1979 July 5

[A. LOIZOU, MALACHTOS, SAVVIDES, JJ.]

GEORGHIOS SAVOULLAS,
Appellant–Defendant,

v.

PANAYIOTIS NICOLA LOUCAS,
Respondent–Plaintiff.

(*Civil Appeal No.* 5651).

Trespass to goods—Damage to water engine through intentionally interfering with it in an unauthorised way—Amounts in law to trespass to goods.

Civil Procedure—Practice—Evidence—Recalling witness—Discretion of trial Judge—Principles applicable—After a party's case is closed a witness will be recalled only under special circumstances.

The appellant–defendant was adjudged to pay to the respondent–plaintiff the amount of £53.500 mils as damages plus costs for the damage he caused to the water engine of the latter. The respondent agreed with the appellant to supply the latter with water from his well on condition that the engine would be started by one of the joint cultivators of respondent, namely, Kneknas. The appellant started the engine himself, in the absence of the said Kneknas, without using the ignition keys but with the use of wires. The trial Judge having believed evidence of an electrician, called by the respondent, that the damage to the engine was caused by the unorthodox way of starting it drew the conclusion that tresspass had been committed.

Upon appeal by defendant counsel for the appellant challenged the findings of fact from which the trial Judge drew the above conclusion. Counsel further contended that the trial Judge erred in law in refusing to grant an application of the appellant to recall a witness for further cross–examination. The application to recall the said witness was made after the close of the plaintiff's case; and the trial Judge refused the application

as, *inter alia*, no valid reason had been put forward for giving such leave at that late stage.

Held, (1) that though a Judge may, at any stage of the trial, at his own instance or at the instance of a party, recall a witness for examination or cross-examination this will only be allowed under special circumstances after a party's case is closed; and that, therefore, there is no reason to interfere with the Judge's discretion in the circumstances.

(2) That no valid reasons have been established, entitling this Court to interfere with the findings of fact based on the credibility of witnesses; that, therefore, the appellant was rightly found liable and adjudged to pay the amount of the judgment as damages, as in law the unauthorised manner with which he intentionally interfered with the water engine amounted to trespass to goods; and that, accordingly, the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

R. v. *Sullivan* [1923] 1 K.B. 47.

Appeal.

Appeal by defendant against the judgment of the District Court of Larnaca (Pikis, Ag. P.D.C.) dated the 20th October, 1976 (Action No. 68/76) whereby he was adjudged to pay to the plaintiff the sum of £53.500 mils as damages plus costs for the damage caused to his water engine.

Chr. Sozos, for the appellant.

P. Papageorghiou, for the respondent.

The judgment of the Court was given by :

A. Loizou J. This is an appeal from the judgment of the President of the District Court of Larnaca by which the appellant, defendant in the action, was adjudged to pay to the respondent the amount of £53.500 mils as damages, plus costs for the damage he caused to the water engine of the latter.

The facts of the case as found by the learned President are very simple. The appellant was in need of water for irrigation purposes and asked the respondent—his neighbour—who was

the owner of a nearby well, to supply him with water, to which request the respondent agreed. It was, however, a condition of this agreement that the appellant would be supplied with water but the water engine would be started by one of the joint cultivators of respondent, namely, Euripides Kneknas. Consequent to that it was arranged that the appellant and Kneknas would meet on the following morning at about 8 o'clock, so that Kneknas who had the ignition keys of the water engine, would start same for the benefit of the appellant. Instead, the appellant went there at 07.30 a.m. and met Nicolas Astras, another joint cultivator of the respondent, who, however, refused to start the engine as he did not have the ignition keys. The appellant then said that he could start himself the engine by by-passing the starter with the use of wires, and Astras was asked to, and did in fact, open the flow of petrol and the appellant started the engine in that unorthodox way. The engine worked for some time, but a little later, as the rubber hose through which the water was pumped to the field of the appellant were disconnected, the engine was stopped by cutting the flow of petrol to it. The hoses were repaired and an attempt was then made to re-start the engine, but unsuccessfully. Eventually it was discovered that the cut-out of the engine had been burnt because of the connection of the wires done by the appellant. This was established by the evidence of an electrician, Charalambos Loizou, one of the witnesses called by the respondent. In fact, there was nothing to the contrary in the evidence, as the electrician Artemis Troullis, called by the appellant, did not exclude the possibility that the damage suffered by the engine could have been caused by this unorthodox way of starting it. The damage to the engine was undoubtedly caused by the unauthorised manner with which the appellant, at his own risk, started it. The fact that plaintiff's witness Astra opened the flow of the petrol, could not exonerate the appellant from the consequences of his aforesaid action. The act of Astra did not amount to either authorization by or on behalf of the appellant or ratification of the manner with which the engine was started, nor could it be—and in fact there is nothing in the pleadings alleged to that effect—a variation of the original agreement or a substitution thereof by a new one.

By the first ground upon which this appeal was argued on behalf of the appellant, the findings of fact of the learned

President from which he drew the conclusion that trespass had been committed because of the unauthorized way with which the appellant interfered with the water engine of the respondent, are challenged.

Having heard counsel for the appellant and having duly considered the totality of the evidence that was adduced at the trial, we have come to the conclusion that no valid reasons have been established, entitling this Court to interfere with these findings of fact based on the credibility of witnesses.

The next ground argued on behalf of the appellant was that the learned President erred in law in refusing to grant an application of the appellant at the trial to recall witness Astra for further cross-examination.

The facts relevant to this ground, as they appear from the record, are these: Astra was called as plaintiff's witness No. 2 and testified about certain other aspects of the case; he did not, however, testify in his examination-in-chief, nor was he asked in cross-examination, as to whether any other electrician had inspected the damaged engine, at the instance of the appellant, at any time between the day same was damaged and the trial. What witness Astra was needed for, according to the appellant, was to be cross-examined further, and in order to contradict the statement of witness Loizou, to the effect that no other electrician had been called to examine the engine.

The case for the plaintiff had been closed when the application to recall witness Astra was made. The learned President refused the application, as no valid reason had been put forward for giving such leave at that late stage, after the close of the case for the plaintiff and as, moreover, the testimony of the two witnesses that were called on behalf of the plaintiff, after Astra, was within the ambit of the issues as defined by the pleadings. We see no reason to interfere with the exercise of the learned President's discretion in the circumstances. No doubt, a Judge may, at any stage of the trial, at his own instance or at the instance of a party, recall a witness for further examination or cross-examination (see *R.* v. *Sullivan* [1923] 1 K.B., 47), "though", as stated in Phipson on Evidence, 10th Ed., para. 1563, "after a party's case is closed, this will only be allowed under special circum-

stances". Such circumstances do not seem to have been present in this case.

On the totality, therefore, of the evidence, as accepted by the learned President, we have come to the conclusion that the appellant was rightly found liable and adjudged to pay the amount of the judgment as damages, as in law the unauthorized manner with which the appellant intentionally interfered with the water engine of the respondent, amounted to trespass to goods.

For all the above reasons this appeal is dismissed with costs.

Appeal dismissed with costs.