SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2024] CSIH 3
XA27/23

Lord Justice Clerk
Lord Malcolm
Lord Pentland

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in the Appeal

by

ALAN KING

Pursuer and Appellant

against

(1) BLACK HORSE LIMITED

Defender and First Respondent

(2) PARK'S AYR LIMITED

Third Party and Second Respondent

and

THE COMPETITION and MARKETS AUTHORITY

Interveners

Pursuer and Appellant: Mitchell KC, Haddow; TC Young LLP
Defender and First Respondent: Thomson KC, Adam; TLT LLP
Third Party and Second Respondent: MacColl KC, Tosh; DWF LLP
Interveners: Middleton; Office of the Advocate General

31 January 2024

Introduction

[1] This is an appeal arising from an action in the Sheriff Court for declarator and payment concerning a contract for hire purchase of a jaguar vehicle. The first respondents are the company who supplied the car and provided the finance therefor, all under a contract of hire purchase. The second respondents and third parties are the dealership through which the contract was brokered. In the appeal the Competition and Markets Authority has been given permission to intervene.

Background

[2] The appellant maintains that the vehicle was defective for reasons connected with non-performance of the diesel particulate filter. He intimated his rejection of the vehicle.

[3] In the initial writ he sought (1) declarator *inter alia* that the vehicle was not of satisfactory quality at the date supplied or any point thereafter; and that he validly rejected it; as well as decree for payment for two separate sums, namely (2) £34,769.40; and (3) £1000. Neither the craves nor the pleas-in-law make any reference to the Consumer Rights Act 2015. By process of deduction and inference, however, it may be deduced from the pleadings as a whole that the appellant maintains that the car was rejected under the 2015 Act; that the first sum sought is meant to represent a figure for repetition and refund of sums paid by the appellant under the hire purchase agreement, all in terms of that Act; and the second sum is meant to represent a further sum for common law damages.

[4] To say that the pleadings are a mess is to make a statement of extreme generosity to the drafters thereof, in respect of all parties. Somehow they have managed to extend pleadings for this simple scenario to a record of about 80pp. It is abundantly clear that no-

one has taken the time to analyse the circumstances of the case in terms which clearly specify the alleged legal consequences said to arise out of the facts, the legal duties which follow, or to specify clearly the remedies sought and their basis. The Sheriff's restrained observations as to the pleadings are stated thus:

> "To say that I found the format and content of the Record confusing may be to understate the position. 'Bloated' may be a fair description of the pleadings. It contained many typographical errors."

[5] After the date on which the appellant intimated rejection of the car he continued to make the payments due under the contract and to tax and use the vehicle. This led to a successful motion for summary decree of *absolvitor*, granted by the Sheriff and affirmed by the Sheriff Appeal Court. For the detailed reasons which follow, we consider that the appeal must succeed.

Decisions of the Sheriff and Sheriff Appeal Court

[6] The essence of these decisions rests on the proposition that at common law there was an absolute bar on the continued use of goods after rejection by the buyer. This had its origins in the decision of *Ransan* v *Mitchell* (1845) 7 D 813, and remained unaffected by the terms of the 2015 Act.

The Appeal

[7] The primary issue raised in the appeal is thus whether the *Ransan* bar subsists, meaning that a consumer is automatically barred from insisting on the right to reject goods under the Consumer Rights Act 2015 where they have continued to use the goods after communicating that rejection to the supplier. A further issue arises as to whether this should have resulted in summary decree of dismissal standing that the appellant maintains a case of common law damages for breach of contract.

[8] The parties have entered into a Joint Minute asking the court to proceed on the hypothesis that the appellant communicated a valid rejection of the vehicle, without prejudice to the parties' ability to insist in a contrary position in the event of matters ultimately being remitted to the Sheriff Court. The Joint Minute also agrees the nature and extent of the pursuer's post rejection use of the vehicle, additional mileage recorded and so on.

Sale of the vehicle

[9] The Joint Minute specifies a further factor which shows that the factual position has otherwise altered significantly from that upon which the Sheriff and Sheriff Appeal Court proceeded. This is that on 31 March 2023 the appellant made a payment of £17,579.98 to the respondents corresponding to the sum required to repay all sums outstanding under the hire purchase agreement; and that on the same date he sold the vehicle to an unrelated person for £20,233.

[10] Although junior and senior counsel for the appellant initially maintained that the sale of the vehicle made no difference to the arguments, and that this court should reach a determination on the legal effect of the disposal of the vehicle, senior counsel was eventually driven to accept that this was not a realistic proposal. The pleadings in the case are now of largely historic interest. The appellant has not sought to amend and the court cannot know, and should not speculate as to, the manner in which he might seek to reformulate the claim, were he to seek, and be given, permission to do so. On the face of it there is such a major difference between post rejection use and sale to a third party as might take matters outwith the scope of the Act – but it would not be appropriate for the court to consider that issue when it was not the subject of written pleadings. Senior counsel for the appellant ultimately

recognised that on the pleadings as they stand this court could not address the effect of sale of the vehicle.

[11] We recognise that the effect of the sale means that the appellant's case can no longer be advanced on the basis of the pleadings, and the remedies sought may no longer be relevant. However, given the general importance to consumers of the issue raised, and the unsatisfactory state in which the decision of the Sheriff Appeal Court would have left the law, we considered that it was in the public interest for us to address the matter. Should any application to amend be forthcoming, it will be entirely a matter for the Sheriff to consider that issue, on the basis of what is proposed at the time, and assessing whether the sale of the vehicle takes matters outwith what is envisaged by the statutory scheme

Statutory Provisions

Directive 1999/44/EC

[12] The Directive of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees had as its specified purpose: the achievement of a high level of consumer protection (recital 1); the minimum harmonisation of rules governing the sale of consumer goods, which were somewhat disparate across Member States (recitals 3-4); and the creation of a common set of minimum rules to strengthen consumer confidence (recital 5).

[13] Recital 6 recognised that the main difficulties consumers encountered and the main source of disputes related to the non-conformity of goods with the contract. Remedies that the Directive provided national law should make available were: repair or replacement, where possible and proportionate; price reduction; or rescission of the contract, where repair or replacement was not available (recitals 10 and 11; article 3). There could be deduction for

use since delivery and the detailed arrangements for rescission of the contract were to be laid down by national law (recital 15). These rights were not to be restricted or waived by the common consent of the parties (recital 22). On the contrary, more stringent provisions, which ensured a higher level of consumer protection, were allowed (recital 24).

Consumer Rights Act 2015

[14] The protections enshrined in the 2015 Act were based, in part, on the terms of the Directive and the provisions of Part 5A of the Sale of Goods Act 1979 which had previously been inserted pursuant to the Directive, by regulations in 2002, to provide additional rights for buyers in consumer cases.

[15] Chapter 2 of the 2015 Act applies to contracts for the trader to supply goods (section 1(3)(a)), including hire-purchase agreements (section 3 (2)(c)). Where the goods do not conform to the contract section 19 provides for the consumer's right to enforce terms about the goods, which are three-fold:

> "(a) the short-term right to reject (sections 20 and 22);
> (b) the right to repair or replacement (section 23); and
> (c) the right to a price reduction or the final right to reject (sections 20 and 24)."

[16] The consumer is not precluded from seeking other remedies for breach of contract, including (a) claiming damages; (b) seeking an order for specific implement; (c) relying on the breach against a claim by the trader for the price; and (d) exercising a right to treat the contract as at an end (subsections (9)-(11)). In terms of subsection (13), "treating a contract as at an end means treating it as repudiated".

[17] The right to reject generally, set out in in section 20 of the Act, whether a short-term right to reject, subject to section 22, or a final right to reject, subject to section 24, entitles the

consumer to reject the goods and treat the contract as at an end (subsection (4)), which means treating it as repudiated (section 19(13)). Relevant parts of section 20 include that:

> "(7) From the time when the right is exercised—
>
> (a) the trader has a duty to give the consumer a refund, subject to subsection (18), and
> (b) the consumer has a duty to make the goods available for collection by the trader or (if there is an agreement for the consumer to return rejected goods) to return them as agreed.
>
> ...
>
> (9) The consumer's entitlement to receive a refund works as follows.
>
> (10) To the extent that the consumer paid money under the contract, the consumer is entitled to receive back the same amount of money.
>
> …
>
> (14) If the contract is a hire-purchase agreement or a conditional sales contract and the contract is treated as at an end before the whole of the price has been paid, the entitlement to a refund extends only to the part of the price paid.
>
> (15) A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund."

[18] The conditions attached to exercising the short-term right to reject are prescribed by section 22. We say no more about this provision given the present case is concerned with the final right to reject.

[19] In respect of the final right to reject and the right to a price reduction a consumer may only exercise either of, but not both of, these rights. Section 24 provides:

> "(8) If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered, but this is subject to subsections (9) and (10).
>
> (9) No deduction may be made to take account of use in any period when the consumer had the goods only because the trader failed to collect them at an agreed time.

> (10) No deduction may be made if the final right to reject is exercised in the first 6 months (see subsection (11)), unless— (a) the goods consist of a motor vehicle, or (b) the goods are of a description specified by order made by the Secretary of State by statutory instrument."

Submissions for the appellant

[20] The 2015 Act created a comprehensive, simple and UK-wide scheme of consumer rights and remedies, including a new and substantially reformed right to reject, which replaced the previous law on contracts for the sale and supply of goods as far as it concerned consumer contracts. The right to reject under the 2015 Act was significantly different to that which had been available under the 1893 and 1979 Acts. The Sheriff Appeal Court erred, in construing the 2015 Act, by leaving out of account the legal and economic context of that legislation and the practical effect of the competing interpretations argued for by the parties.

[21] The SAC erred in failing to consider the Act's purpose and scope. It could be presumed that the Act was intended to mitigate the imbalance of power and resources as between traders and consumers, and to strengthen the position of consumers. The court could infer from the legislative history of the 2015 Act, including that it was passed in order to implement the EU Consumer Rights Directive (by then Directive 2011/83/EU), that Parliament intended to create a comprehensive, comprehensible and straightforward set of remedies, focused on the rights of consumers. It was unlikely that Parliament would have intended that consumers would require sufficient knowledge of the common law in order to be fully aware of the extent of their rights under the statute.

[22] The appellants in their note of argument pointed to the absurdity of the argument that the *Ransan* bar remained good law:

> "… insistence that the common-law *Ransan* bar survived the reforms enacted by the 2015 Act piles absurdity upon absurdity. As the CMA points out (at [8] of its Written

> Submissions), Paragraph 16(2) of Schedule 1 to the 2015 Act, by inserting a new section 15B(1A) into the 1979 Act, specifically disapplied the right to reject under section 15B of that Act in favour of the short term right to reject and the long term right to reject under the 2015 Act. Consequently, for the *Ransan* bar to have survived, it would be necessary to take Parliament as having chosen to abolish the pre-existing statutory provisions as to right to reject, but to leave standing a common law provision which pre-dated the legislative reform in 1893 and subsequent reforms. This is not consistent with the evident policy of the 2015 Act in providing a clear and easily accessible code (as discussed above) and undermines the rights accorded to consumers by the 2015 Act and, in respect of the final right to reject, the rights and remedies accorded to consumers under the Directive."

Submissions for the respondent

[23] The Directive by recitals 6 and 15 allows for controls to be imposed on the right to reject in national law. The statute has given effect to the requirement that a right to reject be provided as a minimum standard. But it is not required to be inviolate. The statute did not oust the common law. The right of rejection in the statute must be understood to mean rejection according to known legal principles as espoused in *Electric Construction Co Ltd* v *Hurry & Young* (1897) 24R 312. Rejection brought the contract to an end, with the result that post-rejection use of goods was entirely prohibited. Actions which are inconsistent with rejection, such as continued use of the goods, result in the right of rejection being lost. In the absence of terms in the 2015 Act indicating a clear and precise intention to change the common law, that principle continued to apply.

[24] The statute provides that rejection entitles the buyer to treat the contract as at an end, as repudiated. There arises an immediate right to a refund and, since the contract is at an end, the buyer has no obligation to continue to pay instalments under the contract. In providing (section 24(8)) that any refund may be reduced by a deduction for use the statute must be taken to mean deduction for use during the period between delivery and rejection, given the effect of the common law, and the terms of section 20(14). The latter restricts the

refund under a contract of hire purchase "only to the part of the price paid", with the effect that the quantification of the refund is crystallised at the moment of rejection.

Submissions for the third party

[25] The consequence of rejection is that the contract is treated as being at an end. To determine the effect of that one looks to the common law, under which the contract is rescinded. That has the effect of bringing the possessory interest of the hirer to an end, and consequently they no longer have any entitlement to make use of the goods. The Act contains an unqualified requirement that the buyer must make available the goods after exercising his right to reject (section 20(7)(b)). The Act has not changed the law that rejection ends the contract- it says so in terms. The Act does not create some new possessory right post rejection.

[26] As to the provisions relating to refund, the sum falls to be crystallised and calculated at the point of rejection, and any reference to use since delivery of the goods must mean use between delivery and rejection.

Interveners

[27] The effect of the new right in the 2015 Act is that the consumer is entitled to treat the contract as at an end (not bring it to an end). It is an unconditional right, a far wider and more powerful remedy than the old common law one, under which exercise by the buyer of the remedy of rejection, even if validly made, did not entitle him to treat the contract as being at an end- this was entirely dependent on the reaction of the seller. If the seller accepted the rejection, the contract came to an end, but otherwise the buyer had to treat it as enduring until resolved by the court, hence the obligation to put the asset into neutral custody and refrain from using it.

[28] However, the 2015 Act disapplied the common law right to reject in consumer contracts, as well as the rights contained in the Sale of Goods Act 1979. The 2015 Act prescribed a detailed statutory scheme setting out the consequences which followed a consumer exercising his right to reject, as well as the conditions that attached to the exercise thereof (section 20(4) and (7)). Nothing contained therein suggested that Parliament intended it to be subject to the limitations which had formerly applied. Rather, the explicit disapplication of the 1979 Act to consumer contracts suggested the contrary.

[29] The final right to reject (section 24) was derived from EU Directive 1999/44/EC. From the recitals to the Directive, the following principles could be derived. First, conferral of high level protection upon consumers was intended (recital 1). Second, limitation on the right to rescind would contradict its purpose, to achieve a "common set of minimum rules of consumer law" (recital 5). Article 8 provided that it was intended to be a *sui generis* remedy setting a minimum level of protection, thus one which Member States should not weaken by the adoption, or maintenance, of national measures. Third, it was not intended that rights could be indirectly waived or restricted by the consumer (recital 7). Rather, it was intended that parties could not by common consent restrict or waive the right to rescind (recital 22). Fourth, detailed arrangements by which rescission may be effected did not relate to restrictions or qualifications of the right (recital 15).

[30] By providing for deduction for use, and that no deduction could be made in respect of use after the trader has agreed to take repossession of the goods, Parliament had clearly envisaged continued use post-rejection without the right to a refund being lost. To hold otherwise would be seriously to weaken the consumer's position as against the rest of the UK. Unless post-rejection use was possible, the trader could simply delay the refund and collecting the goods in order to circumvent the right to reject.

[31] No exception would have been taken to arguments presented on the general principles of personal bar, under which there would have been inquiry into the facts concerning the circumstances of the rejection, and the nature and whole circumstances of any use of the vehicle, including the practicability of alternatives, to determine whether it was of such a degree and extent to be entirely inconsistent with the maintenance of rejection. The problem was the absolute nature of the ban imposed, which hands what is in many cases a decisive advantage to a trader who may wish to avoid paying a refund, contrary to the purpose of the legislation.

Analysis and decision

Preliminary observations

[32] The Sheriff essentially started addressing the case on the basis that it was an aspect of the operation of the principles of personal bar, but seems to have reached the conclusion that any use was sufficient to constitute an absolute bar, notwithstanding the terms of the statute, and to endorse the observations made in *Electric Construction*. The Sheriff Appeal Court took a different tack, and concluded that "the rule that defective goods should not be used after rejection is not governed by the general principles of the concept of personal bar." It is a more specific and more restrictive rule, as explained in *Ransan*, the effect of which is that any continuing use of the goods constituted adoption of the contract and a retraction of the rejection. The fact that cases such as *Ransan* were concerned less with consumer rights than with rights between merchants did not prevent its continued application to the former situation, since the rule had survived the introduction of the 1893 Sale of Goods Act and the introduction of the remedy or reduction and damages. When the 1893 Act spoke of rejection, it was taken to mean rejection "according to known legal conditions" (*Electric*

Construction) and those conditions included a rule that post rejection use of the goods was absolutely barred.

[33] We should point out that the issue is a narrow one: it was accepted in argument that the ordinary principles of personal bar may apply, in which case the question whether the consumer was personally barred from insisting in the rejection would be determined by an assessment of the whole facts and circumstances of the case, following inquiry. As the interveners noted, in that case the issue would, to a greater or lesser extent require an investigation into the facts. If the circumstances of the use are such that the trader seeks to establish that the consumer has personally barred himself from standing on the rejection, there would generally be an inquiry into the circumstances to ascertain whether his actions have been of such a degree to justify the conclusion that he has abandoned the rejection and affirmed the contract. The situation between a consumer and a trader is one in which a great deal of power remains with the trader; and this, together with the practical consequences to the consumer, including the cost, affordability and inconvenience, of taking any other course of action, would be relevant. The question though, would not simply be whether the consumer has continued to use the goods, or pay the finance, but whether his whole actions, in light of all the circumstances, were such as to personally bar him from insisting on the rejection. Moreover, in the present case we were not called upon to consider what actions might now be such as to constitute a bar, nor the scope of such a bar, having regard to the terms of the statute. The learned editors of *Chitty on Contracts* (34th edition, 2023), suggest that

> "it seems clear that the omission of any reference to the loss of the consumer's right to reject the goods by committing an act inconsistent with ownership was also a deliberate choice on the part of the legislature".

Whether, and how, that impacted upon notions of the principles of personal bar in this field were matters beyond the scope of the arguments presented in this case.

[34] The criticism was fixed on the approach of the Sheriff Appeal Court which admitted of no inquiry into the facts and proceeded on the basis that there was an absolute bar on use post-rejection, notwithstanding the terms of the 2015 Act.

[35] The appellants presented the case on the basis that (i) the *Ransan* bar was never good law, and *Electric Construction* was wrongly decided; (ii) even if it had been good law, it had never applied to contracts of hire purchase; and (iii) in any event it is not compatible with the 2015 Act, given its scope and purpose. It was accepted that if the appellant was correct about this third point, the remaining points would not arise for consideration. It would not be necessary to determine whether *Ransan* (which was not actually referred to by any party) justifies the conclusions drawn from it, nor whether the reasoning in *Electric Construction* withstands scrutiny. We therefore start with consideration of the statute, without examining whether the Sheriff Appeal Court was right in the inferences it drew from the two cases just mentioned.

The 2015 Act

[36] The starting point for an exercise of statutory construction must be the words of the statute itself, and where the statute was enacted pursuant to a European Directive, the policy and words of the Directive. Examination of the directive makes clear that enhanced consumer protection was at the heart of it. The recitals speak of "achievement of a high level of consumer protection" (recital 1); of measures which "will strengthen consumer confidence" (recital 5); of a "growing concern to ensure a high level of consumer protection" (recital 23). Recital 7 notes that in some legal traditions it might be useful specifically to

provide that agreements which directly or indirectly waived or restricted consumer rights resulting from the Directive are not binding on the consumer. Recital 20 commences:

> "Whereas the parties may not, by common consent, restrict or waive the rights granted to consumers, since otherwise the legal protection afforded would be thwarted;".

These Recitals are echoed in Article 7(1) which provides that:

> "Any contractual terms or agreements concluded with the seller before the lack of conformity is brought to the seller's attention which directly or indirectly waive or restrict the rights resulting from this Directive shall, as provided for by national law, not be binding on the consumer".

Again this suggests an intention to achieve a high level of protection for the consumer, and that the rights conveyed by the Directive should not be subject to undue limitation. (Section 31 of the 2015 Act serves to prevent traders from contracting out of the consumer's rights under the Act.)

[37] The Directive sets out minimum standards. It provides that the rights under the Directive "may all be exercised without prejudice to other rights which the consumer may invoke under the national rules". This makes plain that the rights must not be subject to limitations imposed by national rules. As ever, the Directive allows States to adopt more stringent measures, "to ensure an even higher level of consumer protection" (recital 24 and article 8). The UK did this by the introduction of the short term right to reject, which is a national protection not provided for in the Directive. It is obvious that Parliament clearly had in mind a purpose of significantly strengthening consumer rights by the provisions of the 2015 Act.

[38] In our view it is clear that the scheme of the Act differs in substantial ways from the protection previously offered to consumers. Once rejection is intimated the consumer is unequivocally entitled to treat the contract as at an end, and this applies whether or not the

trader accepts the rejection. The power imbalance which previously existed between consumer and trader, in favour of the trader, is thus to a substantial degree inverted. There are still consequences which hinge on whether the trader accepts the rejection (see e.g. section 20(15)), but the whole aim appears to be to prevent a dilatory trader from eroding a consumer's rights by failure to engage. The scheme is essentially consumer-centric, putting more power in the hands of the consumer.

[39] From the moment that rejection is intimated, the trader is under an obligation to give a refund; and the consumer is under an obligation to make the goods available for collection (section 20(7)). Continued use by the consumer is not incompatible with that latter obligation.

[40] The provisions as to how the statutory right to a refund works say that the consumer is entitled to get back the same amount of money as he has paid (section 20(10)). There is no time limit put on this, and it must surely mean that the consumer gets back whatever he has paid up to the point of the refund being given (subject to appropriate deduction for use, if any). On the face of it this supports the possibility of post-rejection use. *Vis a vis* a HP/PCP contract, if it is treated as at an end before the whole price is paid the entitlement is only to that part of the price which has been paid (section 20(14)). This again is consistent with post rejection use.

[41] The refund must be paid without unreasonable delay and in any event within 14 days of the trader agreeing that the consumer is entitled to a refund. This surely indicates that there must be anticipated a period of post-rejection use. The mere fact that some delay in payment of a refund is permissible implies as much. Essentially, the Act envisages post rejection use and then provides recourse for the trader to make sure he is not disadvantaged thereby. It would have been very easy to specify that there should be no use post-rejection

but that has not been done and the statute clearly envisages that there might be such use, which may be reflected in a reduction of the refund should the circumstances so merit.

[42] The consumer may only pursue rejection or reduction of price on certain conditions (section 24(5)). These are that post repair/replacement the goods remain disconform; that repair/replacement is impossible or disproportionate; and that the trader having been required to repair/replace has not done so within a reasonable time. Immediate cessation of use by the consumer post-rejection is not a condition for the exercise of either of these rights.

[43] If the consumer does exercise the final right to reject, any refund may be reduced by a deduction for the use which he has made of the goods "in the period since they were delivered"(section 24(8)). These are very similar to the words used in the Directive (recital 15), transposed to the statute. The only end point reasonably to be inferred from this is the date at which the refund is to be given and calculated. The "period since they were delivered" does not suggest a period ending with the date of rejection. The period in question is the period from delivery to refund, not the period from delivery to rejection. The effect, if any, of continued use may be reflected in a suitable deduction in favour of the trader, if justified by the whole circumstances. There is to be no such deduction in respect of use when the consumer only had the goods because the trader failed to collect them at an agreed time, see section 24(9). Whether this envisages that parties had agreed a collection or whether it envisages a situation where the trader had failed to make arrangements to set an agreed time, the provision necessarily envisages a period of post-rejection use, which in such circumstances would not result in any deduction.

[44] We agree with the submission for the interveners that if use of the goods after rejection resulted in the consumer losing his or her right to a refund, there would be no need

to qualify the trader's right to reduce the refund, as the consumer would not be due any refund at all: section 24(9) would be redundant.

[45] The arguments for the respondents would result in placing a strict limitation on the consumer's rights under the Act, and in many circumstances make it impossible for the consumer, who is in the weaker position, to insist in his rejection of the goods. It would return the trader to a position of undue strength and allow a dilatory, or unscrupulous trader, to thwart the consumer's ability to exercise his statutory rights. The effect would be that the automatic right to refund, which is a strong step forward in favour of consumer rights, would become somewhat illusory, because the effect of a complete ban on post-rejection use would place undue economic pressure on the consumer, the weaker party. It would be artificial not to recognise the practical issues which might arise where the consumer exercised the right of rejection, but the trader refused to engage. For example, it is highly likely that if the consumer stopped payment under the contract the trader would take action under the Consumer Credit Act 1974 and the consumer's credit rating might be badly affected; the Act provides a sensible way to avoid this undesirable consequence which would clearly weaken rather than strengthen consumers' rights. If the consumer continues to pay the finance and use the goods, he is not automatically to be taken as thereby affirming the contract. He will remain entitled to a refund of all sums paid by him, subject to any deduction which is appropriate for use.

[46] In any event, there is one remaining issue, namely the fact that the appellant has on the pleadings a claim for common law damages for breach of contract. He is entitled to pursue such a claim as well as his statutory claim although he is not entitled to recover twice for the same loss. The damages claim flows from the allegation of material breach of

contract, and is a matter for inquiry, which should not have resulted in decree of absolvitor at debate.

[47] It follows that in our view the decision of the Sheriff Appeal Court was wrong, both in respect of the damages claim, and, in so far as it applies to the pleadings as they stand, in respect of the claims under the 2015 Act. The interlocutor of that court must be recalled along with those of the Sheriff dated 6 and 27 April 2022, and the matter remitted to the Sheriff to proceed as accords.