IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. D7/82

BETWEEN	DONALD DAVIS	PLAINTIFF
A N D	AMY BROWN	
A N D	EVERTON BROWN	DEFENDANTS

Mrs. Ursula Khan for Plaintiff

Miss Dorothy Lightbourne for Defendants

Delivered: 23rd March, 1984

JUDGMENT

McKAIN J:

The plaintiff claims $7,000 on a written document (Ex. 1) admitted by defendants as balance due and owing on a vehicle sold.

The plaintiff stated he owned a minibus which he used privately in connection with a farm he had some distance (over ten miles) from his home. He had a car also, Rover which he still owns. He lived in England but came home from time to time and built a house here. When he came with his family to reside he started out working as a mechanic in a shop at Moneague where he met the second defendant who also worked there as a mechanic. He left that job, opened up a mechanic establishment for himself and the second defendant joined him and worked with him on vehicles brought to his shop for repairs, as a self-employed job worker, for over eighteen months. These two facts were confirmed and admitted by the second defendant who said the plaintiff was good to him and treated him as a father to a son and this relationship lasted three to four years.

The plaintiff during this period purchased the mini van as a second vehicle / to his car. After a while his wife returned to England and he decided to rejoin her. He decided to sell the van and keep the car. He had an offer for the van but it was not sold due to lack of financing on the buyer's part. The second defendant expressed his desire to purchase the van. He knew the second defendant could not afford the van for which he asked $8,000. The second defendant said he would ask his mother to join him in the purchase. / This was on a Saturday about 7th October, 1979. On the Sunday the defendants and another man came to his home, where he told them the price of the van was $8,000. They asked to be allowed to test the vehicle which in his view was in good running / order as he had worked on it recently. The two defendants and the driver, who was the younger son of the first defendant and brother of the second defendant, went in the van, went away and returned after about two to three hours. They told him they would buy but had only $1,000 and he / agreed they should pay the rest by instalments. After he / had left for England and decided they should go to a lawyer to prepare the agreement, which they did the Monday. Two days after the visit to the attorney he handed over the vehicle to the defendants. Some time later / about the 12th October, he was not sure, he left for England after having made arrangements for the payments to be made to one Tracy. Whilst in England he learnt that the payments were not being made; he wrote to the defendants about it once. He got no letter of complaint from / the defendants. He said he was corresponding with Tracy and may have said he would bring a gear box after what Tracy told him but if he made such offer it would be with intention of collecting for its cost as from time to time he did buy things for people and would have done the same for defendants without feeling committed on the basis of personal responsibility with respect to the parts needed for the van.

(The defendants themselves admitted they had never personally written the plaintiff in England but had told Tracy to write him asking him to bring a gearbox)

The plaintiff returned to Jamaica in 1981 November and after speaking to Tracy went to defendants' home. There he saw the shell of the van under a tree, the seat and trimmings were rotten with water, mirrors missing, no tyres, no wheels on.

He spoke to the defendants who said the engine was out for repairs. He asked about repayment, the first defendant said things were bad and she could not afford to repair the vehicle so as to work it.

He said that he had never told the defendants the vehicle could be run as PPV, and he should be repaid from its earnings.

To comment here, I would expect even assuming that the plaintiff did give them such information the defendants would be fully aware of the fact the vehicle was not licensed as a PPV, even assuming that the second defendant was aware that the plaintiff had so operated it. In any event it is hard to accept that the defendants could think the plaintiff was in a position to give them permission to operate any vehicle as a PPV and they could do so on his word alone.

Certainly, he could tell them he had, he could encourage them that they could, but they would be fully aware he was not in a position to give them any guarantee / that they would be successful in a breach of the Road Traffic Act assuming he had been so fortunate, if indeed, he had ever operated the vehicle as a PPV, a fact the second defendant might / have known, as also the fact that it was not so licensed. The second defendant did not seem to know the rates of operation or the routes. He could not even say he had travelled once on the vehicle to see it operated as a PPV so that he could support his

allegation. To say that the plaintiff told them how much they could charge and the routes they could travel would still not establish that the plaintiff was in a position to influence them to buy the vehicle. It would still be up to them to decide independently to try their luck as indeed they seem to have done but not successfully, and this I think, given the fact of "robots" profitably operating all over the Island, was due mostly to poor handling on the part of the defendants in the operation of the vehicle and the inexperience of its driver. I say so because the plaintiff admitted as did the defendants, that the vehicle was used to transport him to the Airport. So there is no doubt that up to when the plaintiff left the Island the vehicle was in working condition. That of course, is another matter. In any case the vehicle was not forced on them. It was for sale to any buyer and they approached the plaintiff with an offer.

To continue, the plaintiff said when he went to the Attorney he gave instructions, signed the transfer for the vehicle and gave it to the lawyer. At the time of the transaction the matter of ownership was settled and there was no agreement other than that in the document. He was therefore not responsible if the vehicle's breakdown was responsible for the defendants' inability to pay him and he is entitled to his balance of purchase money, the van being in no condition that he could take it back to mitigate his loss.

The first defendant, mother of the second defendant, said the second defendant told her about the vehicle the Saturday and the day after the plaintiff came to her house and said he decided to sell the second defendant the van but was scared to leave it to the youth without any big person agreeing. She said she told him and here I quote, "if he knew bus not in good order to keep up to pay instalment he should not leave it give to Everton because I would not have it

to support a motor vehicle because he's a youth and don't have any money." The plaintiff and she discussed how the van was to be paid for and this discussion was in the second defendant's presence. She said the plaintiff told her she could take people in the neighbouring districts as he did. He told her what fees to charge and suggested "how to make money to pay the instalments." She thought the bus would make the money to help up the instalments and so agreed to buy the bus.

She there and then gave him $1,000. She had a shop which was not doing well, had borrowed $1,000 from her Credit Union to do business and so had it there at the time. Next day they completed the agreement at the lawyers. She did not know the plaintiff, had never met him before, but had heard her son speak of his treating him as a father to a son so she was prepared to trust the plaintiff and took his word that the vehicle was all right since he had recently overhauled it;(an assurance the second defendant did not challenge and he would know).

Here I'll say it is indeed remarkable and highly improbable that a person who knew nothing about a vehicle, did not try to find anyone who could test it for her, could not drive, had no assurance as to its roadworthiness, did not know the vendor yet was willing to put down $1,000 instantly on a secondhand vehicle which was intended to be operated under rigorous circumstances. It is to be noted the second defendant did not challenge or comment on the matter of the plaintiff's saying the van had been recently overhauled and he being at the plaintiff's everyday would be the best person to know. There is also a conflict as to where the bargain took place, it is not of any great importance but I accept it took place at the plaintiff's home.

The defendant the very day after the downpayment attended at an Attorney's office in St. Anns Bay where the document (Ex. 1) was prepared for and signed by the defendants. To quote the first defendant:

> "The secretary took words from plaintiff towards it, took down notes and let us sign. She did some typing there that day. After that she gave us the paper that Everton and I should sign. We signed."

The defendant denies that she got delivery of the car two weeks before the plaintiff left and said it was delivered the very day he left and they took him to the Airport. The Tuesday following the vehicle was driven with her in it by her other son to Ocho Rios and back home.

She next heard the bus had broken down and as she had no money to pay repairs the vehicle was at mechanics until February 1980. It was not working properly and leaking oil so she sent it in April to one Manzie but took it back the same month as they could not afford the repairs. She then sent it to one Kelly in Discovery Bay. She got a bill which showed parts $1,000 - workmanship $120. (Estimates from each garage were present each showing that the same parts were needed and/or supplied within four months of each other). On the second occasion the vehicle was under repairs until 7th August, 1980 when it was delivered. On the 12th August it took a trip of passengers to Ocho Rios and broke down again. This time she had it towed home and parked, after which time it was never checked again, (nor it seems, was any complaint made to the first repairer who in Court said he had done a good job of work on vehicle).

Meanwhile she had ceased payments to the plaintiff but complained to his collecting agent Tracy of the problems with the vehicle.

Knowling that the operation the defendants proposed to be engaged in was illegal, it would not be unreasonable for them to anticipate that one day the vehicle may well have been seized by the Police and they would thereby be deprived of its use and expected earning power as far as meeting the instalments were involved, in my view.

She subsequently got a note from the plaintiff through Tracy saying to let the vehicle stay in the condition it was and not to let it be scrapped. She said the vehicle was not scrapped and was available to the plaintiff in same the condition it had been parked respecting the mirrors, seats and wheels thoughthe carpet was rotting in 1981 when the plaintiff returned to Jamaica and visited her.

She said the plaintiff told her that the engine was not that good but he did not expect the gearbox to mash up and upon that he left, whereupon, the next thing she heard of plaintiff was the letter from his Attorney.

It is not surprising that the plaintiff should make remarks about the engine and gearbox, one could expect these to go if not properly cared, given the fact that the driver at all times since its purchase was young Alden who seemed to have been a learner driver, twenty years old at the time and not an experienced mechanic but a learner for six months only. Him I would refer to as a trainee mechanic and for him to operate a bus on the country roads in the conditions our roads generally are, lack of experience alone could have resulted in complete destruction of the gearbox in less than a week's driving. Indeed with an inexperienced driver as Alden one trip over Mt. Dioblo would be enough to contribute to the destruction of the engine,,to be learning "mechanics" and proficient in driving being two different matters. If as plaintiff said Alden took the van for a spin under the circumstances it is unlikely he would hear or

feel signs of malfunction if there were any, six months tutoring being very short to supply any worthwhile experience and I do hold they did try out the van.

The second defendant in his evidence said he worked with the plaintiff on his farm and in the yard. As a ducoman he did body work at the plaintiff's shop. He also helped in lifting up engines for the plaintiff in the mechanic shop, but on a voluntary basis and for free.

He said he saw the plaintiff often, knew he had the van, knew it ran as robot, knew the plaintiff was going back to England and intending to sell the van. He was interested in buying and decided he would ask the plaintiff about it. This he did on Saturday the 7th August, 1979. He said the plaintiff told him he would like to see the first defendant because (quoting the second defendant) "he had ran short of $1,000 and would like the money to carry with him." (The underlining is mine). And I wonder how would taking $1,000 Ja to England be an emergency.

He said the plaintiff told him he was short of $1,000 so would like to leave the bus with him. The plaintiff saw his mother the Sunday 8th October, 1979 (the dates are confused) and told her that he the second defendant would like to buy the van, whereupon the mother told plaintiff she did not really agree to give the money unless the vehicle was in good condition. The plaintiff said the vehicle was for $8,000 and he would like $1,000 in advance. His mother said no, she would not like to give money unless the vehicle was in good order. The plaintiff said everything was in good order as he had lately overhauled the engine. They made the agreement, all three of them, for the other $7,000 to be paid monthly.

They made the agreement at the lawyer about the $7,000. He further said, "we did not decide at the house how the $7,000 was going to be paid."

(This telling sentence, underlined by me, was made in his examination in chief, although he later said the $200 payment arrangement was made at the home when the discussion came up as to how the money could be found, and it was then the plaintiff's robot suggestion took place). He said an arrangement was also made that the vehicle was to run from Claremont-Minvale-Alderton-Benston.

It is noteworthy that while both defendants insist the terms of repayment of the $200 monthly was agreed, this defendant says no such agreement was made at the informal contract, no such was referred to at the preparation of the written agreement at the Attorney's. What both seem to be insisting and relying on is that the plaintiff told them how they could make money to repay him. I doubt if any vendor would really care, having successfully disposed of his merchandise in terms firmly engrossed and totally endorsed by the purchasers.

To continue, the defendant said at the Attorney's office all three of them spoke to the secretary and after the documents were finally prepared she read them over to the defendants, and explained what it meant and asked them to sign it.

He said he did not get delivery of the van until they took the plaintiff in it to Airport some days after the meeting at the lawyer's, and that and that was the only occasion on which he ever rode in the vehicle after its purchase.

He said on the way to the Airport the bus swung but he did not feel it. His brother who was driving called to the plaintiff and asked what happen why the bus swing and the plaintiff said the caliper was not good but he would send the part for it so not to worry about it.

They reached the Airport and on the way home whilst on the Airport Road he heard a knocking. They stopped and same time asked a mechanic guy. On his advise they drove slowly to a garage. A man drove up to help them and on being told their belief the man came in the van, drove it a little distance himself to hear, then said it could be the gear box but it was not serious so they could take time and drive it home. They then drove the man back to his vehicle, turned, and continued home. They did not stop until they reached Claremont.

He never drove in it again, never once went and looked at it the several times it went to garage.

He said the day he went to the lawyer and signed the document was the 9th October. (He seemed confused as to the month referring to August and October in turn

This is the same man who was interested in buying and operating and had no funds whatever in the deal. He was not even working as a sideman or collector on the van. What was his interest then? Why did he sign to buy, and not the brother who was to be and was the driver operator? I am of a strong view he was in the agreement because he was the one best known to the plaintiff, and they felt, as the mother said, since the plaintiff treated him like a son, the plaintiff would be favourable to his request and sell them the vehicle on terms. That is why he was a co-purchaser on the records. He said he bought without trying it, nor did his brother try it. If that is so, it would lead one to feel that the second defendant knew the van was in good working order, if he did not try it out as the plaintiff says. Of course, I accept that they did try out the van the very day the agreement was made and that they were satisfied both from the test and the second defendant's previous knowledge of the van that as he said he

saw the plaintiff working it up and down, and up to the week-end before it took them to the Airport.

I do not believe this defendant left his job as a mechanic in Claremont to go and work with the plaintiff, another mechanic. Operating his own mechanic business, as a handyman in the plaintiff's yard, cutting his grass, and acting as sideman on the van when it went to the plaintiff's farm at Bamboo, ten miles away. It is far fetched especially when one hears the defendant had experience as a mechanic, and had no reason to leave his former employer. His not having been fired he could have left only to better his situation and this would be more likely to be accomplished by working as a mechanic rather than a handyman. Then too, given human, and manly pride no man would be content to be a handyman with his former co-worker, in preference to being a mechanical assistant, unless the handyman's pay was so high it would be hard to resist, and nowhere has this defendant intimated that such was the case here.

He said the plaintiff treated him like a son. I take that to mean as a good father to a beloved son. That relationship to my mind would say more of a profession to profession relationship than as a professional to a handyman, one always being mindful of the fact both men were of the same craftsmanship, each able to succeed independently of the other.

The defendant said he met the plaintiff when they both worked at a mechanic shop in Claremont when the plaintiff had recently come from England. He was there before the plaintiff. In no space of time, after about three months together, when the plaintiff decided to leave and open his own establishment, the defendant left his former work place to go and work with the plaintiff. It must

have been in his same field of auto-mechanics.

Aldington Brown the younger son and driver of the vehicle said the first time he drove it was on the way to the airport. Whilst going on, on touching the brakes the vehicle swung and when he asked the plaintiff the reason the plaintiff told him it needed a caliper and cylinder head which he the plaintiff would send from England.

On the way back home the car got into difficulties and a stranger drove it and told him the vehicle needed crown and pinion. He next drove it to Ocho Rios 16th September, 1979 and it broke down and a cousin came on and towed him to Rankin's Garage at Salem. He got it back next April 1980 and "it was OKay." The very next day he saw a heap of oil pumping out when he started it up. He took it back to Rankin who was not at work, so he took it to one Kelly in Farm Town where he got a list almost identical to the one Rankin had given him and he bought the parts again - $450 - he collected the repaired vehicle 7th August, 1980 (four months later).

He next drove it a Sunday few days after he got it back. It broke down on the way and he took it to one Sinclair's Garage and left it.

At that time witness had been a trainee mechanic for only six months. It is quite evident his knowledge was very limited, and given his position it is doubtful if he had much driving practice. According to him his first intimation of anything going wrong, that is, the swinging on touching the brakes was when he was at Flat Bridge. For the car to have successfully manouvered the Mt. Diablo run, on the flat to Flat Bridge and show nothing given the many corners between the two areas mentioned would suggest to me, more the faulty

driving than the faulty car.

From experience, and it is common knowledge any vehicle with the slightest fault in its breaking system will give some indication of a worsening situation once it has gone up and down Mt. Diablo. This vehicle did not swing going up, it did not swing going down, a ten mile stretch of driving calling for continual braking even with prudent changing to lower gears.

If the brakes were faulty to begin with and this driver did not discover it then, one must accept he was not sensitive to and aware of the driving mechanics of the car, or if he knew enough about driving then nothing was wrong with it when he drove it to the airport.

He said it was the first time he was driving it, he said he never tried it the day he accompanied his mother and brother to the plaintiff's. From his own accounts he had no driving experience. He was virtually learning to drive off that vehicle. He drove to the airport and back, next day he drove it towards Ocho Rios by way of Claremont, St. Anns Bay and Dunn's River. Here he heard a "bung" when he accelerated. The vehicle stopped. He looked at the engine and could not see anything. Then to quote him:-

> "I looked underneath and saw some pieces of the V.W.; on the road. Pieces of broken iron crushed up. Seemed to come from the piston. Could not count the number of pieces. Broken pieces they were. There could have been twenty pieces, big and small."

Vehicles are strange things and the newest and most well cared tend to give out when least expected. Used cars are to be expected to give some problem if not properly handled. Indeed that is so with new cars at times. But, invariably its not necessarily the age of the car but more the use of the

car that can ensure its giving long and useful service.

This vehicle was not new. Its driver did not know anything about its handling, always starting out in perfect comfort and ease, and never arriving home in the same manner. Had the vehicle been one with automatic controls its life in the hands of this witness may have gone on longer, trouble free. But, in my view, the trouble with this vehicle was the inexperience of its new driver and wholly so. No driver, however green, would without protest or query purchase within three months two sets of the same parts for one vehicle, virtually unused within that period, unless he was aware or made so that his driving was the main cause of the repeat replacement of parts in such a short period.

Mr. Rankin, a mechanic for ten years with his own shop at Salem, St. Ann, said he pulled down the vehicle when it was towed in.

He saw the engine was no good. The crankcase was worn out, the crankshaft was bad, damaged a bearing. There was need either for a new crankshaft or repair to the one in the vehicle.

The cylinder head was cracked in the valveport and a new head needed. It needed a set of piston and sleeves as all were worn. If they had been broken he would have seen and written so. He put new bearing right through and an overhaul kit. It still needed ball joints at the front end and crown and pinion in the gearbox. This he knew without taking the gearbox apart, as he had no tools to do so. He did not correct these defects, he said. He also said when he first saw the vehicle it had no upholstery, the seats were bad and the body rotten all over. The engine was all "messed up" and could not run, but he was unable to say how its running condition had been before he saw it. He said he saw it

16th October, 1979. He did not repair the crankcase he gave the parts to the bearer and when he gotiit back he fitted up the car after completing his repairs. He was satisfied with the working of the vehicle, delivered it to the person who towed it there and got paid April 1980. He never got any complaints about his work on the vehicle and although he was away sick a week after he delivered the repaired vehicle, his garage was open and operating. The first time he saw them again was when they asked him to give evidence and even then they did not complain that he had done his work badly so that it had to be re-done soon after.

The bill supplied by Rankin left much to be desired. It was undated, had no reference to any vehicle by number or ownership, and, although I am not a handwriting expert, when I saw and heard the witness and looked on the bill there was great doubt in my mind that he could have personally prepared such a correct bill and with such excellent penmanship. If any writing on it is his it would be his name and address at the top and foot of the bill and these were remarkably different from the rest of the writings on the bill.

Indeed it is my firm belief he did not write it, even though I did not test his writing ability.

He was in no position to say how the damage came about whether it was from age or because of worn parts. These parts he changed. His evidence served merely to support the fact the vehicle had to be repaired early after it was bought. At that he was not even sure of the time it came to him to be repaired and guessed late 1979; October 1979 and said he used the term late because October was towards the end of the year.

I am strengthened in my belief that poor handling by the new owner was the cause of the extensive damage to the vehicle. The driver was no driver.

If Mr. Rankin repaired all the worn parts which he said had caused the damage to the vehicle, by replacing them with new ones, then surely there should have been so much more life to the vehicle before a second replacement of those very parts. Exhibit 2 his list reads:

"

INVOICE

3173

.....19.....

To Repair VW Bus

Reg.

Bought of

M. Rankine

2 Piston	$ 180.00
1 set Main Bearing	90.00
1 set Conrad Bearing	70.00
8 Push Rod Guide	20.00
2 Sleve	50.00
1 Cylinder Head	498.00
1 Overall Kit	60.00
4 Plug	12.00
Points & Condenser	16.00
3 Quart Oil	12.00
2 Taper Cov. Gasket	6.00
1 Caliper (Brake)	98.00
	$1122.00
Workmanship	150

Salem, Runaway P.O.
St. Ann."

The second list (Ex. 3) states:

"Estimate to Decarb 1600 VW Bus

1 Decarb Kit	$ 43
1 gallon engine oil	18
1 cylinder head	425.25
1 vaccuum unit	27
1 piston	80
1 set piston rings	99.77
4 spark plugs	14
1 pair points	8
1 condensor	12
1 bottle shellack	3
2 sheet sandpaper	1.60
4 exhaust valves	150.96
4 oil cooler seals	8.60
1 flywheel oil seal	12.42
Labour to Decarb Engine	120

G. Kelly
Farm Town
Red Valley P.A.
St. Ann."

If age did not wear out the parts, and they were found worn, and replaced, if there was not sufficient time to age those new parts, and they are worn out in less than no time and, non-user could not wear them out then it leaves only bad use to have worn them out again so soon after Rankin's repairs.

I accept that no complaint of bad repairs was made to Rankin neither personally at any time or to any person at his workshop.

It was submitted by the defendants that:-

(i) Exhibit 1 was a hire purchase agreement and the plaintiff could take back his goods on non-payment and mitigate his loss, if any.

(ii) The document did not set out the comprehensive nature of the agreement in that there was an oral agreement and understanding that the mortgagors would use the vehicle as PPV and pay the $200 monthly instalments from the proceeds.

(iii)(a) There was a fundamental breach by the mortgagee in supplying a vehicle which could not be driven.

(b) There was a breach of obligation by the mortgagee to supply a vehicle for the purpose for which they had bought it.

Paragraph 1 of the Agreement (Ex. 1) reads:

> "That in pursuance of the "PREMISES" and in CONSIDERATION of the said sum of SEVEN THOUSAND DOLLARS ($7000.00) lent and advanced by the Mortgagee to the Mortgagors (the receipt whereof is hereby acknowledged) the Mortgagors as Beneficial Owners DOTH HEREBY CONVEY and assign unto the Mortgagee all and singular the "MOTOR VEHICLE" Tyres, Tools, Accessors and all things now or hereinafter appurtenant to and at any time used therewith hereafter the property of and in the possession of the Mortgagors and located at Claremont in the Parish of Saint Ann or at any place to which the same may now or hereafter be removed either permanently or in the process of travelling or wheresoever situated TO HOLD THE SAME UNTO the Mortgagee his Successors or assigns absolutely and by way of security for the repayment to the Mortgagee of the said sum of SEVEN THOUSAND DOLLARS ($7000.00)."

Paragraph 2 reads:

(a) "To pay to the Mortgagee the principal sum of SEVEN THOUSAND DOLLARS ($7000.00) by monthly payment of Two Hundred Dollars ($200.00). First payment to be made on the 1st day of November, 1979."

(c) "To pay to the Mortgagee on demand all costs and expenses incurred or may be incurred of or incident to the negotiations for and the completion of this security and the realisation thereof of the enforcement or partial encorcement from time to time of any of his rights hereunder."

Paragraph 3 reads:

(1) "PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED:-

That when the Mortgagors shall have performed all the conditions herein contained and have

"fully paid off the principal sum due and all or any Law costs which the Mortgagee shall have incurred hereunder and there shall be nothing due under these presents then and in such case the Mortgagee at the request and at the sole cost of the Mortgagor shall enter satisfaction on the margin of the record of these presents.

(2) That at any time during the continuance of this security without further consent on the part of or Notice to the Mortgagors the Mortgagee may take possession of the "MOTOR CAR" or any of the chattels hereby assigned and all additions substitutions for the replacements in lieu of the same and for which purpose the Mortgagee may enter into or break into and upon any land and or premises wherein or whereupon the "MOTOR CAR" or all or any portion of the chattels hereby assigned are or then be and may also sell the same or any part thereof either by public auction or private contract and shall out of the monies to arise from such sale retain the legal costs and costs of seizure and travelling expenses attending such sale or otherwise incurred in relation to this security including cost of taking possession keeping and clearing charges and shall in the next place apply such money in and towards the satisfaction of all the monies hereby secured whether the same shall by the terms thereof actually be due and payable or not and shall pay the surplus (if any) to the Mortgagors or their representatives and upon any sale the purchaser shall not be bound to enquire into the regularity or priority of such sale."

I considered these paragraphs carefully and can find nothing to indicate that anything else may have been agreed. It was never urged that the defendants on the document being read over and explained to them, complained or remarked that they had other little "side" agreements which were between both parties and not to be incorporated in the document. Nor was it urged on me that they/there settled oral terms and agreed they should not, or need not be included in the document.

I find:

(i) A valid sale agreement was made between the parties and $1,000 paid to bind the contract, and the property passed to the defendants thereupon, and possession was given on the formal signing of Ex. 1 and delivery made before the day plaintiff left Jamaica.

(ii) The stipulation for repossession was one inherent in any agreement where repossession is available to a party on non-fulfilment of a term of that agreement, and there was no hire purchase entered into.

(iii) The defendants were informed at the Attorney's office when, as they say, the document was read over and explained to them as to the meaning of its contents.

(iv) All the terms and conditions agreed between the parties at any and all times were embodied in the document.

(v) It was not a term than on non-payment the plaintiff would retake the vehicle in whatever condition it was, wherever it was.

(vi) The plaintiff did not tell the defendants they could work the vehicle and pay him from the proceeds therefrom. He owed them no duty to so inform them, nor was it any condition of the sale agreement, oral or written, they knew they could not operate it as a PPV on the plaintiff's word alone.

(vii) The plaintiff was not in a position to dictate the use to which the defendants could put their property and could not have made it tacitly or orally, a binding term of the agreement that the payments be made from the operation of the vheicle, ownership and control having effectively passed from him.

(viii) The default in payment was in no way contributed to by any act on the part of the plaintiff.

(ix) The unavailability of the vehicle to the defendants for any use whatsoever they may have required it was due to the damage to the vehicle by the lack of experience and expertize on the part of the driver who operated the van on the road and much more frequently then he states.

(x) The vehicle was tested to the satisfaction of the purchasers before the purchase, was delivered to them before the plaintiff left the Island and was found to be roadworthy up to when and after the plaintiff left the Island.

Judgment for the plaintiff with costs to be agreed or taxed. Interest on the amount due at the rate of 9% from date of filing of suit until Judgment.

J.