IN THE COURT OF APPEAL
R. M. CIVIL APPEAL NO. 4/70.

BEFORE: The Hon. Mr. Justice Shelley, J. A.
The Hon. Mr. Justice Luckhoo, J. A.
The Hon. Mr. Justice Smith, J. A. (Ag.)

L. C. MCKENZIE CONSTRUCTION CO. LTD. & ASTON DAVIS,

Defendants/Appellants.

vs.

GEORGE CORRIE, Plaintiff/Respondent.

Mr. Joseph Cools-Lartigue for Defendants/Appellants.
Mr. Richard Small for Plaintiff/Respondent.

July 23, 1970

SHELLEY, J. A.: This is an appeal from the judgment of the learned resident magistrate for Kingston in a claim and counter-claim for damages for negligence. The defence to the claim was simply a denial of negligence on the part of the defendants. The defence to the counter-claim was the same; a denial of negligence.

The case was tried on the 23rd of October, 1967. The learned resident magistrate's reasons for judgment were filed on the 6th of November, 1969, two years after the trial. Perhaps it is well to say something as to why this is so. The defendants/appellants, it appears, did not comply strictly with the requirements of the Judicature (Resident Magistrates) Law, Cap. 179, with regard to security for costs. They sought leave of this court to proceed with the appeal nevertheless. Leave was granted to give security for costs out of time on the 10th of October, 1969. It seems that the learned resident magistrate did not feel obliged to prepare reasons for judgment until after the appeal was properly filed. I do not wish it to be thought that I am criticizing him for this, because he may well have taken that view, having regard to the provisions of the Judicature (Resident Mag-

istrates) Law, Cap. 179.

Judgment was given for the plaintiff on the claim and on the counter-claim. The plaintiff's case, briefly, was that on the 11th of January, 1967, he drove his Vauxhall car along Mission Rd., Kingston, and was entering Windward Rd. from the north, turning right to the west. He said that in obedience to the stop sign at the junction he stopped. He moved off as he saw nothing coming along Windward Rd., crossed Windward Rd. and straightened up. He observed the defendants' truck (ownership and agency admitted) coming from west to east on Windward Rd. whilst he was crossing Windward Rd. and the truck, he says, was then about 35 to 40 yards from him, travelling "quite speedily but not fast." Well, he straightened up and then the truck turned to its right, struck the car, spun the front of the car eastward and the car came to rest partly in the gas station premises on the south side of the road and partly in the road, facing east. He alleged that the truck ran back, ending up obstructing the road on the southern side at an angle. The damage to the car was from the right front door to the front of the car; the windscreen was shattered; the engine shifted. The impression of the truck's bumper could be seen on the right front door.

In cross-examination he said he noticed the front of the truck after the accident; he did not notice damage to its left front bumper; he did not notice the left headlamp damaged, but he saw a small dent on the left front of the cab near the bumper.

The defendants' version of the collision is as follows: The defendant Davis was driving the truck along Windward Rd. at about 30 miles per hour. About 12 ft. from the corner of Mission Rd. he saw the Vauxhall car rush down Mission Rd. and it went across Windward Rd. He applied his brakes and swerved towards the right sidewalk and there was a collision. He admitted that the truck struck the front door and the front fender of the car; and his case was that the left bumper of the truck hit that portion of the car. He said the car stopped in the middle of the road, pointing east towards the gas station. The truck stopped, pointing in much the same direction towards

the gas station but two or three feet clear of the car. The damage to his truck was to the left bumper, front panel to the left, left fender and also the left headlamp. There was a statement by the plaintiff that the driver went to the truck after the impact and switched off his blinker light. The defendant driver said he did not go back to the truck and turn off the right blinker.

Evidence was given by Mr. Harold Smith of damage to the car; and evidence was given by one Mr. Campbell of the damage and repairs to the truck. Mr. Campbell's account of the damage was, front left upright damaged, door (which was not mentioned by the defendant driver), also front panel of cab left corner, clearly indicating some damage to the left front of the truck.

Several grounds of appeal have been filed. Firstly, the judgment of the learned resident magistrate cannot be supported by the evidence. Secondly, the learned resident magistrate failed to properly analyze and evaluate the evidence. The others are, in my view, merely enlargements of these two, perhaps the most important of them being that "the learned resident magistrate failed to appreciate that the damage to the truck was entirely inconsistent with the plaintiff's version of the accident and entirely consistent with the defendants' version. If the accident did occur in the way the plaintiff had alleged, damage to the defendants' truck would have been on its right side. The second defendant gave unchallenged evidence, supported by that of Mr. C. Campbell, an employee of the first defendant, who repaired the damaged truck, to the effect that the damage to the truck was in the area of the left front section thereof."

The learned resident magistrate, in his reasons for judgment, made the following comments: "the two accounts were so divergent and irreconsilable that it was obvious that one side had come for the sole purpose of misleading the court and thwarting the ends of justice." He found the following facts: The plaintiff did stop at the stop sign facing Mission Rd. He had already crossed Windward Rd. and was proceeding west at the time of

the collision. The second defendant swung his truck from the north to the south, going in the general direction of the gas station premises. "I accepted the plaintiff as a witness of truth. I did not believe Aston Davis' version of the accident."

Mr. Small, in reply to learned counsel for the appellants' arguments on the grounds I have mentioned, contended that those arguments are against the reasons for judgment, which were committed to writing in 1969, two years after the judgment was delivered and, of course, it is well established that an appeal is against the judgment, not against the reasons for judgment. He submitted that there was no one conclusion that must have been arrived at even if the evidence of the damage to the vehicle - to the truck, that is - were accepted, and he pointed out that the resident magistrate specifically rejected the defendants' version. He contended that the crucial evidence is that of the defendant driver as to when he saw the car and what he did when he saw it, and that evidence was specifically rejected by the learned resident magistrate. He pointed out that the resident magistrate found facts which excluded the defendants' version and therefore it was not necessary for him to itemize the different allegations in the defendants' case and say he specifically found them not to be so.

The resident magistrate, in his findings of fact, was silent on the position of the damage to the truck. In my view, that was a primary fact which was of vital importance in the case. There was no denial, neither in the statement of the defence nor in the evidence, that there was some damage to the truck. I have referred to what the plaintiff said about what he noticed on the defendants' truck; he admitted there was a slight dent to the left front of the cab. Other than his statement that he did not notice certain things, there is no challenge of the evidence of the defendant company'sl repair man of the damage to the truck at the left front. This evidence supported the second defendant's evidence that the left bumper of the truck hit the car, although the repair man mentioned damage to the upright and to the door, which was not mentioned by the defendant driver. What was import-

ant, in my view, was the site of the damage rather than the details. In any event, the damage to the truck - and this was not surprising - was minor.

Applying the third principle stated by Lord Thankerton in Watt or Thomas v. Thomas, (1947) Appeal Cases 484 at p. 487, and applied in Powell v. Hibbert, 6 W. I. R., 43, governing an appellate court when reviewing the findings of a judge sitting without a jury, I take the view, because it unmistakenly so appears from the evidence, that the learned resident magistrate has not taken proper advantage of his having seen and heard the witnesses. The evidence of the position of the damage to the defendants' truck strongly supported the defendants' case; had it been properly considered in conjunction with the other evidence, the resident magistrate would better have been able to test the credibility of the witnesses.

I would allow this appeal, set aside the judgment and order that judgment be entered for the defendants on the claim and on the counter-claim for $46, with costs to be taxed or agreed, the defendants to have costs of the appeal, $30.

LUCKHOO, J. A.: I agree.

SMITH, J. A.: I also agree and have nothing to add.