

NOVA SCOTIA  
COUNTY OF HALIFAX

To wit:

CH 11489

IN THE COUNTY COURT  
OF DISTRICT NUMBER ONE

BETWEEN:

JOSEPHINE SHEPPARD,

Plaintiff

- and -

DIANNE MacDONALD and  
CLYDE MacNEIL,

Defendants

Robert S. Huestis, Q.C. for the plaintiff.  
Douglas Campbell, Esq., for the defendant, Dianne MacDonald.  
Gordon A. Tidman, Q.C., for the defendant, Clyde MacNeil.

1976, January 30, O Hearn, J.C.C.:— The plaintiff claims possession of an automobile, alleged to have been sold to her by the defendant, Dianne MacDonald, and repaired at the request of the defendant by the other defendant, Clyde MacNeil, which MacNeil retains in his possession. The plaintiff also claims damages for wrongful detention of the automobile. It is to be noted that there is no counterclaim and in particular that Mr. MacNeil has not pleaded any claim for the cost of the repairs he made.

Certain facts have been established without cavil. A year ago, in January, 1975, the plaintiff was living in St. Mary's Highrise in Halifax and encountered the defendant, Dianne MacDonald, whom she knew previously, when Mrs. MacDonald was moving into the highrise. Mrs. Sheppard had been looking for a Volkswagen Station Wagon, mostly, as she says, by scanning the advertisements in the papers but had not been successful in her search. She says she had a price of approximately \$1,000.00 in mind. During Mrs. MacDonald's removal to the highrise it came out, in conversation, that she had such a station wagon although not in Halifax. It was in the Annapolis Valley, at a garage, and was inoperable because the motor had seized

up and had to be replaced. It is likely enough, as Mrs. MacDonald says, that she mentioned the station wagon because she had to make so many trips in using her small car to move.

It is clear that Mrs. Sheppard expressed an interest in buying the station wagon and mentioned \$1,000.00 and that Mrs. MacDonald set a price of \$1,100.00 for the vehicle, to which Mrs. Sheppard agreed. What the price covered is not at all agreed, however. Indeed, it is the central matter of dispute. Mrs. Sheppard says that it was understood the car would be in running order when she paid for it. Mrs. MacDonald testified, 'I think I may have said "For what its worth without an engine, you can have it for \$1,100.00".' Neither testimony is very impressive, a year after the event. Mrs. MacDonald's version is explicitly a surmise; Mrs. Sheppard's is not explicit as to what passed between the two ladies on the point.

There was some continuing conversation about the station wagon. Mrs. MacDonald had asked her father, the defendant MacNeil, to try to locate a reconditioned engine. It was not clear whether this was before or after the station wagon was put in his garage, at Victoriavale, Annapolis County, after having been in some other garage for six weeks. Indeed, it is not clear from the evidence when the transfer to Mr. MacNeil's garage took place.

On March 21st. Mrs. MacDonald was admitted to hospital as a result, as she testified, of a hit-and-run accident and remained there, apparently confined to bed for some considerable period, extending beyond April 30th. On April 30th Mrs. Sheppard gave Mrs. MacDonald a cheque for \$1,100.00, which was not, however, cashed until August, and Mrs. MacDonald assigned the documents of title to Mrs. Sheppard.

Mrs. Sheppard says that this happened because Mrs. MacDonald told her the station wagon was in the garage and had

been fixed. She, Mrs. Sheppard, decided it would have to be road tested (which she later explained meant safety inspected and certified under the *Motor Vehicle Act*.) The vehicle had no registration plates and it would be necessary to have registration plates and a current safety certificate before it could be driven on the highway. While Mrs. Sheppard, as she testified, had not been in a hurry at the beginning of her dealings with Mrs. MacDonald, she was apparently now becoming more concerned to have the vehicle in operating condition. Mrs. Sheppard testified that after the transaction, Mrs. MacDonald told her they had been let down and the garage had not done any work on the vehicle. Mrs. Sheppard said she was very cross about this.

Mrs. MacDonald testified about the exchange of the cheque and papers that Mrs. Sheppard told her she wanted the car, although she knew that they had not found an engine. She, Mrs. MacDonald, was flat on her back, as she phrased it, and was not concerned with selling as she had other things to consider. Mrs. Sheppard proposed to give Mrs. MacDonald a cheque for \$1,100.00 and have the vehicle towed down. Mrs. Sheppard testified on cross-examination that she had no recollection of discussing having the vehicle towed down. Mrs. MacDonald testified that Mrs. Sheppard suggested it would be better to register it in her name. According to Mrs. MacDonald, she urged Mrs. Sheppard to wait until she saw the car as it might not suit her. Mrs. MacDonald denied telling Mrs. Sheppard it was ready for the road. In fact, its unreadiness was almost a joke it was so prolonged. Mrs. MacDonald did not cash the cheque because she did not consider the deal final. She says she told Mrs. Sheppard on several occasions she would give her the cheque back if she found another vehicle to suit her. She was sympathetic, she said, with Mrs. Sheppard's difficulty and felt an obligation to help her find an engine. Mrs. MacDonald denies that she promised to put the car in running order; as she understood the transaction Mrs. Sheppard would pay for the

repairs. Indeed, Mrs. Sheppard acknowledged on cross-examination that Mrs. MacDonald never promised to install a new or used engine, but did say that the engine would have to be replaced. The idea of towing was dropped when Mrs. Sheppard decided it would be better and cheaper to have Mr. MacNeil find an engine and make the repairs.

While Mrs. MacDonald was in hospital Mrs. Sheppard met Mrs. MacDonald's mother and father, the defendant Clyde MacNeil and his wife. The apparently became quite friendly and when, at some point, Mrs. Sheppard was given the use of Mrs. MacDonald's automobile she used it also to drive Mrs. MacNeil shopping and possibly to other places. Mrs. Sheppard was aware that Mr. MacNeil was trying to get a reconditioned motor for the station wagon and it is clear, from all the evidence, that the difficulties were discussed when the parties met in the hospital, but Mrs. Sheppard denies that she ever asked Mr. MacNeil to get one for her. She remarked in her testimony that she would not know what to do with it, but that does not seem particularly pertinent as one would not expect her to install it herself.

Mr. MacNeil, on the other hand, says that Mrs. Sheppard asked him to get a used engine. At first he said that this was before April 30th as she owned the car before April 30th. When told that the transaction took place on April 30th he recalled that he was in the Motor Vehicle Branch of the Department of Highways when she changed the registration, and that that was when she asked him to get an engine. His evidence, as I have noted, is a little confused or at least confusing (but no more than that of the ladies). Mrs. Sheppard asked him to get a new engine; she knew she had to pay for it; he was pretty sure he was going to pay for it. In Dianne's (Mrs. MacDonald's) apartment Mrs. Sheppard told him to try to get a second hand engine. This was always done in Dianne's apartment. It is, I think, quite clear from his other evidence and the evidence of

the rest of the witnesses that the question of a new motor did not come up, if at all, until June.

Mrs. MacDonald places it about mid-June. Mr. MacNeil's bill, tendered as D1, contains a note (twice) 'Received material and parts on June 18/75' but that was a Wednesday, and the other testimony indicates what could be called the crucial conversations took place on Monday and Tuesday. I think the most probable dates were June 16th and 17th, but they are not material dates.

Mrs. Sheppard describes this episode as follows: Mr. and Mrs. MacNeil were in Mrs. MacDonald's apartment. Mrs. MacDonald said they had been unable to get an engine. Mr. MacNeil said that he had made efforts to get an engine but had had no luck. He had a friend in the area and would try him as a last resort. Mrs. Sheppard was told that this man had an engine. It was June by this time and she said, 'For God's sake put it in the car!' Dianne then said, 'The car would be worth more'. Mrs. Sheppard was cross and asked why should she pay more. The figure proposed was \$1,650.00. Seeing the car had already been paid for Mrs. Sheppard could not see how they could get that and she asked Clyde (Mr. MacNeil) how. On cross-examination it appeared, more clearly, that she asked Mr. MacNeil the difference in price between the engine proposed and a reconditioned engine and he said \$200.00. As that would make the total price, if accepted, only \$1,300.00 from Mrs. Sheppard's viewpoint, she would not accept (the \$1,650.00 price) and stormed out, saying, 'For God's sake get the bloody engine in it'.

That night, Mrs. Sheppard testified, Mrs. MacDonald called her after ten and asked if she would pay the \$1,300.00; she sounded very upset and Mrs. Sheppard told her she would discuss it the next day. Mrs. Sheppard thought it must have been the next day, although she couldn't quite remember the sequence at about that point, that Mr. MacNeil mentioned that he wanted to see if the numbers on the station wagon coincided

with the numbers on the engine he had found. Mrs. Sheppard's evidence was somewhat vague about these two days and, especially about the second day.

While, in response to several questions, she stated merely that she could not recall any discussion of a new engine or of Hillcrest Motors, she was quite definite that, at the time the price increase came up, the reason that she was given was that the engine Mr. MacNeil had to put in increased the price and at that point she asked him the difference between an old engine and a reconditioned engine and was told approximately \$200.00. She is also quite definite that after the end of April she did not 'discuss' the cost of repairs with Mr. MacNeil and that she did not 'discuss' the price of the engine with Mr. MacNeil.

At that point I drew counsel's attention to the difficulties some witnesses have with the word 'discuss', a difficulty that I think most trial lawyers have encountered. A typical sequence goes like this:

-Q. Did you discuss this case with anyone before coming to court?

-A. Oh no.

-Q. Do you mean to tell me that you did not talk about it to the witnesses when you were in the waiting room?

-A. Oh sure we *talked* about it.

The word 'discuss' seems to have some formal quality in the minds of many people that the basic English equivalent 'talk about' does not.

After this discussion of the word 'discuss' Mrs. Sheppard said, explicitly, that she did not talk to Mr. MacNeil about the price of fixing the Volkswagen bus at any time.

Mrs. MacDonald describes the mid-June events as follows: Her father told Mrs. Sheppard in Mrs. MacDonald's

living room that he could not find a used motor, and asked would she consider purchasing a new engine. He phoned two Volkswagen dealers to get the price and the cheaper was that given by Hillcrest Motors, \$510.00 approximately. He was leaving for Middleton, in the Valley, the next day. Mrs. Sheppard took the situation very seriously and said, 'Give me the night to think about it'. Next morning Mrs. Sheppard came down; Mrs. MacDonald thought she had probably had enough of the deal, but Mrs. Sheppard indicated she had thought it over and she told Mr. MacNeil, 'Go ahead Clyde, get the engine and fix it up'. She indicated she was unhappy in Halifax and wanted to travel west and into the States. Mrs. Sheppard added, 'And if there is anything else that needs to be done, do it'. Mr. MacNeil mentioned some body work.

Mr. MacNeil's account is that he and his wife were in his daughter's home, with the daughter lying on the cot. He told Mrs. Sheppard that it was impossible to find a second-hand engine. The only thing to do was for Dianne to hand the cheque back. He checked on the price of new motors and Robertsons, Dartmouth, wanted \$580.00 and Hillcrest, \$510.00 plus tax. Mrs. Sheppard said she would like to have overnight to think about it. Next day, Mrs. Sheppard told him to get the new engine and fix what needed to be done and he, accordingly, did so. Mrs. MacNeil agrees: her husband came in from the Valley and could not find a second-hand motor; the only alternative was a new one. Hillcrest's price was cheaper. Mrs. Sheppard said she would have to wait overnight. She came next day and told him to get the motor, get it in good shape, she wanted to take a long trip in Western Canada and to the States.

There seems to be no disagreement that Mr. MacNeil then got a motor, installed it and put the van in working order, including doing some body work. When finished—it is uncertain whether this was June 23rd or 30th, but it was apparently a Monday—he phoned his daughter and told her. Mrs. MacDonald

says they discussed that cost because his whole bill was \$700.00, or thereabouts, which would make the total cost of the vehicle to Mrs. Sheppard \$1,800.00. Mrs. MacDonald says they agreed that this was more than the vehicle was worth and that they would split the loss between them, asking only a total of \$1,600.00 from Mrs. Sheppard, as a fair price.

The fair price element in this case requires special consideration, which can be given here parenthetically. Mrs. Sheppard testified that her inquiries showed that a vehicle of this make, type and vintage would be worth about the \$1,000.00 she was prepared to spend initially. Mr. Carl Conrad was called as an experienced car salesman, involved in the business for 25 years. In his opinion, \$1,100.00 was a fair price for a 1968 Volkswagen bus, not complete as a camper. If the motor were gone it would be just so much metal, but with a normal motor a fair price would be \$1,100.00. At the date of trial it would have depreciated to \$800.00 or \$900.00. He noted, however, that Volkswagens were different to an extent, and that the price depends very much on the condition of the unit. The Volkswagen bus is a popular vehicle; people make campers of them and there is probably more demand for them in this respect in the summer time. Mr. Conrad's point about the particular market for Volkswagens is well taken. It is a matter of world-wide notoriety that the Volkswagen company prides itself on maintaining the style of its vehicles, not only for several years but for many years, so that style obsolescence is not a major factor in value and people mainly prize the vehicle for its utility and associated virtues. Mrs. MacDonald attributes her willingness at all material times to call the deal off if Mrs. Sheppard were dissatisfied to the fact that she was confident she could sell it for \$1,600.00, \$1,800.00 or even \$2,000.00 at any time. Her family were familiar with conditions in the Annapolis Valley, where there are many young families, especially in the services,



who could use such a vehicle for many purposes. Her intention, however, was to offer the station wagon at \$1,600.00.

It is possible that Mrs. MacDonald was mistaken about this but I do not think that it was probable that she was, although a \$500.00 spread in another type of vehicle might be hard to justify. Whether she was or not does not matter too much, in this case. What is important, is whether she believed she could get that price and I am persuaded that she did.

Mrs. MacDonald testified that when her father phoned to say the car was ready and they had agreed on \$1,600.00 as a fair price, she tried to reach Mrs. Sheppard by telephone but did not succeed until Tuesday morning. She told Mrs. Sheppard that the whole bill was \$700.00 but that, 'we' (she and her father) felt \$1,600.00 a fair price. Mrs. Sheppard said she was not prepared to pay that—the most she would pay was \$1,350.00. Mrs. MacDonald said 'If you really feel strongly I will give you your cheque back'. Mrs. Sheppard said, 'If you feel that way I'll get it for \$1,100.00—after all you signed the registration'. Mrs. Sheppard then said unpleasant things to her and left. Mrs. MacDonald told her father that Mrs. Sheppard was not going to pay and that the deal was off as far as she (Mrs. MacDonald) was concerned.

Mrs. Sheppard, as already noted, places the \$1,350.00 phone call in the previous week. She says that within a day or two of the phone call Mrs. MacDonald called or her mother came up and said that the bus was ready to go. She went down and was told the bus was now worth \$1,650.00 and that would be the price. She got very angry—particularly over the loss of time—and there was a short and heated conversation. She said she was not going to pay anymore; she had handed over the \$1,100.00 when the papers were transferred. At the time of the final conversation, Mrs. MacNeil had the cheque and she offered to give it back to Mrs. Sheppard. Mrs. Sheppard refused to take it, to have anything more to do with it. Later it was cashed, in August she thinks.

Some time after this, Mrs. Sheppard and a friend were in the Annapolis Valley and called in on Mr. MacNeil, where they saw the vehicle. Mr. MacNeil says she got him to start the motor up and said she was satisfied with it, but he would not permit it to be taken from the garage because she denied responsibility for the bill. This was apparently an exercise of the mechanic's lien on chattels recognized but not conferred by *Mechanics Lien Act*, R.S.N.S. 1967 c.178, s.44.

Mrs. MacDonald agrees that she did phone Mrs. Sheppard and suggested settlement for \$1,350.00 but this was after she received a letter from Mrs. Sheppard's solicitor and it was because Mrs. Sheppard, herself, had suggested \$1,350.00 when, as Mrs. MacDonald put it, 'they agreed to disagree'. It is clear that Mrs. MacDonald's offer to settle was not accepted by Mrs. Sheppard.

Plaintiff's counsel made a staunch effort to have Mrs. MacDonald call Mrs. Sheppard a liar. She was naturally (and to my mind commendably) reluctant to do so, as the epithet is commonly considered to be a grave insult. She did state, however, that there were some things Mrs. Sheppard said that she could not agree with and some were absolutely false. In this respect, counsel merely emphasized a point that is quite obvious from the foregoing outline of the testimony given in this case, i.e., that credibility is a very important question here.

Credibility, of course, involves a great deal more than honesty and the intent to be truthful. It involves, for example, a person's powers of observation; what use he or she makes of his senses and how good those senses are; what kind of intelligence does he or she apply to interpreting the signals received through the senses.

These factors are probably not too important in this case. There is no evidence of defective sight or hearing and

I would say all the witnesses were of above average intelligence, with no evident quirks that would affect their reasoning powers. I attribute more importance to interest, attentiveness and temperament as factors affecting the recording, retention and recall of the significant events in question. Of all the witnesses involved I know only Mrs. MacDonald. I am acquainted with her through church and social work and membership on a church board, but as I have no idea of her reputation in the community for honesty and truthfulness, I think I am in a position to determine her credibility on the basis of the evidence and her demeanor in the court room. It is perhaps unfortunate that the necessity to keep this in mind should arise. Had I known earlier that she was a party I might have arranged for another judge to take the trial. I will come to her in turn.

Another important element in credibility is the tendency of people, even very good high-minded people, to rationalize their recollections in line with what they feel the facts must have been, should have been or could have been. People everywhere and in all ages have tended to believe what they wanted to believe. God made man in his own image and ever since man has been remaking God and the world in his own image: this is what we mean by idolatry. Life might well be unbearable without some degree of rationalization of this kind, but it obviously gets in the way of truth. I think that it played a large part in this case but that it is not possible to explain or resolve all the conflicts on that basis.

The witnesses show quite different temperments. Mrs. Sheppard appears to be a very reserved person and not at all loquacious. She had some difficulty in dealing with the facts in sequence and I was not always sure what event her answers related to. On occasion, it appeared that she and counsel, both direct and cross-examination, were directing question and answer to different events and she admitted, once or twice, that she was not sure of the sequence. She did not fix on any

date except the April 30th one but the defendants were not, I think, any more accurate in that respect. She did not attempt to give an account of anything said by Mrs. MacDonald that led her, Mrs. Sheppard, to the understanding that the car would be put in running order by Mrs. MacDonald, nor was the question explored in any detail. More than once she asked counsel, including her own, to explain a question but I felt that the explanation did not always put them in the same perspective. My strong impression is that while Mrs. Sheppard likes things definite and tied down, she is not always able to organize her thoughts and to express herself so as to obtain that result, and that mutual misunderstanding could easily arise between herself and those with whom she communicates. One must make allowance for the possibility, of course, that she was more tense in her appearance in court than she would ordinarily be.

Mrs. MacDonald's appreciation of and response to questions was much quicker, and she gave a more ordered and coherent account of the transactions in the case than Mrs. Sheppard or her father. She appeared to appreciate some of the legal niceties involved, no doubt as the result of consultation with her solicitor but on one or two occasions she expressed herself, in a way that was at odds with the legal structure of her evidence. It was obvious, for example, that to some extent she thought of this as a family affair, involving her father and herself in an effort to help Mrs. Sheppard get a suitable engine for the vehicle. I don't think that this could be properly characterized as a joint venture, as I am sure that the two of them never consciously worked out the terms of such an arrangement and that, in fact, it would be absurd to consider that they created any such legal status as between themselves. The fact, however, that the cost of repairs together with the original price of \$1,100.00 were lumped together in the figure of \$1,600.00 and that it was conveyed in that way by Mrs. MacDonald to Mrs. Sheppard is surely a definite indication that

in the mind of both Mrs. MacDonald and her father, the two parts of the transaction, the sale and the repairs had coalesced in some way. This way of presenting the bill may of course been suggested by the fact that Mrs. MacDonald was in Halifax and more able to receive the money than Mr. MacNeil in Victoriavale, and also, possibly, by the fact that Mr. MacNeil had to borrow the money to purchase the motor from Mrs. MacDonald, who presumably would be getting it back from him in any case. This way of looking at things and expressing things could, I suppose, give Mrs. Sheppard the impression that the engine installation and vehicle repair was a common effort by Mrs. MacDonald and Mr. MacNeil, although not necessarily a joint venture in its legal sense.

Mr. MacNeil displayed some confusion about dates but otherwise his evidence was straightforward and in sequence. There was an element of confusion in it, however. He has a tendency in responding to try to cover all the foreground and background at one blow, with the result that a lot of extraneous matter appeared in his answers, and if this is his ordinary way of explaining things—and I have no reason to think otherwise—it could make him hard to pin down.

For example, what exactly was the conversation on the Monday and Tuesday (say June 16 and 17) when Mrs. Sheppard was told that a used engine could not be found and she ended up by saying, 'For God's sake get the bloody engine in it? Can it be reduced to either of the simply differing accounts that the parties give of it, or even to both of them combined. This strikes me as very dubious. I am satisfied that Mr. MacNeil discussed the idea of getting a new engine with Mrs. Sheppard on this occasion, but is it also possible that they talked about one final effort involving a man who had an engine that might be suitable and that the numbers would be checked out. I think it is probable that there was such a conversation and not unlikely that it may have taken place on this occasion,

mixed with the talk of the new engine. I am satisfied that Mrs. Sheppard was told the price of the new engine, but I think it not unlikely that she asked the difference between the price of a new engine and a used or reconditioned one. In this respect I am not unmindful of the testimony of Mrs. MacNeil, in which she substantially supported her husband and daughter and which she gave in a very direct and straightforward manner, in full accord with her situation as a respectable rural housewife. Her evidence, however, was brief and was not explored in any depth. In sum, it seems highly probable that the conversations on the 16 and 17 of June were fairly discursive and could well have been conditioned and even burdened by the fundamental ambiguity that I find to exist in this case.

That ambiguity concerns the question of whether the vehicle was to be sold in running order or not. It may be that Mrs. MacDonald's specified that the vehicle would be sold as is, without a functional motor, but she did not say so in very convincing language. It may be that Mrs. Sheppard had some basis for her understanding that the vehicle would be sold in running order but she did not say what it was. I have toyed with the idea that the burden of proof might resolve the difficulty. Could Mrs. Sheppard's case, for example, be assisted by invoking *Sale of Goods Act*, R.S.N.S. 1967 c.274, s.16. Apart from the difficulty of applying the wording of that section to this situation, it is clear that Mrs. Sheppard was aware from the beginning that the vehicle was inoperable because of the engine, and I think any court would be reluctant to imply a term that it would be put in running order in the circumstances.

Neither side has produced a preponderance of evidence that the other party understood the deal in the same way they did, or that the other party so conducted herself that she or any other reasonable woman would be entitled to rely upon that conduct as expressing an understanding and acceptance of the proponent's terms, i.e., to rely upon the objective view of

contract as express by Anson. The balance of probability is much in favour of the view that there was no *concensus ad idem* on this occasion and up until then, probably including the conversations of June 16 and 17, and no conduct that could reasonably be taken as an Ansonium substitute for a true consensus. While I am rather less certain that Mrs. Sheppard believed, on reasonable grounds, that she was only going to be asked to pay the difference between a new engine or a special engine and a reconditioned one, on June 16 and 17, when she undoubtedly told Mr. MacNeil to go ahead and install the engine, it seems to me definitely more probable than not that she had some such understanding, and that the subsequent suggestion of \$1,600.00 a week later (if that was the date) was a shock to her, although the amount of \$1,650.00 may have come up on June 16 and 17 in adding the price of \$1,100.00 to the price of \$510.00 plus tax, for the new engine. According to Mrs. Sheppard's own account it was discussed on June 17 (if that was the date) and despite her figuring that it should be only \$1,300.00, she told Mr. MacNeil 'For God's sake get the bloody engine in it'.

It being established that there was an initial error on a basic term between Mrs. MacDonald and Mrs. Sheppard it is clear that the two ladies never achieved a subsequent agreement in any terms. The transfer of April 30th was executed on the basis of their mutual misunderstanding and would no doubt be subject to rescission, unless that is precluded by the bringing of the action, the cashing of the cheque and the state of the pleadings.

Does this apply as between Mrs. Sheppard and Mr. MacNeil? The question is not without doubt. Mr. MacNeil's understanding of the sale was undoubtedly that communicated by Mrs. MacDonald. He was a stranger to the sale himself, and there is no clear evidence that Mrs. Sheppard ever gave him a different account.

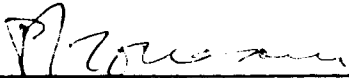
The fact that, of which Mrs. Sheppard testified, the figure of \$1,650.00 was discussed, the fact also, which I accept as proved, that she was told that it would involve the purchase of a new engine and the fact that she undoubtedly told him 'For God's sake get the bloody engine in it' would, I think, justify him in the eyes of any reasonably by-stander in believing that he had Mrs. Sheppard's authority to get the engine and install it. It has been proved to my satisfaction that he did install it and that he bestowed monies, skill and materials upon the vehicle in the alteration and improvement in its properties, so as thereby to be entitled to a lien at common law upon the vehicle while it remains in his possession and so as to be entitled to retain it in his possession, in the exercise of that lien. I find therefore that as against the defendant, Clyde MacNeil, Mrs. Sheppard is not entitled to the possession of the vehicle until the lien is discharged and is not entitled to damages for detention. I find that there was no legal nexus between Mrs. MacDonald and Mr. MacNeil that would entitle Mrs. Sheppard to treat MacNeil as the servant or partner of, or joint adventurer with, Mrs. MacDonald in the affair of the engine.

With respect to the relationship between Mrs. Sheppard and Mrs. MacDonald, rescission not having been pleaded or otherwise raised (and it being doubtful that it can be raised at this point) I find that the contract has been executed and that it has not been proved by a preponderance of evidence that the plaintiff was entitled to have a motor installed and the vehicle put in operating by the defendant, Mrs. MacDonald, and that the vehicle is not being detained by Mrs. MacDonald or on her behalf, and that with respect to her the plaintiff is not entitled therefore to either the possession of the vehicle or damages for its detention.

The action will therefore be dismissed with costs.



The plaintiff made an interlocutory motion before my brother, Anderson, J.C.C., for an order for possession which was dismissed, the costs of the application to be decided at the trial. The motion was contested by Mr. MacNeil, who will have the costs of this application.

  
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Judge of the County Court of  
District Number One