Had this plea been set up in the statement of defence, the plaintiff could at once have abandoned this action and begun a new one the next day. At the trial such an amendment should have been permitted only on terms that the defendant should bear all costs thrown away in consequence of the amendment, and the plaintiff could then have commenced a new action. The amendment was not only technical but valueless in determining the real rights of the parties: Sales v. Lake Erie and Detroit River R.W. Co. (1896), 17 P.R. 224, and other cases.

Reference also to Rule 183 and to Witherspoon v. Township of East Williams (1918), 44 O.L.R. 584, 602.

The "real matter in dispute" was—what was insured against?

The appeal should be allowed, and judgment should be entered for the plaintiff for $1,181.47, with costs throughout.

Appeal allowed.

SECOND DIVISIONAL COURT. DECEMBER 20TH, 1920.

HILL v. WELLS.

Trial—Action for Damages for Injury Sustained in Collision between Automobiles—Negligence—Judge's Charge—Questions Left to Jury—Unsatisfactory Answers—New Trial.

Appeal by the plaintiff Ida Belle Hill from the judgment of the County Court of the County of Middlesex, in an action to recover damages for injury sustained by her in a collision upon a highway between an automobile in which she was seated and the defendant's automobile. The action was brought by Ida Belle Hill and her husband, and was dismissed after trial by one of the Judges of the County Court with a jury, and the plaintiffs were ordered to pay three-fourths of the defendant's costs; the counterclaim of the defendant was dismissed without costs.

The appeal was heard by MULOCK, C.J. Ex., HODGINS, J.A., RIDDELL and MASTEN, JJ.

W. R. Meredith, for the appellant.

J. C. Elliott, for the defendant, respondent.

HODGINS, J.A., in a written judgment, said that the question principally argued was, whether a wife, whose injury was partly caused by the negligence of her husband, who was driving the car in which she was a passenger, was so identified with him or so