ROYAL COURT

31st January, 1990

Before: The Bailiff, and
Jurats Lucas and Orchard

Between:	Andrew John Beal	Plaintiff
And:	John Joseph Powell	Defendant

Breach of contract - claim for damages - plaintiff relied on defendant's declaration that a motor vehicle was roadworthy when purchasing at an auction.

Advocate D.F. Le Quesne for the plaintiff,
The Defendant represented himself.

JUDGMENT

THE BAILIFF: This action arises from the sale by the defendant to the plaintiff of a Land Rover, J55430, at an auction conducted by H.W. Maillard and Son on the 30th November, 1988.

The evidence shows that the vehicle was put into the auction accompanied by an undertaking signed by the seller to the effect that it was in roadworthy condition. We find that that was a condition which was, so to speak, a condition precedent and was accepted by

the plaintiff who relied on it and without that undertaking he would not have bought the vehicle.

Shortly after he had bought it and completed the sale on the 5th December, he discovered a number of defects in the course of his driving it back to his house from Maillard's auction field to Bel Royal.

Eventually, and it is not necessary for us to go into the details, he was so disturbed at what he had found that he obtained a report concerning the condition of the vehicle, but in particular the fact that it was emitting a large amount of smoke. It was therefore examined by Mr. Rabet, a Traffic Officer, on the 14th February, 1989, and the concluding sentence of his report is this: "Due to the defective braking system the excess smoke and oil emitted from the exhaust, this vehicle is unfit to circulate on the public highway".

Furthermore, as a result of further examination of the vehicle the plaintiff became aware that the chassis itself was defective and probably unroadworthy and accordingly Mr. Rabet prepared a second report dated the 22nd June, and the penultimate paragraph of that report is as follows: "The condition of the chassis would make the vehicle unsafe to circulate on the public highway". Therefore, the position is that an Officer of the Jersey Motor Traffic Office on the 14th February, that is to say some two months or so after the sale, certified that it was unroadworthy for one particular reason and added a further reason in June.

The question we have to decide was whether we felt, on the balance of probabilities, having regard to the evidence we have heard, that those two conditions were present at the time of the sale on the 5th December, 1988, and if they were, then it follows because the plaintiff had relied on the certificate of roadworthiness that we should have to find for the plaintiff.

The defendant says that there is a time factor involved here and that the vehicle was in fact in a roadworthy condition because he himself had driven it, after buying it in England about one month previously and because it had been examined in Scotland at about the

time he had bought it and he had a letter in the form of a certificate by Hallidays Garage, who had also completed the formal certificate regarding the condition of the vehicle - an MoT certificate - which they issued on the 21st October, 1988. There is of course a warning attached to that certificate which says: "A test certificate should not be accepted as evidence of the satisfactory mechanical condition of a used vehicle offered for sale". But that is not, really, what is in issue. The issue is: was the vehicle roadworthy in December, 1988?

In the course of the hearing, although the Order of Justice lists a specified number of defects, these were reduced to two, the excessive smoke and the defective chassis. Although, strictly speaking, the letter was not evidence, we allowed it to be put in, because Mr. Le Quesne did not insist on his legal right to object to it.

We are satisfied that the report given in Scotland is not reliable. We have no doubt whatever, from the evidence we have heard, that the defects were there in December, 1988. We do not ignore the plaintiff's evidence, nor do we ignore the evidence of Mr. Overbury. The evidence of Mr. Overbury is interesting; he answered an advertisement of the defendant, who had bought the vehicle, as we said, about a month before the transaction and advertised it in the "Jersey Evening Post" as being in very good condition for something like £1,700. Mr. Overbury drove it and did not experience the amount of smoke which was discovered by the Motor Traffic office in February. But we think the reason for that is quite clear: he could not have 'topped up' the oil, if he had 'topped up' the oil it would have smoked as it did eventually. That was the difference between the test-drive he carried out with the vehicle and that carried out by Mr. Ivor Ozouf shortly after the plaintiff had taken possession of the vehicle. The difference is that when you 'topped up' the oil then very shortly afterwards the engine would begin to smoke. There is no doubt in our minds, having looked at the report and heard the evidence of Mr. Young of St. Helier Garage, that the defect there was due to the pistons and the leaking of oil onto the exhaust.

It is also I think, in our opinion, significant that within a very short time of the test carried out by Mr. Overbury, the defendant

decided to reduce the price from £1,700 also, to just about enough to clear what he had paid for the vehicle in England.

We do not know what the purpose was, but we accept the evidence of Mr. Beal, senior, the father of the plaintiff that the engine had been steamed which had removed any traces of excess oil from it. We can only conjecture as to why this was done shortly before the sale at Maillard.

Mr. Le Quesne is right when he says that we have to consider the question as a whole, that is to say, was the vehicle unroadworthy at the time it was sold in December. We have come to the conclusion, notwithstanding the evidence of the defendant and his witnesses, that on the balance of probabilities, the plaintiff had relied on the undertaking that the vehicle was in a roadworthy condition when in fact it was not. There will therefore be judgment for the plaintiff in the sum of, first of all, special damages, £127.41 which was the bill incurred by him to St. Helier Garages for examining the vehicle; and £55 for the attempt he made to put right the excessive smoke by replacing the injectors, at Tostevin. There will also be judgment for general damages in the sum of £1,250; interest will be payable on special damages and general damages at twelve per cent, with effect from the date incurred. As to the date of the bills, we don't have the receipts in front of us, but interest will accrue from the date they were paid. So far as the general damages are concerned, interest at twelve per cent will run from the 5th December, 1988, until today. The defendant will pay the taxed costs of this hearing and of the earlier hearing when the costs were left over.