ANTIGUA

IN THE COURT OF APPEAL

(On appeal from the Court of Summary Jurisdiction)

Civil Appeal No. 3 of 1968

Between: LAURISTON POTTER Plaintiff/Appellant

and

CORA DERRICK Defendant/Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Gordon
The Honourable Mr. Justice St. Bernard (Acting)

L.H. Lockhart for Plaintiff/Appellant
C.O.R. Phillips, Q.C., with Bernice V. Lake
for Defendant/Respondent

1970, February 18,20.

JUDGMENT

GORDON, J.A.

As a result of a collision between two motor cars owned respectively by the appellant and the respondent in this case, the former brought an action in the Court of Summary Jurisdiction against the latter for damages to his car, and the latter counterclaimed for damages to her car. The counterclaim was based solely on the defence which was pleaded. The trial judge commenced the hearing of the claim and counterclaim as one. At the close of the appellant's case the respondent elected to call no evidence, and the trial judge upholding a submission on her behalf entered judgment for the respondent. The hearing of the counterclaim was then proceeded with.

At the end of the respondent's case on the counterclaim the appellant elected to call no witnesses, and submitted that the counterclaim should be dismissed as the defendant had not proved that his car was being driven by his agent. The learned trial judge, having reserved judgment, on his own motion amended a paragraph in the pleadings of the respondent by deleting the word 'plaintiff' and substituting therefor the words 'plaintiff's driver', and entered judgment in her favour on the counterclaim for $500.00 general damages with costs $25.20.

-The appellant-

The appellant has appealed against this order on the counterclaim and before this Court argued the two following grounds of appeal:

"(1) That the learned judge erred in amending the defence and counterclaim after the close of the case and without giving the plaintiff/appellant a chance to adduce testimony thereafter.

(2) That the damages awarded are excessive."

Section 39 of the Summary Jurisdiction Act (Cap. 80) of the Revised Laws of Antigua provides -

> "39. In all matters of procedure or evidence, not provided for by this Act, the provisions of the Supreme Court Act, shall apply to causes and proceedings in the Court in the same and the like manner as such provisions apply to causes and proceedings in the Supreme Court, and shall in all respects govern the same."

Section 27 of the Supreme Court Act (Cap. 81) of the Revised Laws of Antigua make the Rules of the Supreme Court (U.K.) applicable locally.

Order 28 rule 12 of the Rules of the Supreme Court (U.K.) which is as follows:

> "12. The court or a judge may at any time, and on such terms as to costs or otherwise as the court or judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings,"

gives the Court the necessary power to amend at any stage. In the light of the evidence in the case no injustice was done to the appellant by the amendment. This ground of appeal accordingly fails.

In support of his contention that the damages awarded was excessive, counsel for the appellant argued that having regard to the finding of the trial judge that the respondent had not proved to the satisfaction of the Court the special damages claimed, she had accordingly failed to establish the damages which she alleged she suffered. In the circumstances the trial judge erred in making the award which he made.

In the course of her evidence the respondent merely stated that she had been given a bill for $632.29 for repairs to her car. She neither submitted a receipted bill to support the fact that this amount was paid, nor did she call as a

witness the person who did the repairs. In support of her claim for the loss of use of the vehicle during the period that the car was being repaired, 18th March - 9th May, she stated in her evidence that she claimed what it would cost her to hire a car, namely, $12.00 per day. In cross-examination, however, she stated that she had in fact only hired a car once during this period, and that she did not know what the charge was as it was her husband who paid the hire. It is therefore not surprising that the trial judge was not satisfied that the damages claimed, viz: $632.29, had been proved.

In this case the respondent did not tender any evidence which could enable the Court to ascertain how much the repairs to the car cost or what the damages for the loss of use of her vehicle were. Her failure in these directions are such that the Court had nothing before it to enable it to quantify the amount which should be awarded for general damages. When, therefore, the learned trial judge sought on this evidence to assess general damages at $500.00 he accordingly erred.

In my view the evidence before the Court merely indicated that some damage was suffered; accordingly in the absence of having a basis on which a proper assessment of the loss could have been made the respondent can only be awarded nominal damages which I assess at $10.00.

In the light of the above I would allow the appeal and would substitute for the order of the court below judgment for the respondent for $10.00. The respondent should have her costs in the court below and the appellant should have his costs in this court.

Before departing from this case it is important that some reference be made to the manner in which this action was proceeded with. The action was a claim for damages and a counterclaim.

Having regard to the fact that the pleadings in the claim and in the counterclaim were so inextricably interwoven this Court is of the opinion that it would have been preferable and in the better interest of justice if the learned trial judge had declined to rule on the respondent's no case submission and required her to enter upon her defence and counterclaim. After hearing all the evidence he would

-then have been-

then have been in a better position to adjudicate upon the relative merits of the claim and the counterclaim.

(K.L. Gordon)
Justice of Appeal

I agree.

(Allen Lewis)
Chief Justice

I agree.

(E. L. St. Bernard)
Justice of Appeal (Ag.)