q. Did you ever see him after that?
A. No, sir.
Q. Did you ever hear what happened to him?
A. I heard that he got separated from his wife and that he had left.
Q. And have you heard from him since?
A. No.

Mr. Gray: Answer Mr. Fine.

CROSS EXAMINATION

By Mr. Fine:
Q. Mr. Grulke, that evidence that you put in, Defendant's Exhibit—the storage—

Mr. Gray: I didn't put it in as an exhibit, I merely used it as a memorandum.
Mr. Fine: May I have it?
Mr. Gray: Yes, sir.

By Mr. Fine:
Q. When did you make this exhibit up, prepare it, sir?

*Ivan L. Grulke*

A. Well, it is dated here 12/14/66.

page 25 } Q. And that is the day after you had conversations with the representative of the bank?

A. I don't know whether it was the day after. It was about that time.

Q. You never told the bank that you were holding this for a storage lien, did you?

A. No.

Q. You made this only after you talked to your attorney, didn't you? Isn't that true?

A. I don't know if I talked to him yet or not. I believe I had but I am not positive.

Q. When the representative from the bank came down there and offered you $75 and you refused it, you called your attorney, didn't you?

A. Yes.

Q. And it was then that you made up this estimate for storage, isn't that true?

A. Well, that is customary.

Mr. Fine: I would like to introduce that, if Your Honor please.

The Court: Plaintiff's 4.

(Marked Plaintiff's Exhibit 4.)

By Mr. Fine:

Q. Mr. Grulke, do you have any signs on your garage stating that you are going to charge for storage,

page 26 } sir?

A. No.

Q. Do you have a license for storage?

A. I have a license for auto repair.

Q. And that is all?

A. That is—

Mr. Gray: Your Honor, there is no requirement that I know of that you have to have a special license for storage.

Mr. Fine: Yes, sir.

Mr. Gray: No, sir.

The Court: Storage entered into the repair job, didn't it?

Mr. Fine: No, sir. We maintain a separate—

The Court: He takes it out, moves it out on the street every night after he gets through?

*Ivan L. Grulke*

Mr. Fine: I agree with you there; but it would be incident to it. Every time you take your car down to be repaired, you don't get a bill for storage. It is normal that you pay your repair and you do not pay for your storage, unless you are on notice.

The Court: Put on any evidence you wish.

page 27 } Mr. Gray: Or unless you abandon it. I have a case right on the point here on this thing.

The Court: Go ahead.

By Mr. Fine:

Q. Do you have a license for storage?

A. Not specific storage; just auto repair.

Q. Did you give Mr. Kleinman a warehouse receipt?

A. No, sir. I didn't give any receipt.

Q. Did you ever send Mr. Kleinman a letter stating that you were going to charge him for storage?

A. No, sir.

Q. Did you ever petition any bank for storage?

A. No, sir.

Q. As a matter of fact, you told this gentleman from the bank that all you wanted was your repair bill, isn't that correct?

A. Yes, sir.

Q. You didn't want anything for storage, didn't even mention it to him?

A. Storage only if you repair a car, don't get paid for repairing it.

Q. In other words, you charge storage if the

page 28 } repair bill isn't paid?

A. Yes.

Q. And if the repair bill would be paid, you wouldn't charge for storage?

A. No, sir.

Q. Did you tell Mr. Kleinman this?

A. Well, I didn't know all this was going to happen. No, sir, I didn't tell him that.

Q. You don't have it on your estimate, do you?

A. No. There wasn't no storage when I made the estimate.

Q. Did you have any statement such as what you have told us here in court, on your estimate?

A. The only thing I have got on the estimate is the storage that was due on it at the time I made the estimate.

Q. You don't have any statement that if the repair bill is not paid you will not charge for storage, do you?

A. No, sir. I don't think there is nothing like that on it.
Q. How long did it take you to fix this car?
A. It was fixed in October, after I got all the
page 29 } parts for it.
Q. In other words, from June to October?
A. But it was no hurry. He wasn't in a hurry. He didn't have the money to pay for it.
Q. From June to October it sat in your yard?
A. Or inside the shop.
Q. And you didn't charge Mr. Kleinman any storage then, did you?
A. No. I didn't even see him. After October 10th I didn't see him. I assumed he was going to pick up the car. He wanted it. He come in about a week before it was ready.
Q. Do you claim a lien, sir, for the time from June to the time you repaired it?

Mr. Gray: That is in the pleadings. He did, yes, sir.
Mr. Fine: I understand. I am asking him. The pleadings say a lot of things.
The Court: Go ahead.

A. Yes, sir.

By Mr. Fine:
Q. Even though it just sat in your yard and you were going to repair it, and you did?
A. Yes. Well, I didn't get paid for it.
page 30 } Q. When did you order the parts?
A. Shortly after I made the estimate and he said to go ahead and fix it.
Q. When did you make the estimate?
A. 6/8/66.
Q. Did you inquire of Mr. Kleinman if he had a lien on this car?
A. No, sir. He said he didn't have insurance.
Q. He told you he couldn't pay for it right then, didn't he?
A. That is right.
Q. Did you write off to the Division of Motor Vehicles to determine whether there were any liens—
A. No, sir.
Q. —before you repaired it? You didn't repair it until October?
A. That is when I finished.
Q. And as I understand your testimony, you don't claim

any amount of lien for repair of the car, $75, as a garage man?

A. I don't understand this.

Q. The law gives you a right to repairs, a mechanic's lien, in effect, $75?

Mr. Gray: I object to the question because the
page 31 } pleadings show what his claim is and the pleadings do not claim that.

Mr. Fine: Well, if you acknowledge that you don't claim it—

Mr. Gray: Well, we acknowledge—

Mr. Fine: Well, say so.

Mr. Gray: We don't claim—

The Court: That is immaterial, then.

By Mr. Fine:

Q. Now, when you went over to see Hanks, what did you go over to see Hanks for?

A. I just called him on the phone.

Q. Was Mr. Kleinman there when you called him?

A. No. He told me to pick up his car. Mr. Kleinman called Hanks, told him to release the car to me.

Q. And you had no conversation with Hanks?

A. I don't remember.

Q. Did you pay him any money?

A. Yes.

Q. How did you pay him?

A. By check.

Q. And for whom did you pay this money?

A. For Mr. Kleinman.

page 32 } Q. Is Hanks also in the business of repairing automobiles?

A. Yes, sir.

Mr. Fine: I have nothing further.

The Court: Stand down.

Mr. Gray: That is our case.

The Court: The Court is ready to decide the case. If you want to argue, you may do so.

(After argument by counsel, the following occurred:)

The Court: This mechanic had a right to be paid for the work he had done and to be compensated for the money he contracted to pay. And if he had a right to charge storage—and I think there is no question he had a right to charge storage—that right can't be wiped out just because of the conduct of this mechanic unless it be to the prejudice of someone else. I don't know of any evidence that anyone

page 33 } was prejudiced by this man not charging storage or charging storage.

Judgment is for the defendant to recover as set out in his answer.

Mr. Gray: Do I understand that to be $585.21, the storage and the parts?

The Court: That is right.

Mr. Fine: Does that include, if Your Honor please, Hanks Body Shop, the $44?

The Court: My thought was the $44, but the $44 stands in the same shoes as the other amount.

Mr. Fine: Your Honor, that, as I understood the assignment law, was an assignment to someone else.

The Court: But he had a right under the authorities to—

Mr. Fine: To assign it, but there is no evidence it was ever assigned in this case. I would, of course, object and except to any judgment.

The Court: Exception noted.

page 34 } JUDGE'S CERTIFICATE

I, Clyde H. Jacob, Judge of the Circuit Court of the City of Norfolk, Virginia, do hereby certify that the foregoing is a true and correct transcript of the testimony and proceedings in the case of Checkered Flag Motor Car Company, Inc., versus Ivan L. Grulke, etc., tried in said court on the 6th day of March, 1967, and includes all the testimony offered, the motions and objections of the parties, the rulings of the Court and the exceptions of the parties, and all other proceedings of said trial.

I further certify that the exhibits offered in evidence, as described by the foregoing record, and designated as Plaintiff's Exhibits 1 to 4, inclusive, are all of the exhibits offered upon said trial, and the originals thereof or a certified copy thereof have been initialed by me for the purpose of identification.

I further certify that said transcript was presented to me for certification and signed within sixty days after the final order in said cause, and that the attorneys for the defendant

had reasonable notice in writing of the time and place at which the same would be tendered for certification.

Given under my hand this 1st day of May, 1967.

CLYDE H. JACOB, Judge

page 35 } CLERK'S CERTIFICATE

VIRGINIA:

In the Clerk's Office of the Circuit Court of the City of Norfolk, on the 2 day of May, 1967.

I, W. R. Hanckel Clerk of the Circuit Court of the City of Norfolk, do certify that the foregoing report of the testimony, exhibits and other incidents of the trial in the case of Checkered Flag Motor Car Company, Inc., versus Ivan L. Grulke, etc., was lodged and filed with me as the Clerk of said Court on the 2 day of May, in the year of 1967.

CLERK OF THE CIRCUIT
COURT OF THE CITY OF
NORFOLK

By T. A. W. GRAY
Deputy Clerk

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

# INDEX TO RECORD


| | Page |
|---|---|
| Writ of Error Awarded | 1 |
| Record | 2 |
| Assignments of Error | 2 |
| Judgment—March 6, 1967 | 2 |
| Witnesses: | |
| Eddie Gene Freeman | 4 |
| Ivan L. Grulke | 9 |
| Certificates | 19 |