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ROYAL COURT
(Samedi Division)

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25th July, 1997

Before: Sir Peter Crill, K.B.E., Commissioner,
and Jurats Herbert and Rumfitt

Between:	David Dumosch Ltd	Plaintiff
And:	Christopher Hugh Taylor	Defendant

Advocate P. de C. Mourant for the Plaintiff.
Advocate T.J. Le Cocq for the Defendant.

JUDGMENT

5 THE COMMISSIONER: David Dumosch Ltd. (the plaintiff) is a general agricultural merchant. Amongst items it sells is cattle feed. Christopher Hugh Taylor (the defendant) is a dairy farmer who dealt over a number of years with the plaintiff, which allowed him extended credit on terms which are not relevant to this case. The defendant built up a considerable indebtedness over the years to the plaintiff for reasons which are, again, not relevant.

10 As a result of the company ceasing to supply Mr. Taylor in the autumn of 1994, and Mr. Taylor's ceasing to order from it, David Dumosch Ltd. eventually actioned Mr. Taylor for some £46,000, being the amount they claimed was due, including interest. Mr. Taylor brought a counterclaim with which this Court has been concerned for the last three days.

15 By agreement between the parties the Court was only concerned to decide what contract or contracts, if any, there had been between Mr. Taylor and David Dumosch Ltd. between October, 1992 and May, 1994. Mr. Taylor admits the amount claimed at the figure 20 in the summons but, as we have said, counterclaims.

25 There are four groups of contracts relied on by Mr. Taylor, which were concluded, he says, in October, 1992, with Mr. Martin Whitley, the managing director of David Dumosch Ltd. when he changed from feeding "Country Manor" to "Country Style"; both of these items being manufactured by a firm in England called "Oldacres".

The second contract is in October, 1993, when he ordered, again through Mr. Whitley, something called HSS 21 which was manufactured, or was about to be manufactured, by a firm called "Bibby's".

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The third was in April 1994 when he changed again from that "Bibby's" feed as a result of discussions with Mr. Philip Roberts.

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Lastly, in May, 1994, again after discussions with Mr. Whitley, he claims, when he changed to a feed called "Super Magnum".

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Of necessity we have had to abbreviate the names of these feed cakes in order to sketch out, as I have just done, the four separate contracts. However, this is not just a simple case of a farmer ordering 'blind', so to speak, because of two factors in this case. The first is the position of Mr. Taylor himself. He is an articulate, well-educated man, who attended a well-known agricultural college at Cirencester. He has had considerable experience for a number of years, working firstly as an employee, then as a relief milker and then starting with forty head of cattle himself in 1983. It may be said, therefore, that he is an experienced dairy farmer and it is clear to us that he knows a good deal about the practice of dairy farming. He mentioned, for example, the importance in the proper feed for dairy cattle of protein and of ME, that is to say the ingredient which supplies energy and the weed for cattle cake to be digestible. He explained very clearly that ME is a complicated way of working out the energy utilised by a Jersey dairy cow. It is important to get the correct balance, he told us, between protein and ME so that there can be proper milk yield and growth and, of course, it is important, also, from the point of view of pregnancy and breeding.

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Miss Janice Radford is the area management consultant for ADAS, who has a degree in agriculture at Nottingham University and has worked 12 years for ADAS herself and has been coming to Jersey since about February, 1992. She met Mr. Taylor in April, 1992, and thereafter quite regularly, discussing farming in general, with particular attention being paid to grass management and lately to the financial aspects of farming and the cash flow projections. She described him as well above-average in his knowledge of cattle feed.

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Mr. Taylor gave evidence of the four contracts we have mentioned and he is adamant that on each occasion the question of ME and a minimum requirement of ME formed part, expressly, of his agreement with David Dumosch Ltd. Those allegations are totally denied and the managing director, Mr. Martin Whitley, was quite clear that, as far as he was concerned, he would never discuss technical details of that sort without having first obtained the answers from the suppliers because he did not have the technical knowledge. Neither, we are satisfied, did Mr. Philip Roberts have

that knowledge. If information was passed to Mr. Taylor from the suppliers which turned out to be faulty, Mr. Mourant for David Dumosch Ltd. conceded that, because David Dumosch Ltd. was selling those products and was the agent of the supplier, then it would be liable. But that is not what is alleged to have happened in this case.

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In September/October, 1992, having seen certain formulae which Mr. Taylor had obtained, a letter was sent by Miss Radford to Mr. Taylor, recommending that he should use "Country Style". He had hitherto been using "Country Manor" which he may or may not have believed to have an ME of at least 13.2. He may have thought he was using "Country Manor" which had an ME of 13.2, but in fact he was using "Country Manor" DF - that is to say digestible fibre - which had an ME lower than 13.2. Therefore if he thought that by changing to "Country Style" on the recommendations of Miss Radford - although he said he thought the two were the same - he was getting something higher, it is difficult for the Court to follow that reasoning. Moreover, having heard some of the evidence Mr. Taylor, admittedly on the advice of his counsel, amended his pleadings when it became quite clear - as it must have done to him and as it did to us - that the figure of 13.2 could not be sustained and he reduced it to 13 plus wherever it was applicable in the particulars. Advocate Mourant, for David Dumosch Ltd., said that this indicated a vacillating state of mind and cast doubt on the certainty with which Mr. Taylor had given his evidence about the contracts.

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Between October, 1992, and September/October, 1993, Mr. Taylor fed "Country Style" to his herd. He was worried about the milk yield and there is no doubt - and we accept this - that he was a conscientious farmer, constantly looking for a greater increase in his yield, constantly seeking a proper balanced food which would improve his herd generally and he obtained a further formula from Mr. Whitley together with a price for this formula - (the "Bibby's" price because it was a different firm) as he was going to move from "Oldacres" which he did. Mr. Whitley said that all he did was to give a price to the farmer after he had obtained from the supplier a formula, and after the farmer had agreed that that was the formula he wanted. He then offered that formula to the farmer at the price which the supplier had laid down.

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There was either a meeting at that time or it was done in some other way - Mr. Whitley was not sure, Mr. Taylor was quite adamant there was a meeting - at which a number of feeds manufactured by "Oldacres" the manufacturers of "Country Manor" and "Country Style" together with the relevant prices were shown to Mr. Taylor. He had decided, however, that he wished to change to "Bibby's" and it so happened that Miss Radford, at that time, had obtained a formula which it was hoped a group of dairy farmers called the Jersey Dairy Farmers Group would use and, as there were

quite a number of them, it would be advantageous to the merchants to have this contract.

5 Mr. Taylor was shown not only the formula of HSS 21 - we
pause here for a moment to say that when a formula is first
prepared it is given a number with letters and numerals and then
later it is given some sort of trade name such as "Country Style",
"Country Manor", depending on the manufacturer - he saw two which
10 were offered to him and he chose HSS 21 and made a note of it on
his copy. Unfortunately, the Jersey Dairy Farmers Group did not
order that cake and so it was not made, whereupon David Dumosch
Ltd. supplied him with an alternative at the same price. The
Court cannot find that in either of the first two contracts there
15 was that express term as alleged in the counterclaim and,
accordingly, cannot find for the defendant on these two contracts.

20 There were, however, two other contracts as I have said.
There was the change later in April, 1994, to Magnum 20, after, it
should be noted, the replacement of HSS 21 had been fed throughout
the winter, apart from a small *interregnum*. Again Mr. Taylor
relies on his dealings with Mr. Roberts in this case, but Mr.
Roberts, who gave his evidence stolidly and steadily, could not
recall the conversations relied on and indeed, as we have already
said, had no technical knowledge and did not pretend to have any.

25 Lastly, there was a further contract in May, 1994, which
involved changing from Magnum to Super Magnum for the summer feed,
although there is some dispute as to whether that was concluded in
February or April. In our view it is not important, and, again,
30 we are unable to find, on the balance of probability, in those two
contracts that there was that express term in each contract, as
claimed, so that we could properly arrive at a conclusion which
would enable us to find for the defendant's counterclaim.
Accordingly, on the question of what the contract or contracts was
35 or were we are unable to say that there was this express term in
each of those four groups or in the contract as a whole.

The plaintiff will have its taxed costs.

No Authorities.