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3rd November, 1987.  
IN THE ROYAL COURT OF JERSEY  
(Samedi Division)

Before P.R. Le Cras, Esq., Commissioner  
and Jurats M.G. Lucas  
J. Orchard

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BETWEEN Alfred Thomas Cornish PLAINTIFF  
AND David Wright DEFENDANT  
(by Original action)

AND

BETWEEN David Wright PLAINTIFF  
AND Alfred Thomas Cornish DEFENDANT  
(by counterclaim)

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For Mr. A.T. Cornish - Advocate S.C.K. Pallot  
For Mr. D. Wright - Advocate C.M.B. Thacker

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In this action Mr. A.T. Cornish ("the Plaintiff") claims to be the owner of a Volvo Penta Outdrive Motor (a Petrol engine) and alleges that Mr. D. Wright ("the Defendant") is guilty of the tort of detinue in withholding it from him. In his answer and counterclaim, the Defendant alleges that the motor is in the joint ownership of the parties under the terms of an agreement relating to the purchase and refurbishment of the M.V. Simetra: and further counterclaims for a sum of money which he claims to be due thereunder, for the work on the boat to be completed and for damages.

In his reply, the Plaintiff denies that there was a binding agreement, but only an agreement in principle; and that the conduct of the Defendant was such that he could not be expected to proceed with the proposed arrangement which had not in any event materialised, so that there was no concluded partnership agreement.

So far as the terms of the agreement are concerned, these are plain beyond a peradventure. They are contained in a letter written by the Defendant to the Plaintiff on the 25th September 1986. This letter was put to the Plaintiff who accepted the first seven paragraphs as setting out the agreement. These read as follows:-

"I am writing to ask you for settlement of your half share in the above boat, which according to our agreement is now four weeks overdue.

You will remember that we agreed in early June that you would purchase from me a half share in this boat.

We agreed that because you would personally carry out most of the repairs yourself without charge, the purchase price was to be reduced from £5,000.00 to £4,000.00. You agreed to pay me not later than 31st August, 1986 the sum of £2,000.00 in full settlement of your half share in this boat.

We then further agreed to purchase replacement engines and outdrives from D.K. Collins Marine Ltd., at a cost of £2,850.00 each. On the basis of this agreement, I asked for and obtained overdraft facilities until 31st August, so that I could purchase same. These engines were delivered to us on the 26th June.

On the 29th June, the boat was transported from Gorey harbour to La Solitude to commence work on replacing engines etc.

At the time, you instructed the harbourmaster at Gorey that my mooring was to be given up and that we would be sharing your old mooring jointly. Your old mooring was then transferred to our joint names.

During July, you removed the engines and the boat was placed undercover where you subsequently removed the cabin and other panelling. Very little work was carried out during August due to pressure of work, but I telephoned you on the 27th August to confirm payment. At that time you indicated payment on 30th August, but although you were working on the boat that day, no payment was made."

Having heard evidence at length, we have no hesitation in saying that we find that the agreement was concluded and came into effect. The boat was taken out of the water, removed to La Solitude Farm, the old diesel engines were taken out, one of them being sold certain items

were stripped out of the hull which was steam cleaned, and two new petrol engines were purchased, one in the name of each of the parties.

It follows from this, first that the Plaintiff is liable to pay the Defendant £2,000 in respect of his half share of the boat, and, second that the petrol engine which the Plaintiff claims as his does not belong to him outright, but to the parties jointly with the consequence that his claim of detinue must fail.

This deals with the first part of the case. The next aspect is whether the agreement has been concluded, and the consequences which follow from such conclusion.

There is no question but that the agreement has been concluded, and this is accepted by both parties, although they disagree as to the date and the circumstances in which it was concluded. As these may be relevant if and when damages are sought we propose to make a finding on these points.

To do this, we do not think that we need go into great detail. The difficulty arose over the disposal of the original diesel engines. The Plaintiff was under the firm impression that the sale was in his hands. He arranged to sell both engines for £100; but when the Defendant wished to keep one in case it would serve as a replacement in his forklift truck, the Plaintiff gave way and countermanded the sale. In fact, the engine would not fit the forklift truck, and although it was claimed that the value of the engine was greater for the Defendant than £100 as various components could be used as spares, the Defendant or his servants removed only one or two pieces. However, he did not keep the engine and it was not put back in the hands of the Plaintiff for sale but, without reference to him was sold for £100 to someone to whom the Defendant wished to grant a favour. The Defendant gave evidence that he tried to telephone the Plaintiff as a matter of courtesy, but on receiving no reply proceeded without any further reference to him.

Had the parties been of equal standing this might have been of less importance, but they were not. The Plaintiff is an electrician, who,

over a period of years has done work for the Defendant. In our view the Plaintiff was entitled to view the actions of the Defendant as being tantamount to a cavalier overriding of his rights and interests under the agreement and to be fully entitled to conclude that proper consideration was unlikely to be given to him. In our view, although the incident was small in itself, given the surrounding circumstances he was entitled to seek to terminate the arrangement.

There is no question but that he did so. In his view, the Defendant, at a meeting on the 3rd September 1986, at which the Defendant's son Timothy was also present, agreed to this. The Defendant denies this, saying that he did not so agree, but he accepts, through his Counsel, that in any event the agreement was terminated by the delivery of the Plaintiff's Order of Justice which was served on the 2nd December 1986.

There is a clear conflict of evidence as to whether the agreement was terminated on the 3rd September. The Plaintiff was quite clear that the engine disposed of by the Defendant not being recoverable, he no longer wished to remain in association with him with regard to the boat. Although he wished this association to end, it is quite clear that he nonetheless, and notwithstanding, that he regarded the venture with the boat at an end, asked if this would affect his work/as an electrician, for the Defendant. The question is, whether the Defendant asked him to reconsider the position and come back whilst not accepting that the agreement was ended or whether, as the Plaintiff claims, he accepted it. Our view is that he did accept it, but hoped that the Plaintiff would reconsider his decision, not least on account of the position which had by this time been reached by the parties.

Whatever his view as to the termination of the agreement, it is apparent from his letter of the 25th September that the Defendant wished to sort out the problem. However, whatever he wished to do, it is clear that first, he was unable to obtain any response from the Plaintiff, and second, was very shortly under the further handicap that, following

the Order of Justice, one of the petrol engines was removed from La Solitude Farm. It is clear to us that nothing can be done until this engine is once again available.

Having however made these findings, we are not, so far as the issue of damages is concerned, in a position to make any order, as we have no evidence before us either as to any loss which may have been suffered or as to the circumstances which may have caused it. Nor are we in a position to make the order sought by the Defendant when he requests that the Plaintiff return the engine and complete the work, for we have not heard whether it is, for example, better to complete the work and sell the boat or to sell the assets as they stand. All we can say on this point at this stage is that the assets fall to be liquidated and the proceeds divided and that the assets include the hull, the interest in the mooring, one diesel engine and the proceeds of the other and the two new petrol engines.

Finally, we should add that Counsel for the Plaintiff suggested that the Defendant should purchase the engine invoiced to his client and have the boat, thus releasing the Plaintiff from any obligation. The Defendant declined this suggestion, and we have to say, in view of our finding, that he is entirely within his rights to do so.

In these circumstances the order of the Court, at this stage, will be as follows:-

1. The claim of the Plaintiff in detinue contained in his Order of Justice is dismissed.
2. The Plaintiff will pay the Defendant £2,000 as claimed in the answer and counterclaim.
3. Interest will run thereon, at a rate and from a date to be decided after hearing the submissions of Counsel.
4. The joint assets are to be liquidated and divided. In the absence of agreement we will hear further argument.

5. The issue of damages is adjourned. If it is to be proceeded with, then, again, further argument will be required.

Cases Cited.

Wilkinson -v- Haygarth: (1847) 116 ER 1085.

Macay -v- Dick & Anor: (1881) 6 A.C. 251.

Dingwall -v- Burnett: 776 Digest of Cases 1911-1920.

Harrison -v- Walker: (1919) 2 KB 435.

Baker -v- Barclays Bank: (1955) 2 All ER 571.

Daulia Ltd -v- Four Millbrook Nominees, Ltd.: (1978) 2 All ER 557.

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"Roman Law and Common Law" by W.W. Bockland, & Arnold, McNair.  
2nd Edn. (1952) (2nd Reprint) p.300.

Planiol: "Traité Élémentaire du Droit Civil, Vol.2, Part 2, 1658-3504.

Halsbury's Laws of England, Vol.35 (4th Edn.) re Partnership: paras 4-7.

op.cit. : paras 1127,1143-1147.

Words and Phrases legally defined (2nd Edn.): pp.78-79.

Crossley Vaines "Personal Property" (5th Edn.): pp.56-59.

Lindley on Partnerships: pp.653, 656-657, 680.

Benjamin's Sale of Goods: pp.69-72, 132-133, 144-155, 299-307, 394-395.

Chitty on Contracts (25th Edn.): pp.33-34, 97-98.

Statutes Cited.

Sale of Goods Act, 1979: Sections 2, 4, 17, 18, 35, 49, 50.