CA on appeal from Wrexham County Court (His Honour Judge Barnett) before Evans LJ, Mr Justice Hidden. 12th February 1999.

**JUDGMENT : LORD JUSTICE EVANS:**

1. This is on any view of the matter a most unfortunate dispute. I, for my part, am quite clear that what we know is only part of the full story. There is on any view some deep seated antagonism between the parties, which has been exacerbated by these proceedings. Apart from saying how regrettable that is, the court can only attempt to deal with the evidence and the issues that arise in the proceedings and to do so as dispassionately as possible.

2. The story is simple in outline. Mr Jones has some experience as a motor trader and in about July 1994 he bought an Audi motor car, registration number C301 UVT. Apparently he bought it from his brother and paid £1,695 for it. But at that time he says that it was worth, and there is evidence that it was worth, rather more, £1,995. On an occasion, which he put as July 1994, but which the defendant for some reason at one stage said was February 1994, the car broke down near Coedpoeth in Clwyd. He left the car there. The trouble was that it was overheating and it clearly needed a new radiator hose. Subsequently there were problems because the car was left parked outside a house, whose owner complained about it obstructing his driveway. The plaintiff contacted the defendant, Mr Harrison, who is a motor vehicle repairer. As a result of that the defendant removed the car and took it to his garage premises for repair. He found that there was a burst coolant hose, which had caused the head gasket to blow, and he said that Mr Jones then came to see him for what would be the second occasion and said that he, Mr Jones, would provide the head gasket set. Mr Harrison says that Mr Jones returned with the head gasket set about a week later and asked him to repair the engine which involved having the cylinder head skimmed. To that extent the story is agreed by Mr Jones, but then an intense dispute arises as to what happened after that.

3. On the timing, already given, the story has been taken through until about some time in August 1994.

4. The fact is that the vehicle, believe it or not, is still there, stored in the open at Mr Harrison's place. Mr Jones, the plaintiff, says that he made a number of visits to see what was happening about the car, but never succeeded in finding Mr Harrison there. He says that finally he met him in the Cross Foxes Public House in Coedpoeth, where they had a conversation which resulted in Mr Harrison, in effect, refusing to let him have the car and refusing to tell him what had happened to it. Mr Jones says that as a result of that he eventually, in about March or April, visited Mr Bhalla, of the local Trading Standards Office, and as a result there was contact between Mr Bhalla and the defendant, Mr Harrison. That resulted in the defendant sending to the plaintiff an invoice which is undated, but which was accompanied by a letter which is dated 26th April 1995, and we are told that there was internal evidence from the defendant's invoice book that the invoice was issued at about that time. The invoice was for a total of £632.25 and described the work as follows: *"Tow car to workshop removed [cylinder] head have head refaced refit renew engine oil oil filter antifreeze start engine engine still overheating engine U/S remove engine replace with S/H [meaning second hand] unit."*

5. Then there were charges for the engine, the skimming of the head, for towing the car and for labour.

6. The letter dated 26th April 1995 in Mr Harrison's, the defendant's, handwriting reads as follows:
*"Mr C Jones.*
*I refer to your vehicle registration No. C301 UVT, of which I towed in in February 1994. The vehicle is stored at my premises Penygelli Road Workshop and Stores. To date you have not settled my account of £632.25. Further, I confirm that storage charges of £2,050 are due, being £5.00 per day and continue from today until such time as your vehicle is collected.*
*I confirm that the car is repaired and ready for collection. I am exercising a motor repairer's lien upon the vehicle until such time that payment in full is made.*
*I further give you notice that unless the vehicle is collected and my invoice settled I will have no option but to sell/dispose of the vehicle to recover my losses. This shall be done upon expiry of three months from the date of this letter.*
*Yours sincerely."*

7. Shortly after that proceedings were begun, in which Mr Jones claimed damages for wrongful detention of his car. The defence which was served, initially, sometime later, in December 1995, pleaded that there was an oral agreement made in or about February 1994 whereby the defendant agreed to carry out all necessary repairs to the Audi motor car after it had broken down. It is said that the repairs had been carried out and the invoice duly rendered. The defendant claimed to exercise a lien over the car, pending payment of the said sum, that is to say £632, in full. There was a counterclaim for that sum and for storage charges at the rate of £5 per day from 1st March 1994 and continuing.

8. Mr Harrison's account was entirely different. He said that when he had fitted the head gasket he found that there was a crack in the engine, which meant that water was blowing out when it was running. His witness statement continued as follows: *"When Mr Chris Jones returned I informed him of this. He asked whether the car could be repaired without replacing the engine that would enable him to sell the vehicle. I informed him that only by replacing the engine would I be able to repair the vehicle. He then instructed me to do the necessary work. Sometime later I found a second hand engine and fitted it."*

9. So Mr Harrison's statement was quite clear that after the occasion when Mr Jones took the head gasket set, there was a further occasion when Mr Jones returned to Mr Harrison's premises and there was this conversation which he described in which he obtained the necessary authority to do the extra work.

10. Mr Harrison's statement continued as follows: *"I attempted on numerous occasions to contact Mr Chris Jones only speaking to his mother leaving messages for him to contact me. Mr Jones failed to return my calls. On one occasion I asked his mother for his address so that I could write to him. She refused to give me his address but informed me that she had passed the messages on to him with a view to resolving the situation. Mr Jones still failed to make contact.*
*Some months later I met Mr Jones in the Cross Foxes Public House in Coedpoeth. I spoke to him and asked him what was going on regarding the car. He told me that he would come and see me the next day. I informed Mr Jones that if the matter was not resolved soon that I would sell the car to cover my costs. However he did not come to see me.*
*Three to four months later, I received a telephone call from Mr Bhalla in Trading Standards."*

11. Mr Harrison said that Mr Bhalla gave him Mr Jones' address which enabled him to write to him as he did on 26th April.

12. What is significant from that account is that Mr Harrison agrees that there was a conversation in the Cross Foxes Public House and he dates that as about December 1994 or early 1995, as is apparent from what I have read.

13. The case was heard by the District Judge who gave a fully reasoned judgment on 15th September 1997. In the course of it he recited the two different accounts which he had heard from Mr Jones and Mr Harrison and then he made the following findings: *"I accept that Mr Jones did ask Mr Harrison to put in a new cylinder head gasket. [I interpose that is common ground.] I accept that when Mr Harrison fitted the parts and the head was skimmed, there was still a problem and he did tell Mr Jones of this and Mr Jones effectively said do what is necessary to make it saleable.*
*I accept that it was Mr Harrison trying to contact Mr Jones rather than Mr Jones trying to contact Mr Harrison.*
*I dismiss the Plaintiff's claim for damages for the reasons given."*

He had also said in terms that, having observed both Mr Jones and Mr Harrison: *"... I have no hesitation in saying that I prefer the evidence of Mr Harrison as to what happened."*

14. He continued by finding that Mr Harrison, although entitled to remuneration, was not entitled to exercise a lien. He assessed the amount that was due at rather less than the full invoice figure of £632. He reduced to it £512. He concluded: *"As to the car, the property is that of Mr Jones although there is a judgment against him for £512.00."*

15. Both parties appealed. They appeared in person before His Honour Judge Barnett on 8th October 1997 in the Wrexham County Court. The learned judge gave a careful and comprehensive judgment, doing the best he could, no doubt, without the assistance of legal representatives on either side, but making

use of submissions that had been put before the District Judge by the solicitor then appearing for the plaintiff. He dismissed the plaintiff's appeal against the District Judge's findings of fact on the ground that his powers were limited to those of a court exercising appellate jurisdiction, and there could be no suggestion that the District Judge's findings were perverse or otherwise open to challenge. He then considered the defendant's cross-appeal which was that the District Judge was wrong to hold that there was no lien. He, the defendant, was a motor repairer and was claiming the cost of £632 in respect of the repairs. He dealt with that matter in detail and, in particular, he addressed the question whether the defendant was lawfully entitled to exercise a lien when his claim had been for £632 rather than the £512 found to be due by the District Judge. He said that an adjustment of that sort was a fairly commonplace matter. He also said that Mr Jones had failed to tender an amount covering "the lien" and that would mean an amount either of £512 or £632. He concluded: *"It seems to me on the material which is available to me that Mr Jones cannot be excused from tendering on the basis of the findings made by the learned District Judge himself."*

16. Mr Jones obtained leave from this court to appeal against that judgment and we have the transcript of what was said (the court consisting of Beldam LJ and Bracewell J) on 19th March 1998. It is apparent from what was said that the plaintiff did not have with him, nor was he able to provide, a copy of the judge's judgment against which he was seeking leave to appeal. Bracewell J said in her judgment that, so far as the court was aware, the County Court judge had not given reasons for finding that the respondent was entitled to exercise a lien. We now know, having seen the transcript, that he did give very full reasons and we can only express surprise at the fact that the plaintiff did not make the court aware that there had been a detailed judgment, even though no transcript was available to him then.

17. I should interrupt the narrative at this stage to say that for the purposes of this appeal the plaintiff has made a separate application to adduce further evidence. The application is dated 25th January 1999. We have seen the contents of the evidence in question and as we pointed out to Mr Jones, at the outset of the hearing this morning, none of the matters raised can be said to be relevant to any of the issues in the case. They concern later events and, at the very most, they would be relevant or marginally relevant to the questions of credibility which arose at the hearing before the District Judge. In part, the evidence consists of a further statement from the Trading Standards Officer, Mr Bhalla, which again could perhaps be said to be marginally relevant to the issues of credit. But, despite that, we are entirely satisfied that there is no basis upon which the further material can or should be admitted for the purposes of hearing the appeal. That application, therefore, must be dismissed.

18. Returning to the appeal itself, the learned judge dealt with the claim for a lien on the basis that there was not an excessive claim. He dealt with that, as already stated, on the assumption that the claim had been for £632, as opposed to the figure found by the judge of £512. The learned judge did not refer to the terms of the letter dated 26th April, which I have already read. On the face of it that letter was demanding payment not only of the amount of £632, but also the storage charges figure of no less than £2,550, calculated at £5 per day (presumably for 400 days or so) dating from about February 1994; a claim which cannot be justified in law, as the learned judge rightly held, and a claim which was grossly excessive in fact having regard to what is now agreed that the period only began in July 1994, in any event.

19. Mr le Brocq has submitted this morning that on a proper reading of the letter the claim to exercise a lien was only in respect of the figure claimed under the invoice of £632. No doubt upon one view of the matter that could be said to be a precise and literal interpretation of the words used. But on the other hand it seems to me that on any sensible reading of the letter as a whole it was saying in terms: "You owe me not £632 but £2,682, and until that is paid in full you cannot have your car and it will be sold". It seems to me that the learned judge was wrong, in considering whether or not there was an excessive claim, to ignore the fact that that was the claim in fact being made in this letter, although it was not later repeated in the defence served on Mr Harrison's behalf.

20. For those reasons, I would hold that the learned judge's finding in relation to the lien was incorrect by reason of omitting that feature of the evidence. It might be that if that point stood alone Mr Harrison would nevertheless be able to say that in the absence of any tender from Mr Jones of the figure of

£512, or alternatively £632, he was nevertheless entitled to exercise a lien notwithstanding the original excessive demand. That, however, is not an issue which was dealt with by the learned judge.

*21.* For those reasons I would be disposed to hold that there is a valid ground of appeal against the learned judge's judgment in respect of that issue of law. The question then arises whether the learned judge was right to hold that he could not go behind the District Judge's findings of fact. Here a particular matter has caused me particular concern, and I believe Mr Justice Hidden also. The account given by the defendant involved, as Mr le Brocq has told us, four visits by Mr Jones to Mr Harrison's premises. The first three are not in issue and it was the third when Mr Jones gave him, Mr Harrison, the head gasket set. When he was cross-examined about this, Mr Harrison was asked about that visit and the note of evidence at page 51 includes: *"Plaintiff handed me a head gasket set."*

*22.* He was then cross-examined, not specifically about what he said was a later visit when he told Mr Jones about the cracked engine and obtained his authority, as he said, to do the necessary work, but about the plaintiff's evidence that he had made a number of attempts to see Mr Harrison and had been back to Mr Harrison's premises but had failed to find him there. In that context, which is quite clear from the note of the cross-examination, Mr Harrison is recorded as having said this*: "He failed to come to see me after only meeting. He never called again at my home to my knowledge."*

23. That passage in the cross-examination followed immediately or soon after the reference to what I can call the head gasket visit. On its face it is wholly inconsistent with Mr Harrison's written statement, which was to the effect that there was another visit from Mr Jones after the head gasket meeting and, therefore, that Mr Jones had called again at his home after that occasion. Mr le Brocq accepts that if that note is correct, then it is difficult to see how there could have been, as the judge found, a further visit after the head gasket meeting; and yet that was the crucial finding of fact that was necessary for the defendant's case. Mr le Brocq submits that the finding is clear, Mr Harrison was preferred as being the more credible witness and therefore the finding should not be interfered with. On the other hand, on the face of it, the finding is inconsistent with Mr Harrison's own evidence in cross-examination, and the fact that the answer was given in a different context, perhaps in an unguarded moment, is undoubtedly a potentially significant factor. It seems to me that there is a potential conflict between Mr Harrison's evidence, as recorded by the District Judge, and the District Judge's finding of fact, which is not explained or investigated, and that a Court of Appeal is entitled to consider whether or not the finding was properly made. It seems to me from what we know of the evidence that was given, and what we can only know, that the finding was not justified by the evidence that the District Judge had heard from Mr Harrison himself.

24. For those two reasons (and I emphasise that there are two reasons and that they are cumulative) it seems to me that the learned Judge was in error, first in regard to the question of lien and, secondly, in not considering whether in relation to this all important central issue the finding in favour of Mr Harrison was justified by the evidence or not.

25. I therefore, for my part, would allow this appeal. The consequences of doing so on the face of it are little short of horrendous. Here is a long-running dispute, where legal fees are already substantial and they will be increased if the matter goes back to trial. Setting aside the judge's judgment on the basis that he ought to have ordered a rehearing before the District Judge, which as I see it is what it amounts to, opens up the possibility of a further hearing before the District Judge, followed by possibly by a further appeal to the County Court judge. It seems to me that at the very least that disadvantage could be avoided if the parties were to agree that the further hearing should take place before the County Court judge in the first instance. Mr le Brocq has rightly pointed out that the amount involved is very small, £500. But it seems to me, from what we know of the underlying and wholly unfortunate antagonism between the parties and the way in which this matter has developed, that if there has to be a retrial it ought to be by agreement before the County Court judge rather than the District Judge.

26. In the circumstances I will add just this. This is a case where it would seem to be quite unnecessary for any further legal costs to be incurred. It is a matter which in the normal course one would hope could be dealt with by some form of mediation. The parties' attitude towards each other does not hold out

much hope. But nevertheless, if properly and carefully advised, they might be persuaded that that is appropriate. Another possibility arises from the fact that in court today Mr Jones has said that he is concerned most of all to reopen the District Judge's findings of fact, and in my judgment he succeeds in doing that. He said in terms, and in open court, that he would be happy now for Mr Harrison to keep the car and to satisfy himself out of the proceeds, whether as scrap or not, as regards the outstanding account. It will be up to Mr Harrison whether he is willing to accept that as a way of bringing this deplorable long-running saga to an end. I would hope that Mr Harrison will give very careful consideration to that and the result would be the eminently satisfactory one of avoiding further legal costs and further inflaming the poor relations between the parties.

27. For those reasons, I would allow the appeal and direct a retrial which I would hope by agreement can take place before the County Court judge.

**MR JUSTICE HIDDEN:**

28. I agree. I would only desire to add this. I have the strongest of impressions that, even at this late stage in this long-running saga, the best interests of the parties would be served by attempts at reaching, even now, a settlement. But all routes to that direction should be followed; the more heavily following perhaps that of mediation, which my Lord has suggested. That, to my mind, is the best route forward for both the parties.

**ORDER:** Application dismissed with costs. Appeal allowed with costs, not to be enforced without leave of the court. The judgments of the District Judge and the County Court judge is set aside. Rehearing on the merits ordered to take place before the judge rather than the District Judge. Matter to be listed for hearing before the County Court Judge in Wrexham for directions within 28 days. As far as the costs before the judge are concerned, the order to pay £35 in respect of Mr Harrison's costs is set aside. Mr Harrison to pay Mr Jones £35 in respect of the costs of the hearing before Judge Barnet. As far as the costs incurred before the District Judge are concerned, those to be dealt with by the judge who rehears the case. Legal aid taxation in respect of the Appellant's and the Respondent's costs. (Order not part of approved judgment)

THE APPELLANT APPEARED ON HIS OWN BEHALF

MR M LE BROCQ (Instructed by Messrs James James & Hatch, Wrexham LL11 1SY) appeared on behalf of the Respondent