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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 4967

In the Supreme Court of Appeals of Virginia at Richmond

VIRGINIA TRANSIT COMPANY

v.

CLARENCE J. HODGES

FROM THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4967

VIRGINIA:

In the Spreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 4th day of December, 1958.

VIRGINIA TRANSIT COMPANY, Plaintiff in Error,

against

CLARENCE J. HODGES, Defendant in Error.

From the Court of Law and Chancery of the City of Norfolk

Upon the petition of Virginia Transit Company a writ of error and *supersedeas* is awarded it to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 10th day of July, 1958, in a certain motion for judgment then therein depending wherein Clarence J. Hodges was plaintiff and the petitioner was defendant;

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of sixteen thousand, five hundred dollars, conditioned according to law has heretofore been given, no additional bond is required.

RECORD

* * * * *

MOTION FOR JUDGMENT.

NOW COMES, Clarence J. Hodges, the plaintiff herein, and moves the Court of Law and Chancery of the City of Norfolk, Virginia, for a judgment against you, Virginia Transit Company, a corporation, the defendant herein, for the sum of One Hundred Thousand Dollars ($100,000.00), which said sum is due and owing by you to the undersigned plaintiff for damages, wrongs and injuries hereinafter set forth, to-wit:

1. That heretofore, to-wit, on the 2nd day of November, 1956, at or about 10:05 P. M., at the intersection of Church Street and City Hall Avenue, in the City of Norfolk, Virginia, I, the plaintiff herein, suffered painful, severe and permanent injuries, both of mind and body, and aggravation of pre-existing injuries and conditions, all of which injuries were suffered by the plaintiff herein as the result of a motor vehicle collision at the time and place aforesaid between a bus owned and negligently operated by you, the defendant herein, and a U. S. Navy ambulance in which I was riding as a passenger, being taken to the hospital as an emergency heart attack victim; that at the time and place aforesaid, the ambulance in which I was riding as a passenger was proceeding in a proper manner easterly on City Hall Avenue, with its siren and emergency lights on and approaching the intersection of the aforesaid City Hall Avenue and Church Street; that at the time and place aforesaid you, the defendant, owned and were operating a bus, proceeding southerly on page 2 } Church Street at or near its intersection with City Hall Avenue in a careless and negligent manner; and then and there you did enter said intersection with your said bus in a careless and negligent manner, at an improper speed under the circumstances, without keeping a proper lookout, and without keeping said bus under proper control, and without yielding the right of way to the emergency vehicle in which I was riding as a passenger and in violation of the laws of the City of Norfolk and the State of Virginia; and as a result of your negligence and carelessness as aforesaid, you, the defendant herein, did proximately cause the aforesaid collision and my resulting injuries.

2. That as a direct and proximate result of the carelessness and negligence of the defendant herein, as aforesaid, I, the

plaintiff herein, sustained and suffered serious, painful and permanent injuries of mind and body and aggravation of pre-existing injuries and conditions; and have become disabled and disordered, internally and externally and suffered great pain of body and mind for a long period of time heretofore, and in the future will suffer and undergo great pain of body and mind, and have been and will be compelled to lay out and expend and become liable for divers large sums of money in endeavoring to be cured and healed of the aforesaid wounds, injuries and sufferings; and by reason of said injuries I have been prevented from following such calling in life as I would otherwise have been able to follow.

WHEREFORE, the plaintiff herein moves the aforesaid Court for judgment against the defendant herein, in the amount of One Hundred Thousand Dollar ($100,000.00) for every item of damage incident to the injuries suffered by the plaintiff as a result of the aforesaid collision, which was proximately caused by the negligence and carelessness of the defendant herein.

CLARENCE J. HODGES,
By WILLIAM N. EASON
Of Counsel.

Filed in the Clerk's Office the 21 day of November, 1956.

Teste:

W. L. PRIEUR, JR., Clerk
L. M. CALVERT, D. C.

* * * * *

page 3 }

* * * * *

PROOF OF SERVICE.

Returns shall be made hereon, showing service of Notice issued November 21st, 1956, with copy of Motion for Judgment filed November 21st, 1956, attached.

Executed on the ..... day of ....., 19 ...., in the City of ....., Virginia, by delivering a true copy

of the above mentioned papers, attached to each other, to ..... in person.

.....
Sergeant, City of ....., Va.
By ....., Deputy Sergeant.

(Use the space below if a different form of return is necessary)

Executed Nov. 23rd 1956 by delivering a copy of the above mentioned papers attached to each other to W. G. Womack, Vice President of Virginia Transit Co. a Corporation in the City of Norfolk, Virginia, wherein the said Corporation is doing business.

HUGH L. BUTLER, JR.,
City Sergeant
Norfolk, Va.
G. F. SHAFFER, Deputy.

Returned and filed the 26th day of November, 1956.

W. L. PRIEUR, JR., Clerk
By H. L. STOVALL, D. C.

page 4 }

* * * * *

ANSWER AND GROUNDS OF DEFENSE.

Now comes the defendant and for answer and grounds of defense to the motion for judgment herein says that it is not due and owing to the plaintiff any sum whatsoever for damages, wrongs and injuries complained of, and further

1. The defendant denies, separately and collectively, all the allegations of paragraph 1, except that it admits that it owned and operated a bus that was involved in the alleged accident, and that an accident did occur within the intersection of City Hall Avenue and Church Street between a United States Government ambulance and the defendant's bus.

2. The defendant denies, separately and collectively, all the allegations contained in paragraph 2.

3. The defendant says that it was not guilty of the negli-

gence or charges laid to it, but on the contrary, the sole immediate and effectual proximate cause of the alleged accident was the negligence, carelessness, recklessness and violations of the ordinances of the City of Norfolk and the traffic laws of the State of Virginia by the driver of the United States Government ambulance in which the plaintiff is alleged to have been riding.

4. The defendant reserves the right to rely upon any other or further *defendes* that may arise prior to or during the trial of this case and to amend its pleadings accordingly.

page 5 } And now having fully answered, the defendant prays that said motion for judgment be dismissed and that it recover its costs in this behalf expended.

VIRGINIA TRANSIT COMPANY
By L. S. PARSONS
Of Counsel.

Filed 12-5-56.

H. L. STOVALL, D. C.

* * * * *

page 6 }

* * * * *

In the Court of Law and Chancery of the City of Norfolk, on the 9th day of July, 1958.

ORDER.

This day came the parties, the plaintiff in person and by counsel and came as well the defendant by counsel, and thereupon came a jury, to-wit: Arthur J. Wunner, Jr., Elizabeth D. Koonce, J. Clyde Malbon, Donald Maxwell, David J. Jones, Blanche C. Padgett and Clara T. Ferguson, who upon being duly sworn the truth to speak upon the issue joined and having heard a part of the evidence at 5:00 o'clock P. M. were adjourned until tomorrow morning at 10:00 o'clock A. M.

* * * * *

page 7 } INSTRUCTION P-1.

The Court instructs the jury that section 27-72 of the Code of the City of Norfolk, Virginia, requires motorists, upon the approach of any police or fire department vehicle or ambulance, giving audible signal by siren or exhaust whistle, to immediately drive to a position at or as near as possible and parallel to the right-hand edge or curb, clear of any intersection of highways, and stop and remain in such position unless otherwise directed by a police or traffic officer, until the police or fire department vehicle, or ambulance shall have passed.

Granted.

J. H. T.

page 8 } INSTRUCTION P-2.

The Court instructs the jury that if you believe from the preponderance of the evidence in this case that the driver of the Bus failed to use ordinary care in his duty to keep a proper lookout then he was guilty of negligence, if you further believe from the evidence that such failure proximately caused or contributed to the accident in question you shall find for the plaintiff.

Granted.

J. H. T.

page 9 } INSTRUCTION P-3.

The Court instructs the jury that if you believe from the preponderance of the evidence in this case that the driver of the bus heard or in the exercise of ordinary care should have heard the ambulance siren and failed to comply with section 27-72 of the Code of the City of Norfolk, Virginia, then his failure to do so was negligence, if you further believe from the evidence that such failure proximately caused or contributed to the accident in question, then you should find for the plaintiff Hodges.

Granted.

J. H. T.

page 10 } INSTRUCTION P-5.

The Court instructs the jury that if you believe from the preponderance of the evidence in this case that the diver of the bus and the driver of the ambulance in which the plaintiff was a passenger, were both guilty of concurring negligence which proximately caused plaintiff's injuries resulting when the bus and ambulance collided in the intersection, then the plaintiff Hodges is entitled to recover in this case.

Granted.

J. H. T.

page 11 } INSTRUCTION P-6.

The Court instructs the jury that the settled rule in Virginia is that joint tort-feasors are jointly and severally liable, and the party injured may sue all of them jointly, two or more of them jointly or one of them as he may see proper.

Granted.

J. H. T.

page 12 } INSTRUCTION P-7.

The Court instructs the jury that if you believe from the preponderance of the evidence that the plaintiff is entitled to recover, you may, in estimating the damages to which the plaintiff is entitled, take into consideration the bodily injuries he sustained, his mental suffering; if any, the pain that he underwent; the effect of the injuries he received on the health of the plaintiff; and his physical condition according to the degree and probable duration thereof, and as to whether the same is temporary or permanent; the inconvenience caused to the plaintiff by his injuries; the loss of earning capacity sustained by him as a result of his injuries; and assess his damages at such sum as you may think just and proper under the evidence in this case, not to exceed the sum sued for.

Granted.

J. H. T.

page 13 } INSTRUCTION NO. D-3.

The Court instructs the jury that there is no evidence that the defendant's bus was operated at an improper speed, unless you believe from a preponderance of the evidence that the bus should have been stopped prior to approaching the intersection in accordance with the requirements of Section 27-72 Code of Norfolk about which you have been heretofore instructed.

Granted.

J. H. T.

page 14 } INSTRUCTION NO. D-4.

The Court instructs the jury that the blowing of a siren or the blinking of a red light from an ambulance is not of itself a warning to the operator of another vehicle, and in order to constitute a warning that would require the operator of the defendant's bus to stop and pull to the right-hand curb, such blowing or blinking must have been done at a time and place that would cause a reasonable person to know that the ambulance was approaching if, when the warning siren or blinker was first reasonably apparent to the bus operator, he was at a point where he could not stop except within the intersection, then under the ordinance he was required to proceed across the intersection before stopping.

Granted.

J. H. T.

page 15 } INSTRUCTION NO. D-7.

The Court instructs the jury that the law does not contemplate a recovery in all accident cases and that the defendant owed no duty to the plaintiff other than to exercise ordinary care or such care as an ordinarily prudent person would exercise under the same or similar circumstances and is not liable for the negligence or carelessness of other persons or conditions not under its control.

Granted.

J. H. T.

page 16 } INSTRUCTION NO. D-8.

The Court instructs the jury that the plaintiff in this case cannot recover for any physical condition or ailment that existed prior to the alleged accident.

Granted.

J. H. T.

page 17 } INSTRUCTION NO. D-9.

The Court instructs the jury that in their deliberations they should confine themselves to the evidence introduced and to the instructions of the Court and must not allow themselves to be influenced by sympathy, prejudice or guess.

Granted.

J. H. T.

page 18 } INSTRUCTION NO. D-10.

The Court instructs the jury that when the collision involved in this case occurred the traffic law provided:

"Sec. 40-208. *Reckless Driving.*—(a) Irrespective of the maximum speeds herein provided, any person who drives a vehicles upon a highway recklessly or at a speed or in a manner so as to endanger life, limb or property of any person shall be guilty of reckless driving; * * *

"(b) Any person who shall

"(1) Drive a vehicle when not under proper control * * * or

* * * * *

"(7) Exceed a reasonable speed under the circumstances and traffic conditions existing at the time,

* * * * *

shall be guilty of reckless driving. * * *"

If you find that the ambulance driver violated any of the

foregoing provisions of the traffic law, then he was guilty of negligence.

And if you further believe from the evidence that such negligence on his part was the sole proximate cause of the collision, you must find your verdict in favor of Virginia Transit Company.

Granted.

J. H. T.

page 19 } INSTRUCTION NO. D-14.

The Court instructs the jury, that the traffic laws of the State of Virginia provide that a red signal indicates the traffic then moving shall stop and remain stopped as long as a red signal is shown, and a green light indicates that the traffic shall move in the direction of the signal and remain in motion as long as the green signal is given. A red light is a command to stop, just as a green light is a command to proceed, and the operator of a motor vehicle having a green light is not required to stop, look and listen before entering or crossing an intersection. This applies as well to the operator of an ambulance as to any other motor vehicle operated. However, this does not permit a vehicle to proceed into an intersection in violation of the requirements of Section 27-72 of the Code of the City of Norfolk as set forth in instruction P-1, heretofore given.

Granted.

J. H. T.

page 20 } INSTRUCTION NO. D-16.

The Court instructs the jury, that the law looks to the immediate and effectual cause of an accident and not to the remote cause thereof, and, if the jury find from the evidence that the operator of the Navy ambulance had a red light against him and failed to stop before entering the intersection, then he was guilty of negligence as a matter of law, and if you further find that his failure to stop or obey the traffic signal was the sole proximate cause of the accident complained of, then the plaintiff cannot recover.

Granted.

J. H. T.

page 21 } INTSRUCTION NO. D-18.

The Court instructs the jury, that the basis of this action is a charge that the operator of the defendant's motor vehicle acted in a negligent manner in colliding with a Navy ambulance. This charge cannot be inferred from the mere happening of the accident. On the contrary, the defendant is presumed to be free from the charges laid against it, and to have operated the bus with due and proper care and without negligence, and this presumption remains with the defendants throughout the trial and applies at every stage thereof, and can be overcome only by a preponderance of the evidence. The burden is on the plaintiff not only to prove, by a preponderance of the evidence, that the defendants were guilty of the charges laid against them, but also that such conduct was a proximate cause of the injuries complained of.

If, after hearing all the evidence, you find that the plaintiff has failed to prove that the defendant was negligent as alleged or that it is just as probable that the defendant was not negligent, as that it was, or you are left in doubt under the evidence, or that the accident was an unavoidable one, or that the sole proximate cause of the accident was due to the operation of the Navy ambulance, the plaintiff cannot recover.

Granted.

J. H. T.

page 22 } INSTRUCTION NO. D-Z.

The Court instructs the jury that if they find from the evidence that in exercise of reasonable care the bus driver did not become aware of the fact that the Navy ambulance was approaching the intersection until the bus was entering or about to enter the said intersection of City Hall and Church Street and could not, in the exercise of reasonable care, be stopped except in the intersection, then it was the duty of the bus operator, under the City ordinance, to move on across the street before stopping, and his failure to stop before clearing the intersection under these circumstances would not constitute negligence.

Granted.

J. H. T.

page 23 } INSTRUCTION No. X-1.

The Court instructs the jury that the ambulance driver was guilty of negligence as a matter of law and if the jury finds that his negligence was the sole proximate cause of the accident, the plaintiff can not recover against the Virginia Transit Company.

Granted.

J. H. T.

page 24 } INSTRUCTION NO. P-4.

The Court instructs the jury that if you believe from the evidence in this case that the plaintiff was riding as a passenger in the ambulance over which he neither assumed nor exercised any control and over which he had no control and that the plaintiff was injured without negligence on his part, even though you may believe that the driver of the ambulance was guilty of contributory negligence this does not affect the plaintiff's right to recover in this case, as the negligence of the ambulance driver, if any, cannot as a matter of law, be imputed to the plaintiff, Hodges.

Refused.

J. H. T.

page 25 } INSTRUCTION NO. D-1.

The Court instructs the jury, that the law looks to the immediate and effectual cause of an accident and not to the remote cause thereof, and if the jury find from the evidence that the operator of the Navy ambulance had a red light against him and failed to stop before entering the intersection, then he was guilty of negligence as a matter of law, and if you further find that his failure to stop or obey the traffic signal was the sole, immediate and effectual proximate cause of the accident complained of, then the plaintiff cannot recover, even though you also find the bus operator was also guilty of negligence.

Refused.

J. H. T.

page 26 } INSTRUCTION NO. D-2.

The Court instructs the jury that there is no evidence that the defendant operated its bus in a careless and negligent manner.

Refused.

J. H. T.

page 27 } INSTRUCTION NO. D-4.

The Court instructs the jury that there is no evidence that the defendant's operator failed to keep a proper lookout.

Refused.

J. H. T.

page 28 } INSTRUCTION NO. D-5.

The Court instructs the jury that there is no evidence that the defendant failed to keep its bus under proper control.

Refused.

J. H. T.

page 29 } INSTRUCTION NO. D-6.

The Court instructs the jury that the Navy ambulance involved in the alleged accident was subject to and required to obey the traffic laws of the State of Virginia and the ordinances of the City of Norfolk with the same effect and degree as that of the defendant's operator and the operator of the Navy ambulance could not, under the traffic laws of the State of Virginia and the ordinances of the City of Norfolk, fail to obey the command of a red light except where an emergency existed and, in such case, he could only disobey or run a red light having first controlled the speed and movement of his ambulance so that he could pass through the red signal without endangering the safety of other vehicles or persons approaching, entering, or upon the intersection and the plaintiff was required first to prove, by a preponderance of the evidence, that an emergency existed

and that the speed and movement of his ambulance had been controlled, as above indicated, and if the jury finds from the evidence that if the Navy ambulance had observed the above requirements, no accident would have occurred, and plaintiff cannot recover against the defendant Virginia Transit Company.

Refused.

J. H. T.

page 30 } INSTRUCTION NO. D-11.

The Court instructs the jury, that the traffic laws of the State of Virginia and the ordinances of the City of Norfolk do not give the driver of an ambulance any right to disobey a red signal unless an emergency exists and even then the speed and movement of the ambulance must be reduced and controlled so that it can pass the red signal with due regard for the safety of persons and property, and it is incumbent upon the plaintiff in this case to prove that there was an emergency and that the speed and movement of the ambulance had been *property* controlled; otherwise, failure upon the part of the ambulance driver to obey the red signal and come to a stop before entering the intersection would constitute negligence as a matter of law, and such negligence, under the facts and circumstances of this case, would constitute the direct, immediate and effectual proximate cause of the accident complained of, for which the defendant Virginia Transit Company is not liable.

Refused.

J. H. T.

page 31 } INSTRUCTION NO. D-12.

The Court instructs the jury, that if you find from the evidence that the operator of the defendant's bus approached the intersection where this accident occurred and had a green light and reached the intersection line prior to the time that the Navy ambulance reached the intersection, and the defendant's bus had entered and crossed the intersection so far that the ambulance struck it at or near the rear end, then the defendants were not guilty of any negligence and the

immediate and effectual cause of the accident was the negligence of the Navy ambulance.

Refused.

J. H. T.

page 32 } INSTRUCTION NO. D-13.

The Court instructs the jury, that if you find from the evidence that the defendant's bus operator approached the street intersection and had a green light and moved ahead in accordance with the command of the law in such case, and when he neared the intersection the Navy ambulance had not yet reached the intersection, then the defendant's bus operator was guilty of no negligence in entering the intersection under such circumstances even though the operator of the navy ambulance was sounding his siren in such a manner as it was heard or could have been heard by the bus operator. The mere sounding of a siren does not permit the operator of an ambulance to disobey the red signal and enter an intersection without regard to the other traffic or without regard to the safety of persons or property.

Refused.

J. H. T.

page 33 } INSTRUCTION NO. D-15.

The Court instructs the jury, that the operator of the defendant's bus had the right to assume under the facts and circumstances of the case that the Navy ambulance was not acting in an emergency and that the operator of the Navy ambulance would reduce and control his speed so that he could pass the signal light with due regard for the safety of persons or property and would not carelessly or arbitrarily disobey the red signal and enter into an intersection against the red light and strike a vehicle moving with a green light.

Refused.

J. H. T.

page 34 } INSTRUCTION NO. D-17.

The Court instructs the jury, that if you find from the evidence that the operator of the defendant's bus had a green light and the operator of the Navy ambulance had a red light, then the operator of the defendant's bus was not required, under the law, to stop, look and listen before crossing the street intersection, and it was the duty of the operator of the Navy ambulance to stop and remain stopped as long as the red signal was against him, and the operator of the defendant's bus had a right to assume that the operator of the Navy ambulance would comply with the law, and this was true even though the Navy ambulance may have been sounding a siren that could or should have been heard by the operator of the defendant's bus.

Refused.

J. H. T.

page 35 } INSTRUCTION NO. D-T

The Court instructs the jury that the blowing of a siren, or the blinking of a red light on an ambulance is not of itself a compliance of the City ordinance. The operator of the ambulance must also have been operating at such speed and under such control so as to not endanger the life or property of others.

Refused.

J. H. T.

page 36 } INSTRUCTION No. D-A.

The Court instructs the jury that before the plaintiff can recover he must prove to your satisfaction by the greater weight of the evidence that the Navy ambulance was in an emergency and the bus operator heard, or should have heard a siren being blown by the Navy ambulance at a time and place that would be a warning to him that the ambulance was approaching the intersection of City Hall Avenue and Church Street, and he thereafter had time and space to pull to the curb and stop before entering the intersection, and he negligently failed to do so and further that such negligent failure was a proximate cause of the accident. In determining "proximate cause" you are further instructed that even if

you find that the bus operator negligently failed to pull to the curb and stop before entering the intersection, such negligence would make the bus operator the first of two tort feasors, and the second one was the driver of the Navy ambulance that was guilty of negligence as a matter of law, and where a second tort-feasor becomes aware, or by the exercise of ordinary care should be aware of the existence of a potential danger created by the negligence of an original tort-feasor, and thereafter by an independent act of negligence brings about an accident, the condition created by the first tort-feasor becomes merely a circumstance of the accident, but is not a proximate cause thereof. The original negligence of the first tort-feasor is legally insulated by the intervening independent negligence of the second tort-feasor, and the latter becomes the sole proximate cause of the accident.

Refused.

J. H. T.

page 37 } INSTRUCTION NO. D-B.

The Court instructs the jury that "proximate cause" of an injury is that cause which, in natural and continuous sequence, unaccompanied by any effiicient intervening cause, proves injury, and without which result would not have occurred.

Refused.

J. H. T.

page 38 } INSTRUCTION No. X-2.

The Court instructs the jury that the ambulance driver in this case was guilty of negligence as a matter of law and if you find that his negligence was the sole proximate, or sole intervening proximate cause, then the defendant Virginia Transit Company is not liable to the plaintiff, even though you also believe that the bus driver was also negligent in failing to comply with City Ordinance 27-72 before entering the intersection where the accident occurred.

Refused.

J. H. T.

page 39 }

* * * * *

To the jurors: Please write your verdict below.

J. H. T.

We the jury find in favor of the plaintiff for the sum of $14,500.00.

DAVID J. JONES. Foreman.

page 40 }

* * * * *

In the Court of Law and Chancery of the City of Norfolk, on the 10th day of July, 1958.

ORDER.

This day came again the parties, the plaintiff in proper person and by counsel and came as well the defendant by counsel, thereupon pursuant to adjournment came again the jury, to-wit; Arthur J. Wunner, Jr., J. Clyde Malbon, Donald Maxwell, David J. Jones, Blanche C. Padgett, Clara T. Ferguson and Elizabeth D. Koonce, who now having heard all of the evidence and argument of counsel returned a verdict in the following words and figures, "We the jury find in favor of the plaintiff for the sum of $14,500.00," thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury and enter up judgment for the defendant or in the alternative set aside the verdict of the jury and grant the defendant a new trial upon the grounds that the said verdict is contrary to the law and the evidence and without evidence to support it and upon the further grounds of errors noted and exceptions noted during the trial, including errors in refusal and admission of evidence and in the granting and refusal of instructions and the error of the Court in overruling the defendant's motion to strike the plaintiff's evidence at the close of the plaintiff's evidence and at the close of all the evidence, which motion after having been fully heard and maturely considered by the Court is overruled, to which action of the Court the defendant, by counsel, duly excepted.

Whereupon it is considered by the Court that the plaintiff

page 41 } recover of the said defendant the sum of Fourteen Thousand Five Hundred Dollars, ($14,500.00), with interest thereon to be computed after the rate of six per centum per annum from the 10th day of July, 1958, until paid together with his costs about his suit in this his behalf expended. To all of which action of the Court, the defendant, by counsel, duly excepted.

Thereupon the said defendant having signified its intention of presenting to the Supreme Court of Appeals of Virginia, a petition for a writ of error and *supersedeas* to the judgment herein, it is ordered that execution upon said judgment be suspended for a period of sixty days from the date hereof, upon the defendant or someone for it entering into and acknowledging a proper suspending bond, conditioned according to law, before the Clerk of this Court, in the penalty of Sixteen Thousand Five Hundred Dollars, ($16,500.00), with security to be approved by said Clerk.

* * * * *

page 42 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendant, Virginia Transit Company, herewith serves notice of its appeal and states the following assignments of error in compliance with Rules of Court 5, Section 4:

1. The Court erred in overruling the motion to strike the plaintiff's main evidence at the close of plaintiff's testimony.
2. The Court erred in overruling defendant's motion to strike plaintiff's testimony at the conclusion of all the evidence.
3. The Court erred in overruling the motion to set aside the verdict of the jury and enter judgment for the defendant, or, in the alternative, to grant a new trial.
4. The Court erred in permitting the witness, Billie C. Lear, to testify to hearsay statements made to him by a corpsman who accompanied him and the plaintiff in the Navy ambulance. See Reporter's Transcript, Page 33, line 20, to Page 39, line 12.
5. The Court erred in entering final judgment in favor of the plaintiff on the 10th day of July, 1958, over the objection and exception of the defendant.

6. The Court erred in granting, and refusing, and modification of instructions offered by both the plaintiff page 43 } and the defendant, as set forth in detail in the Reporter's Transcript, Page 141, line 7, to Page 151, line 22.

VIRGINIA TRANSIT COMPANY
By L. S. PARSONS
Of Counsel.

Filed 7-28-58.

L. M. CALVERT, D. C.

* * * * *

page 47 } I, W. L. Prieur, Jr., Clerk of the Court of Law and Chancery of the City of Norfolk, certify that Suspending and *Supersedeas* Bond in the penalty of $16,-500.00 has been duly executed and I deem the security sufficient.

Teste:

W. L. PRIEUR, JR., Clerk
By L. M. CALVERT, D. C.

* * * * *

page 3 } Norfolk, Virginia, July 9, 1958.

(The reporter was sworn.)

Mr. Parsons: If your Honor please, there is an absent witness whom we have endeavored to find. We cannot find him and therefore we cannot justify a motion for continuance; but he has been summoned and the return is "Not found." I just want the record—

The Court: That was the driver of the bus?

Mr. Parsons: The driver of the bus.

The Court: No longer with the Virginia Transit Company. Go ahead.

Mr. Parsons: If I knew where he was it would be different, but I don't.

(A jury was impaneled and sworn; the witnesses were sworn and, on motion by Mr. Eason in which Mr. Parsons

joined, they were excluded from the courtroom; by stipulation between counsel the medical experts were permitted to remain in the courtroom during the course of the trial; opening statements were made by counsel; and the following evidence was introduced:)

Mr. Eason: May it please the Court, the plaintiff would like to offer in evidence Ordinance No. 16-358 of the City of Norfolk adopted by the Council February 3, 1953, effective March 5, 1953, to amend Section 27-72 of the Code of the City of Norfolk, Virginia, 1950, relating to the
page 4 } approach of police or fire department vehicles and ambulances.

The Court: It will be accepted. I have a copy. I will mark it Plaintiff's Exhibit 1.

(The copy of ordinance referred to was marked Plaintiff's Exhibit 1.)

Mr. Parsons: If your Honor please, the question of the applicability of that will arise, I assume, at a later time.

The Court: I am not holding that it is applicable at this time. I am merely allowing him to introduce an ordinance of the City of Norfolk, which he will, unquestionably, contend is applicable. All right.

Mr. Eason: The plaintiff calls as his first witness Officer M. Pugh.

OFFICER MELVIN PUGH,

called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Eason:

Q. Will you please state your name, sir?

A. Melvin Pugh.

Q. And what is your occupation?

A. Patrolman of the Norfolk Police Department.

Q. How long have you been with the Norfolk
page 5 } Police Department?

A. Approximately three and a half years.

Q. Officer Pugh, did you have occasion to witness a motor vehicle accident on Friday, November 2, 1956?

A. I did, sir.

Q. At or about 10:05 P. M., at the intersection of Church Street and City Hall Avenue, in the city of Norfolk, Virginia,

in which the plaintiff in this case, Clarence J. Hodges was involved?

A. Yes, sir, I did.

Q. Where were you at the time of the accident?

A. We were in unmarked patrol car, sitting on City Hall Avenue headed east, in the third lane from the curb, stopped at the stop light for the intersection of Church Street.

By the Court:

Q. You were facing east?

A. Yes, sir.

By Mr. Eason:

Q. Who was with you at the time?

A. Officer W. M. Pope.

Q. Who was driving the police car in which you were riding?

A. I was the operator.

Q. What vehicles were involved in the accident?

A. A Naval ambulance and a Virginia Transit page 6 } Company bus.

Q. In which vehicle was the plaintiff Hodges riding?

A. He was a passenger of the Naval ambulance.

Q. He was a passenger in the Naval ambulance?

A. Yes, sir.

Q. Where was he riding in the Naval ambulance? In what position was he riding?

A. I couldn't state, sir. There were two passengers in that and I don't remember if he was a sitting passenger or on the stretcher. I just couldn't say.

Q. There was one passenger sitting and one on a stretcher, is that correct?

A. Yes, sir.

Mr. Eason: If your Honor please, the plaintiff, by agreement of counsel, would like to introduce a topographic survey of the intersection of Church Street and City Hall Avenue in the city of Norfolk, Virginia.

The Court: It will be marked Plaintiff's Exhibit 2.

(The topographic survey referred to was marked Plaintiff's Exhibit 2.)

Mr. Parson: If your Honor please, the record might show

that in lieu of the map he had, I furnished this to him because it shows the actual condition.

Mr. Eason: Of course, Mr. Parsons, you understand that I am still going to try to introduce the plat which I
page 7 } have.

Mr. Parson: All right.

By Mr. Eason:

Q. Officer Pugh, I ask you to step down here—and if I may lay this plat on the table here. (Placing on table before jury). I hope that you members of the jury may be able to see this plat. Officer Pugh, in what direction was the ambulance proceeding?

A. The ambulance was on City Hall Avenue, headed in an east direction, approaching Church Street. It would be in this—coming in this direction.

Q. In what direction was the Transit Company bus proceeding?

A. The Virginia Transit bus was on Church Street, headed in a south direction.

Q. Proceeding through the intersection?

A. Yes, sir.

Q. What traffic control device, if any, was there present at the intersection at the time?

A. Stop lights; changing stop light from north and south, and east and west. In other words, we had the red light; we were stopped here at the intersection. The red light here (indicating) and red light here (indicating). This one would be green for Church Street traffic and also coming here, this one would be green for northbound.

Mr. Parsons: In order that the record may be
page 8 } straight, if your Honor please, somebody ought to point out where the red lights are. He just said "here" and "here."

The Court: All right. Officer, do you have a pencil?

The Witness: Yes, sir.

Mr. Eason: Sir, I believe they are already marked on the plat.

The Witness: They are marked on the plat.

Mr. Parsons: All these lights have a "TL" on them.

Mr. Eason: That is "Traffic Light."

The Court: They are marked; I misunderstood.

The Witness: I was going by the marked lights. They are proper and correct.

Officer Melvin Pugh.

By Mr. Parsons:

Q. State where these lights are without pointing to them. This one is in what?

A. This would be on the center island, City Hall Avenue. It would be east of the intersection of Church and City Hall.

Q. And the one on the southeast corner would be a red light for east-bound traffic?

A. Yes, sir.

Q. And the one on the southwest corner was a green light for south-bound traffic on Church Street?

A. Yes, sir, that is correct.

Q. There is a traffic light on each of the other
page 9 } corners. Were they or not involved in this?

A. No, sir.

Q. Or were they just there?

A. No, sir, they were not involved. They wouldn't be in this particular accident, no, sir.

Mr. Parsons: All right.

By Mr. Eason:

Q. Officer, where in the intersection did the impact occur? Where was the point of impact?

A. You mean the point of the impact of the ambulance to the bus?

Q. That is correct. Where was the bus in the street when the ambulance struck it?

A. The bus was in the intersection with the rear of the bus approximately in the center of the intersection. Would you like for me to point it out?

Q. Yes, with your finger.

A. It would be—the back of the bus would approximately be here (indicating) with the front of it would be crossing—the bus would be in a position covering these—approximately these four traffic lanes—with the front end of the bus to the south curbline of City Hall Avenue on Church Street.

Q. How far, if at all, did the bus travel after the impact?

A. The—when the bus stopped, the back end of
page 10 } it was about to the building line or maybe halfway
between the curbline and the building line. We could see it from where we were sitting.

Q. Do you have the approximate distance in feet as to how—

Officer Melvin Pugh.

A. That would be approximately the length of it, from—in other words, the back end of the bus stopped approximately where the front end of it was when the accident first occurred—the approximate length of the bus.

Q. What is the approximate length of the bus? Do you know or—

Mr. Parsons: What is the length?

A. I would say close to 40 feet.

Mr. Parsons: No, I don't think it is that long.

A. It is a long bus.

Mr. Parsons: Let's see if I can tell you. We will get the length and put it in for you. I don't know what it is. See if there is somebody out there (indicating hallway outside the courtroom) who knows what the length is. I think it is about 30 feet.

Mr. Eason: You think it is?

Mr. Parsons: I will get the length and stipulate it with you.

By Mr. Eason:

Q. How far, if at all, and in what direction did
page 11 } the ambulance travel after the point of impact?

A. I would say the front end of the ambulance went sideways approximately three feet. The back end of it stayed within a foot of the position where it hit.

By the Court:

Q. The ambulance went sideways, you say?

A. Yes, sir, to the right, in the direction the bus went.

By Mr. Eason:

Q. As the ambulance approached the intersection, what audible signal, if any, was it giving?

A. Repeat that, please.

Q. As the ambulance approached the intersection, what audible signal, if any, was it giving?

A. The siren was going on the ambulance and the red light was flashing.

Q. How far was the ambulance from the intersection of

Officer Melvin Pugh.

Church Street and City Hall Avenue when you first heard the ambulance siren?

A. I couldn't say how far it was back when I heard it, but the first time we saw it would be when it come around the curve which is approximately 200 feet back from the—

By the Court:

Q. That is the first time you saw the bus?

Mr. Parsons: The ambulance.

A. The ambulance, on City Hall Avenue coming
page 12 } up behind us. I saw it through the mirror when it
come around the corner. Of course, I heard the
siren a little before I saw the ambulance.

By Mr. Eason:

Q. How far was the ambulance away when you heard the siren? Approximately how far?

A. I couldn't—

The Court: He said he heard it before he saw it, so he doesn't know how far, necessarily.

A. I couldn't state. It would be within a block and a half at the most, I would say; between—I will say between Court Street and City Hall, which is I believe a block and a half—or exactly two blocks, but it is one short block and one long.

By Mr. Eason:

Q. From the time that you first heard the siren, was it continuous from that time until the time of the acciden?

A. Yes, it was.

Q. Where was the Virginia Transit Company bus at the time you first heard the ambulance siren? Now, I asked you before; have you answered that question? I will ask you where were you, where was your car sitting at the time of the accident?

A. We were stopped for the stop light in the third lane of traffic from the curb on City Hall Avenue, over as close as
I could get to the other traffic in the second lane.
page 13 } Q. Were you sitting there when you first heard
the siren?

A. No, sir. We were approaching, coming to a stop, within probably a couple of lengths of the car.

Officer Melvin Pugh.

Q. You were driving your police vehicle?

A. Yes, sir, I was.

Q. What action did you take when you heard the siren?

A. I pulled as far to the right—didn't know where the siren was, I just heard it—I pulled as far over to the right as I could and stopped beside the other car.

Q. What other cars are you speaking of?

A. There was a line of traffic in this lane next to the curb. I believe there was a bus and other traffic behind it. There were two or three cars in the second lane of traffic. We were in here (indicating), I would say approximately two lengths of the car from the stop light, coming up to the light; and I just pulled over as close to the other, the second lane of traffic, as I could.

Q. Then when you came to a stop at the intersection, you had already heard the siren before you came to a stop?

A. Just a moment before, yes, sir.

Q. When did you first notice the Transit Company bus? How far was the Transit Company bus from the intersection when you first noticed it?

A. Well, there is a wall here. Naturally you can
page 14 } only see this bus after it comes out around this wall. I think this wall was approximately seven feet tall. And the first point we could see was here (indicating). I would say we were, about the same time that we saw the red light on the siren coming around the curve.

Q. You saw the bus at about the same time you saw the red light on the siren and at that time the ambulance was how far away? I think you testified.

A. That curve is approximately 200 feet back.

Q. What if any defects did you note in the ambulance siren?

A. None to my knowledge.

Q. Was the siren clearly audible?

A. Yes, sir. We heard it.

Q. What is your estimate of speed of the bus at the time of the accident?

A. Between 15 and 20 miles per hour.

Q. As the bus approached and entered the intersection, did it slow down? Did you notice whether or not it slowed down?

A. No, sir. I say it held just a pretty steady speed coming on through the intersection.

Officer Melvin Pugh.

By the Court:

Q. I am sorry. I couldn't hear that.

A. It was held at steady speed of the speed it
page 15 } was coming through the intersection.

By Mr. Eason:

Q. What is your estimated speed of the ambulance as it approached the intersection?

A. We estimated the speed between 25 and 30 miles per hour.

Q. What skid marks, if any, were left by the ambulance?

A. We didn't investigate the accident and I don't think that I would be qualified to say how far because I didn't measure it.

Q. Did you see skid marks?

A. Yes, sir, there were some skid marks.

Q. What skid marks, if any, were left by the bus?

A. None that we saw.

The Court: Now, Officer, I think if you have finished with that, come back to the stand.

(The witness complying).

By Mr. Eason:

Q. As the ambulance approached the intersection with its siren sounding and its red blinker light on, what color was the traffic light for traffic in the direction in which the ambulance was proceeding?

A. It was a red light.

Q. It was a red light?

A. For the ambulance, yes, sir.

page 16 } Q. And, of course, then it would be a green light for the Transit Company bus?

A. Yes, sir.

Q. What other vehicles, if any, did you notice at the intersection other than the ones that were headed in the same direction that you were, on the same street that you were on? You have mentioned those. What other vehicles, if any, did you notice in the intersection?

A. There were no other—

The Court: You mean other than the ambulance and the bus?

Mr. Eason: Yes, sir.

Officer Melvin Pugh.

A. There was no other traffic in the intersection. There was—it would be west-bound traffic on City Hall Avenue, stopped for the light, going in the opposite direction from where we were headed. It would be headed back to the west, in a western direction.

Q. You didn't notice any west-bound traffic on City Hall Avenue?

A. There was some traffic, yes, sir.

Q. There was some west-bound traffic?

A. I couldn't state how many cars. There were headlights.

By the Court:

Q. They were not in the intersection?

page 17 } A. No, sir.

Q. Stopped?

A. No, sir, stopped for the red light; out of the intersection.

Mr. Eason: If your Honor please, may he step back down here?

By Mr. Eason:

Q. Then I understand you to say that there was traffic moving in a westerly direction on City Hall Avenue?

A. No, sir. I said—

Q. Back here?

A. No, sir. I said there was traffic stopped here.

Q. Well, I mean there was traffic stopped there?

A. Yes, sir.

Q. Headed in a westerly direction?

A. For the red light. Yes, sir.

Q. Stopped for the red light. Now, also were there any vehicles proceeding on Church Street in the same direction as the bus, just prior to the accident?

A. No, sir.

Q. Did you notice any vehicle approaching this intersection other than the bus?

A. No, sir.

Q. How about vehicles on Church Street which were headed north; were any vehicles headed north at the

page 18 } time?

A. There was none in the intersection. If they were headed north, I couldn't say if there was any back

down here headed north; but there was no traffic in the intersection at the time the bus and the ambulance—

By the Court:

Q. There was no visible moving traffic on Church Street from where you were sitting?

A. No, sir.

Q. Other than the bus?

A. Other than the bus.

By Mr. Eason:

Q. Sir, if you remember was the pavement dry or was it wet?

A. To my knowledge it was—

Q. Was the pavement dry or wet at that time?

A. It was dry, the best I remember it.

Q. Were traffic lanes marked or unmarked?

A. Traffic lanes were marked, yes, sir.

The Court: Which street are you referring to?

Mr. Eason: Well, sir, on City Hall Avenue, approaching; City Hall Avenue, headed east. As City Hall Avenue intersects with Church Street—

By the Court:

Q. Let me see if I can't clear it up quickly. On City Hall Avenue are there not marked traffic lanes?

page 19 } A. Yes, sir.

Q. Are there marked traffic lanes on Church Street at the intersection?

A. I believe they have divided white line on Church Street —on both streets; just on Church Street, just one line.

Mr. Parsons: If your Honor please, the map shows it all.

The Court: I understand it does.

By Mr. Eason:

Q. As the ambulance approached the intersection, in which lane was it traveling, as it approached the intersection of Church Street? Would you come here and show us? Show us the lane in which it traveled.

The ambulance would be in this left-hand turn lane, the left-hand turn lane for Church Street. It was in the—the biggest part of the ambulance was in the left-hand turn lane,

with its right wheels in the same lane of traffic that we were in.

Q. That is at the time it came to a stop?

A. No, sir. That was the time it came by us. As the ambulance came by us, it made a slight turn which if you went straight down this left-hand turn lane, naturally you would hit this little island here. He made just a little turn to the right, which put him in a position which he would have cleared if there had been nothing there to interfere with him, which he would have cleared this island, at just a slight turn.

page 20

Q. Officer, show us if you can with the aid of my pencil—you have your pencil there; let my pencil represent the Transit bus and your pencil represent the ambulance and show us how—

Mr. Parsons: These (indicating model cars).

Mr. Eason: These automobiles are too big, Mr. Parsons. I just want the pencils, please.

By Mr. Eason:

Q. Show us how those vehicles came into contact with each other.

A. Of course, the ambulance naturally wouldn't be as long as the pencil. The ambulance was, when the impact—would be just in the intersection. The ambulance—make the ambulance, say, as long as from the curb to here or approximately that long. The ambulance struck the bus in the right-hand side, approximately the rear wheel of the VTC bus.

Q. What was the extent of damage to the bus and what was the extent of damage to the ambulance, just as you saw it? What apparent damage did you see?

A. As we saw it, the ambulance seemed to be pretty well a total wreck.

The Court: Excuse me again. Come on back to the stand.

page 21

By Mr. Eason:

Q. The question was, what apparent damage did you see to each vehicle?

A. The ambulance seemed to be pretty much a total wreck due to the weight—shifted the whole front end of it, and I

Officer Melvin Pugh.

believe it was declared a total wreck. The VTC bus showed very little damage due to the impact hitting right at the wheel. We couldn't estimate the damage on the bus.

Q. Is that a business or residential district?

A. It is business.

Q. What was the speed limit for the Transit Company bus at that intersection?

A. It is a 15-mile zone—correction, 25-mile zone.

Q. And the speed limit for other traffic other than possibly emergency vehicles which were proceeding in accordance with their rights if they have a right to exceed the speed limit—other traffic other than emergency vehicles, it is what?

A. The speed limit is 25.

Q. 25 on both streets?

A. Yes, sir.

Q. Do you recall what the street surface is at that intersection?

A. It is blacktop surface.

Q. On both streets?

page 22 } A. Yes, sir.

Q. The plat shows City Hall Avenue as it enters Church Street to be, the street itself to be 55.6 feet wide. Is that approximately correct?

A. I would say close to that, yes, sir. I didn't measure it. It would be close to that.

Q. That, of course, doesn't appear to include the sidewalks.

A. Yes, sir.

Q. And the plat shows Church Street at its intersection with City Hall Avenue to be 32.8 feet wide. Is that approximately correct?

A. Yes, sir.

Q. That is without including the sidewalks?

A. That is pretty close, yes, sir.

Q. Now, I believe you testified that you did not know whether the plaintiff Hodges was sitting up front or whether he was on the stretcher in the back. Now I ask the plaintiff to stand up if he will, please.

(The plaintiff stood up.)

By Mr. Eason:

Q. And I ask you, Officer, if you remember seeing this man in the ambulance?

Officer Melvin Pugh.

A. I remember seeing the man at the scene of the accident. Now, whether he was the one in the ambu-
page 23 } lance or the one in the front I couldn't say, no-
sir.

Q. Do you remember seeing this man after the ambulance—

A. At the accident, yes, sir.

Q. In the accident. Do you recall—

The Court: You may sit down. (Witness complying)

By Mr. Eason:

Q. Do you recall whether or not you noticed any apparent injuries to this man?

A. No, sir. There were none that would—to my knowledge that would show. It has been such a long time since this accident I couldn't state right offhand. We did notice that both men seemed to be injured.

Q. How many people in the ambulance were injured?

A. There were three injured, including the driver—which didn't show at first the driver was injured. Before he was taken away, before anybody was taken away from the accident the driver collapsed at the scene and was also taken to the hospital.

Q. Was there anybody else in the ambulance? How many people were in the ambulance at the time of the accident?

A. There were two patients, a corpsman and a driver—four people.

Q. Did it appear that the corpsman received any injuries?

A. I—he didn't show any sign of it at that time, the best of my knowledge.

page 24 } Q. But as I understand it, the driver and the two patients were injured in the accident, is that correct?

A. They were complaining of injuries in the accident, yes, sir.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Mr. Pugh, as a matter of fact, you say you heard a siren before you saw this ambulance with its light?

A. Yes, sir.

Q. In the course of the day a good many sirens blow around town, from time to time. Have you any way of know-

ing whether this ambulance was blowing a siren except from deduction; or it might have been some other siren blowing around the police station? You couldn't tell whether it was this one blowing or not, could you, at that time, until you saw it?

A. When we first heard it, of course the siren was continuous and it got louder as it approached us.

By the Court:

Q. Apparently from the increase of sound, was it approaching you?

A. Yes, sir.

The Court: Go ahead.

By Mr. Parsons:

Q. The siren that you heard before could have been a siren going on Cumberland Street before it came loud?

page 25 } Until you saw it, you didn't realize that this was a siren from an ambulance coming in your direction?

A. I didn't know where it was until I saw the red light, no, sir.

Q. And, naturally, you couldn't know, could you?

A. No, sir, I don't believe anyone else could.

Q. It could just as well have been a siren over on Plume Street a block away, as far as you know?

A. As far as I know.

Q. When you came up and stopped, why did you stop?

A. For the red light.

Q. The actual fact of the siren had nothing to do with your stopping at all?

A. Chances are if it had been no traffic control at all we would have stopped. Naturally, being policemen, we have the instinct to try to look out for any emergency.

Q. I am talking about that particular incident, though. In this instance, you stopped because of the red light and not because of the siren?

A. Yes, sir, we stopped for the red light.

Q. And when you, coming to a stop—the bus had just reached the sidewalk line, the northern curbline and was moving into Church Street when you looked back and saw the blinker and heard the siren about 200 feet away?

Officer Melvin Pugh.

A. Yes, sir.

page 26 } Q. In other words, the bus had reached the point and in motion about 15 miles an hour, coming into the intersection, and as you looked back from that and heard and saw the blinker, it was about 200 feet away?

A. That was when the bus was at the crosswalk line.

Q. When the bus was coming into the intersection?

A. Yes, sir, approaching the intersection.

Q. And you say the bus was going 15 to 20 miles an hour, did not change its speed?

A. Not to my knowledge.

Q. You said something about skid marks. Were those skid marks that you noticed approximately ten or twelve feet?

A. I would say they were approximately the length of the ambulance, from the longest.

Q. 25 feet?

A. No, sir. The ambulance I would say is approximately 20, maybe 21, 22 feet, I couldn't say. We didn't measure them. I couldn't give you the exact measurements.

Q. You don't know exactly what they were because you didn't measure them?

A. No, we didn't investigate the accident.

Q. You just estimated about 20 feet?

A. That is right.

Q. And they led right up to the point where it struck the bus?

page 27 } A. Yes, sir.

Q. Would you mind stepping down here a moment. Do you have a ruler, your Honor? (Mr. Parsons was handed a ruler.) The line of the bus on Church Street, just put a little dot with the pencil right where the right-hand side of the bus would be as it goes across this—

A. As it would come across?

Q. Yes. Here is the—

A. Well, turn your rule this way. This would be your curb, get a rough idea of the curbline. I would say it would be approximately two feet from this curbline. The rear of the bus you want?

Q. Well, the side of the bus as it went by. Put a mark right in the center there.

A. You mean from the curbline this way, right?

Q. Yes, the right-hand side, about there?

A. I would say, I would estimate that would be probably a foot and a half because there was a bus stop here and he came mighty close to the curb when he stopped.

Officer Melvin Pugh.

Q. On this map that is 1-1/8 inches from the crossline across the street. No; the dotted line across there. It is one inch from these dotted lines here up to the point where you say the side of the bus would be. According to that it would be 20 feet, wouldn't it? One inch to 20 feet. Well, that answers itself.

page 28 } A. It would be close. Yes, I couldn't say how far.

Q. It answers itself. Now, when the ambulance came up, you had stopped in the third lane from the right-hand side?

A. Yes, sir.

Q. And in order to pass you, did he have to go into the left turn lane?

A. Yes, sir, to get by us. His biggest part of the ambulance was in the left turn lane.

Q. And as he approached and came by you, did he change his speed any from the time you saw him until he passed by you? About the same speed or not?

A. He started applying his brakes about the same time he was off to the side of our car there, and I didn't see any change in speed.

Q. That would be about where the skid marks start?

A. Yes, sir.

Q. Up to that time he was operating, as far as you know, about the same speed all the time?

A. Yes, sir.

Q. As he came up, the traffic light sitting in the island directly across the street, would that be in plain view of the ambulance driver?

A. Yes, sir; right in front of him.

Q. Did he appear to pay any attention to it?

A. No, sir. He didn't seem to pay any attention

page 29 } at all to the light.

Q. He ran into the intersection regardless of the traffic light?

A. Yes, sir.

Mr. Parsons: I think that is all, Mr. Pugh.

Mr. Eason: If your Honor please, I would like to clarify one thing and that is—

RE-DIRECT EXAMINATION.

By Mr. Eason:

Q. I understand, Officer, that you say that as the ambu-

lance approached the intersection you were driving your vehicle and you pulled your car as far to the right as you could?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Parsons:

Q. I understood you to say, Mr. Pugh, that if you had known there was an ambulance coming in your direction further back, you would have pulled over before he got to the point, but that you couldn't pull over at this point except just a part of that third lane because you were already passing by some cars in the other lane?

A. Yes, sir. I would estimate there was three cars, if I am not badly mistaken there were three cars in the second lane, which put us off against that when we heard

page 30 } the siren.

Q. At the time you realized the ambulance was coming behind you, you could not go over to the curb, you just pulled next to those cars that were in the second lane?

A. Yes, sir.

Q. That is all you did?

A. Yes, sir.

Q. And stopped?

A. (The witness nodded).

(At this point there was a brief recess, after which the following occurred:)

BILLY C. LEAR,

called as a witness on behalf of the plainitff, and having been first duly sworn, testified as follows:

Examined by Mr. Eason:

Q. Will you state your name, please, sir?

A. Billy C. Lear.

The Court: I am sorry; I couldn't hear it.

A. Billy C. Lear.

By the Court:

Q. How do you spell it?

A. Lear (spelling it).

Billy C. Lear.

Q. Lear (spelling it)?
A. Yes, sir.

page 31 } By Mr. Eason:
Q. It is obvious that you are in the service. What is your grade?
A. Construction electrician, second class.

Mr. Parsons: Talk a little plainer. I can't hear too well.

A. Construction electrician, second class.

By Mr. Eason:
Q. What is your present organization?
A. Present?
Q. Yes.
A. I am in Transportation.
Q. Transportation?
A. Yes, sir.
Q. What are your present duties?
A. At the present time?
Q. Yes.
A. I am in the Grounds detail.

Mr. Parsons: What did he do?
The Court: Does it matter what he does now?
Mr. Eason: No, sir, I guess not.
The Court: Let's go on.
Mr. Eason: All right, sir.

By Mr. Eason:
Q. Mr. Lear, on the night of November 2, 1956,
page 32 } were you the driver of a Navy ambulance which was involved in an accident with a Virginia Transit Company bus at the intersection of Church Street and City Hall Avenue in the city of Norfolk, Virginia?
A. Yes, sir.
Q. It appears that the accident happened at night about 10:05 P. M.; is that correct, sir?
A. Yes, sir.
Q. On November 2, 1956, what were your duties at that time?
A. Ambulance driver, sir.
Q. Ambulance driver?
A. Yes, sir.

Q. And for what organization?
A. The Naval Dispensary, Naval Air Station.
Q. Was anybody else in the ambulance with you at the time of the accident?
A. Yes, sir.
Q. Who was with you?
A. Two patients and a corpsman.
Q. Two patients and a corpsman?
A. Yes, sir.
Q. Was Clarence J. Hodges one of the patients that were with you?
A. Yes, sir.
page 33 } Q. Where did you pick up the patients that were in your ambulance?
A. I picked up Mr. Hodges at his house, came back to the Air Station and picked up Mr. Phillips.
Q. Mr. Phillips?
A. Yes, sir.

The Court: "At his house;" we don't know where his house was.

By Mr. Eason:
Q. Yes; where did Mr. Hodges live at the time?
A. Someplace in East Ocean View.
Q. In East Ocean View; you picked him up, then you went back to the Air Station, you picked up the other patient, Mr. Phillips?
A. Yes, sir.
Q. And then where were you headed?
A. Portsmouth Hospital.
Q. Portsmouth Naval Hospital?
A. Yes, sir.
Q. At the time that you started to make your run to the Portsmouth Naval Hospital, were you told by anyone that it was an emergency?

Mr. Parsons: We object.
The Court: I will allow it; if he was instructed by any superior officer in his command that it was an
page 34 } emergency, I will allow it; but anyone—
Mr. Parsons: Will you excuse the jury for a moment? I want to find out what this is.
The Court: All right. Ladies and gentlemen, step in the hallway.

Billy C. Lear.

(The following occurred in the absence of the jury:)

The Court: You understand I am not going so far as to allow anyone. I wouldn't allow a stranger, for instance, to stop the ambulance and say it is an emergency. If it is a physician who turned the patient over to Mr. Lear and he said it is an emergency, or any Naval officer or member of the commissioned or non-commissioned personnel who was in charge of Mr. Lear.

Mr. Parsons: My understanding of the previous testimony is that this witness would testify that a corpsman who was with him told him that it was an emergency. Now, a corpsman is not a superior officer.

The Court: No, I don't believe a corpsman is; but a corpsman who turned the patient over to him—

Mr. Parsons: He wasn't turned over by the corpsman.

The Court: Let's find out. Let me hear the testimony in the absence of the jury. I think I will be better able to pass on it.

By The Court:

Q. By whom were you told that it was an emergency, if anyone?

page 35

A. The corpsman, sir.

Q. What corpsman?

A. The corpsman that was with me.

Q. Assigned to the ambulance?

A. Yes, sir.

Q. Do you know how the corpsman got his information?

A. The doctor, I suppose. I didn't talk to the doctor.

Q. You don't know?

A. No, sir.

Q. Well now, as between you and the corpsman, both of you were stationed on there—the corpsman is a member of the medical department of the Navy, am I right?

A. Yes, sir.

The Court: I will allow it.

Mr. Parsons: Wait a minute.

By Mr. Parsons:

Q. Actually, the Medical Officer in Charge was a Doctor Okel, wasn't it?

A. Yes, sir.

Q. He was the man from whom you would get your instructions?
A. Well, I didn't go in, sir.
Q. What?
A. I didn't see the doctor at all except when he
page 36 } gave him the shot.
Q. The only person who said anything to you was the corpsman designated to ride the ambulance with you?
A. That is right.
Q. It wasn't his duty to pass upon the emergency or not, it was that of the doctor in charge, wasn't it?
A. Well, the corpsman, he told me that was an emergency.

By The Court:
Q. You were in the medical department?
A. I was driver.
Q. You were the driver; you are not a specialist in medicine of any kind?
A. (The witness shook his head).
Q. The corpsman is like a—

Mr. Parsons: Just a helper.

By The Court:
Q. —civilian nurse, is he not?
A. That is right.

Mr. White: We have an ex-Navy doctor who probably can throw some light on the subject.
The Court: I don't need any light as far as I am concerned. I will allow him to testify that the corpsman who was the medical man assigned to the ambulance instructed him, what instructions he gave him as to whether or not it was an emergency.
page 37 } Mr. Parsons: Let me ask one more question.

By Mr. Parsons:
Q. Do you know what the corpsman's duties were, or not?
A. I know that he was assigned to the patients of the ambulance.
Q. He was assigned to ride with you in the ambulance?
A. That is right.

The Court: He said he was assigned to the patients in the ambulance.

Billy C. Lear.

By Mr. Parsons:

Q. Assigned to ride with the patients in the ambulance?

A. That is right.

Q. He is not a medical man, is he?

A. As far as I know, he is.

The Court: One minute. I think you had better clarify that a little. He is not an M. D., if that is what you mean, I am sure; but I think he does take a course in medicine to the same extent that a trained nurse does.

Mr. Parsons: It seems to me it would be plainly hearsay. The corpsman is the man who would testify to it, if anybody.

The Court: The corpsman would be the man to testify why he gave it but all we are interested in now is whether or not anyone in authority who should know, told him

page 38 } that it was an emergency. I am not suggesting that this particular corpsman was not a doctor of medicine; I merely meant to state under normal circumstances I wouldn't expect him to be. It is not a prerequisite of being a corpsman.

Mr. Parsons: A corpsman might not necessarily be attached to the medical division, as far as that is concerned.

The Court: My understanding is that the medical personnel when they speak of a corpsman mean an enlisted man who is attached to the medical division. He occupies, so I understand, essentially the same position that a trained nurse in a civillian hospital occupies.

Mr. Parsons: I don't think your Honor has a right to take judicial knowledge of any such thing as that.

The Court: I have no doubt that all of that will come out before the case is over. The question now is whether or not this witness may testify as to the corpsman who is in charge of the patients in that ambulance, if he may say that that corpsman told him that it was an emergency. I am ruling that he may. Bring the jury back. Mr. Parsons didn't hear what I said.

Deputy Sergeant: Let Mr. Gillespie remain?

Mr. Eason: He is a witness, he has been excluded.

Mr. Parsons: If your Honor please—

page 39 } The Court: One minute.

Mr. Parsons: I am in a position to show that the corpsman has no right of control or direction of an ambulance.

The Court: I am going to allow this. Then you may introduce your testimony any time you wish to.

Billy C. Lear.

Mr. Parsons: I except, if your Honor please.

The Court: As I understand the witness, the corpsman was in charge of the patients. The patients referred to him were turned over to the corpsman by the doctor.

Mr. Parsons: I can't assume that. I don't know, your Honor. I just say this is improper in its present form.

(The following occurred in the presence of the jury:)

The Court: All right; go ahead.

By Mr. Eason:

Q. All right, sir. Mr. Lear, when you started to leave the Naval Air Station to proceed to take the patients to the Portsmouth Naval Hospital, what instructions, if any, did you receive in reference to whether or not it was an emergency run.

A. The corpsman stated that it was an emergency run.

Q. What corpsman was that who told you that it was an emergency run?

A. The one that they assigned to the patients.

Q. And was he the one that was riding with you
page 40 } and with the patients?

A. Yes, sir.

Q. Do you recall his name?

A. I think it is Duval, or something like that; I don't remember it.

Q. Now, when did you turn on your siren and your emergency blinker light?

A. Well, the light was on when I left the dispensary; before I left the station, the siren was on also.

By The Court:

Q. Did it remain continuously—

A. Yes, sir.

Q. —until the accident?

A. Yes, sir.

Q. Both?

A. Yes, sir.

By Mr. Eason:

Q. Now, what route did you take as you left the Air Station and proceeded to the Naval Hospital? What route did you follow?

A. I came down Taussig Boulevard, down Granby and then Monticello.

Billy C. Lear.

Q. Down Monticello?
A. Yes, sir.
Q. To City Hall Avenue. Is what direction did
page 41 } you then go?
A. Toward the hospital.

By The Court:
Q. You took a left turn from Monticello into what street?
A. This one runs down through here.
Q. Is that City Hall Avenue?
A. Yes, sir.

The Court: Go ahead.

By Mr. Eason:
Q. The street you were on when the accident occurred. Now, I ask you to come down to this table and look at this diagram or survey of the intersection where the accident occurred. This (indicating) is City Hall Avenue and you have just testified that that is the street upon which you were proceeding. You were proceeding in an easterly direction on City Hall Avenue as you approached the intersection, as you approached Church Street. Now, the evidence so far has indicated that the bus was proceeding in a southerly direction on Church Street and that your ambulance collided with the right rear side of the bus. Is that correct?
A. Yes, sir.
Q. As you approached the intersection, show us what you saw and what you did. I ask you to take this pencil and pen; let the pen represent the bus and the pencil represent the ambulance which you were driving.
page 42 } A. Well, as I approached the intersection, it appeared to me that it was clear; the siren and everything was on. I say when I got about 30 to 40 feet, it might have varied, the intersection that was clear and I started to proceed. Suddenly the bus pulled out on me here; and I did everything I could to stop. And I would say when it came across here, I don't know, about—say this is the wheels here—I guess right over there someplace (indicating).

The Court: You dropped your voice very much. In that case I don't imagine it mattered but try to keep your voice up.
The Witness: Yes, sir.

Billy C. Lear.

By Mr. Eason:

Q. Take the chair again, please, sir. But before you do, look at this drawing here and proceeding in the direction in which you were proceeding, we see four lanes for traffic, proceeding in the direction in which you were proceeding. Now, what was the condition, the traffic condition on the street, on City Hall Avenue, at the intersection as you approached it?

A. It was very heavy.

Q. Were there other cars in front of you?

A. Yes, sir.

Q. What lane did you take when you proceeded to go through the intersection?

Mr. Parsons: Did you say no or yes, sir?

page 43 } The Witness: Yes, sir.

By Mr. Eason:

Q. What lane did you take?

A. I was coming down this lane here. As best I remember I pulled out partly into this lane here to get around.

Mr. Parsons: He points to the lane that is marked City Hall Avenue.

Mr. Eason: Left; the lane that is marked left, apparently means left turn lane.

By Mr. Eason:

Q. Were you injured as a result of the accident?

A. My eyes.

Q. Take the chair. Were you injured as a result of the accident?

A. My eyes have give me a lot of trouble. I say my eyes give me trouble.

The Court: We are not in the slightest bit interested in this case in whether this gentleman was injured, except as it may have affected his memory or his ability to ascertain facts immediately after the accident.

Mr. Eason: All right, sir.

By Mr. Eason:

Q. Now, sir, I ask you if the plaintiff Hodges was injured in the accident? I mean did he receive any ap-

page 44 } parent injuries, any injuries that were apparent to you?

Billy C. Lear.

A. His head was bleeding.
Q. His head was bleeding?
A. Yes, sir.
Q. Where was the plaintiff Hodges, in the ambulance? I mean where was he in reference to where you were sitting in the ambulance?
A. He was in a stretcher behind me.
Q. On a stretcher behind you?
A. Yes, sir.
Q. Where was the other patient?
A. He was in the seat with me.
Q. What?
A. He was sitting in the seat.
Q. With you?
A. Yes, sir.
Q. Up front, on the front seat with you?
A. Yes, sir.
Q. By your side. Now, as you approached the intersection, I believe you say it appeared to you that all traffic had stopped?
A. Yes, sir.
Q. Is that true?
A. (The witness nodded).
Q. Did you notice the red light controlling the
page 45 } traffic in the direction in which you were going?
A. The light condition I don't remember.

Mr. Parsons: What did he say?

By Mr. Eason:
Q. You don't remember whether you saw the red light or not?
A. Well, that light came out there, the headlights, and the bus was out in front of me. The light condition I don't remember.
Q. Well, let me ask you this: If the light had been red, if you had seen the light and it had been red you would still have gone through the intersection?

Mr. Parsons: I object to that.
The Court: I sustain the objection. We are not interested in what he would have done under a hypothetical condition.

Billy C. Lear.

By Mr. Eason:

Q. All right. Are you able to tell us what Hodges' head struck at the time of the accident?

A. Well, apparently—

Q. Did you notice what happened to Hodges when the crash occurred?

A. Not at that instant.

Mr. Parsons: He couldn't see, if your Honor please.

The Court: I assume that if he couldn't see him
page 46 } he will say no. Do not speculate. If you saw what
happened, answer the question; if you didn't see, so state.

The Witness: Yes, sir.

By Mr. Eason:

Q. Did you see what happened to him?

A. Well, I couldn't see him the time of the impact, no sir.

The Court: Just say you couldn't, then.

A. At the time of the impact I couldn't see him.

By Mr. Eason:

Q. But you did see the injury to his head?

A. Afterwards, yes, sir.

Q. You have testified that you went to Hodges' home and picksd him up and then you went to the Air Station, and from there, of course, you proceeded on to the hospital. Tell us about your picking up Hodges and how you managed to get him into the ambulance and that sort of thing. What was his apparent condition when you picked him up?

A. He looked sick. Other than that he was in pretty good condition because he rolled over into the stretcher, off the couch.

Q. Well now, did you see him? Of course, you testified that you did see his head injury but did you see anything else about his condition at the time of the accident that you could
tell us about? What else if anything did you
page 47 } observe?

A. Well, after the accident he was rather—he was kind of pale looking. His color changed.

Mr. Parsons: Can you talk a little plainer, Mr. Lear?

The Witness: I will try.

Billy C. Lear.

By Mr. Eason:

Q. Did you see any indication when you picked Hodges up or when you had him with you until the time of the accident, any indication that you saw, did he say anything to the effect that he was paralyzed?

Mr. Parsons: If your Honor please.

The Court: I sustain the objection.

By Mr. Eason:

Q. I believe you have testified to the movements made by Hodges prior to the accident?

A. Yes, sir.

Q. Now, go over those movements with us again. I am afraid I am not sure just what you said about it.

Mr. Parsons: Come back here (addressing Mr. Eason) so he can talk a little louder.

A. When we went out to get him he was lying on the couch. We had had the stretcher. He wanted to get up and walk out; they wouldn't let him, so he rolled over on the stretcher and we carried him out.

page 48 } By Mr. Eason:

Q. Did you see Hodges after he entered the hospital? I mean on that night.

A. As they led me to the dorm that they were putting me in, I noticed him on the right, under an oxygen tent.

Q. Under an oxygen tent?

A. Yes, sir.

The Court: All right, Mr. Parsons or Mr. Ward.

Mr. Parsons: Without waiving objections as to the one phase, if your Honor please.

The Court: I am sorry; I couldn't hear you.

Mr. Parsons: Without waiving my objection as to that testimony about the corpsman.

The Court: I am not sure that question was ever asked. Was it?

Mr. Parsons: About the corpsman?

The Court: Yes.

Mr. Parsons: What the corpsman told him.

The Court: I think we will go ahead. You are not waiving the objection. Go ahead.

Mr. Parsons: I think he did. Whether or not it has been, without waiving the objection I might finally have.

The Court: Go on, Mr. Parsons. You have made your point clear.

page 49 } CROSS EXAMINATION.

By Mr. Parsons:

Q. You know that when a man has heart trouble you shouldn't speed, make a lot of noise around him; you know that?

A. All I was told it was emergency and you can't make emergency run without the siren being on.

Q. That is not my question.

Mr. Parsons: If your Honor please, I ask to strike it out.

The Court: Overruled.

Mr. Parsons: Note an exception.

By Mr. Parsons:

Q. You know when a man has heart trouble he should be kept quiet and away from noise, don't you?

A. I guess he should be.

Q. He should be; and you knew that applied to Hodges?

A. I didn't understand you, sir.

By The Court:

Q. Did you know that Mr. Hodges had heart trouble?

A. He told me it was a heart attack, the corpsman.

The Court: All right; go ahead.

By Mr. Parsons:

Q. Regardless of that, you blew the siren all the way downtown from the Naval Base, all the way and it was still blowing and the light blinking and you were going 25 or 30 page 50 } miles an hour during all that period of time, carrying a man in there with a heart attack?

A. That is right.

Q. Instead of being an emergency, in one sense if any emergency existed, it was to keep down the noise?

A. All I know is, told us it was an emergency.

Q. I am asking you about that. You should have kept down the noise, transporting a man with a heart attack, shouldn't you?

A. Well, sir—

Billy C. Lear.

Q. And you should have operated very carefully, shouldn't you?

A. I did the best of my ability.

Q. When you got up to the point where there was a red light staring you in the face, you didn't even pay any attention to it, did you?

A. Well, sir, I always have observed traffic lights.

Q. You didn't observe this one, did you?

A. The bus pulled out in front of me. The intersection was clear when I started to proceed; and when it pulled out, the light condition I do not remember.

Q. You have heretofore testified that you did not see any red light, that you didn't see, you didn't look at the light; didn't you?

A. The light condition I don't know.

page 51 } Q. What?

A. The light condition I do not know.

Q. You don't know whether there was a red light against you or not, you say?

A. I don't remember.

Q. And what speed were you going when you turned the curve down there?

A. You mean on City Hall Avenue?

Q. What—

A. I say between 20 and 30.

Q. Between 20 and 30 miles an hour. What kind of car were you driving?

A. Pardon?

Q. What kind of car were you driving?

A. Car? Ambulance.

Q. What make?

A. Best I remember, Cadillac I think.

Q. And four-wheel brakes?

A. As far as I know.

Q. Did it have good brakes?

A. As far as I know, it did.

Q. And when you were going along at 20 to 30 miles an hour, you couldn't stop the ambulance in 20 feet, could you?

A. It might have been less than 30.

Q. What?

page 52 } A. It might have been less than 30 miles an hour.

Q. What?

A. I say it could have been less than 30. I don't know exactly.

Q. Suppose you are going 30 miles an hour, could you stop in 30 feet?

A. Not quite.

Q. How much?

A. About 20 miles an hour is 20-some feet. I don't know; about 35, 45 feet.

Q. About 35 feet. Going 20 miles an hour, you could stop in less time?

The Court: I think he said going at 25 miles an hour he could stop in that distance.

Mr. Parsons: 35 feet; I beg your pardon.

By Mr. Parsons:

Q. Going 30 miles an hour, what could you stop in?

A. 30 miles an hour?

Q. Let's change it. Going at the speed you were moving at the time, what distance could you stop? Is that—

The Court: You mean at the time he first saw the bus?

Mr. Parsons: Yes.

By Mr. Parsons:

page 53 } Q. As you approached, the speed you were moving as you approached the intersection, what distance at that speed?

A. Well, if I had a few more feet I think I could have made a complete stop.

Q. I didn't ask you that. About what distance would it take you to stop when you came to a point where you could see the red light, if there was one there, going at the speed you were going?

A. I would say about 35 feet. I don't know.

Q. About 35 feet. Mr. Lear, there was nothing between you and this traffic light on the island, to prevent you from seeing it, was there?

A. Well, sir, all I can tell you is the truth and I can't tell you anything else. When this bus pulled out there, the light condition I can't remember. That is all I can tell you.

Q. And when the bus pulled out as you have heretofore said in another case, you were at that time 40 to 50 feet behind the police car, weren't you?

A. I don't know the distance behind the police car. I noticed when I got out of the ambulance, sitting—the lane of traffic, I think it was next to us.

Billy C. Lear.

Q. When you saw the bus coming across the street, entering and coming across the street, you were still behind the police car?

Mr. Sharp: He answered, "I don't know."

page 54 } Mr. Parsons: Wait a minute.

A. I don't remember.

By Mr. Parsons:

Q. Well, maybe I can refresh your memory. This is the testimony given by you December 19, 1957, over across the hall. (Reading).

"Q. How close would you estimate you were to this intersection of City Hall and Church Street at the time you saw the lights of the bus flash across the street?"

Your answer then was "About 40 feet I would say, approximately," is that right?

A. 30 to 40 feet, something like that.

Q. You said that, didn't you, before?

A. I guess I did.

Q. That was the truth, wasn't it?

A. Pardon?

Q. You were telling the truth then, weren't you?

A. Well, I hope I am telling the truth. That is all I know to tell you, what happened, the best of my knowledge.

Q. How far were you behind the police car then, when you first saw the bus entering the intersection?

A. I don't remember.

Q. You were still behind the police car, weren't

page 55 } you? Were you?

A. Sir, I don't remember; exactly whether I was behind—

By The Court:

Q. Did you see the police car, recognize it as such, before the accident?

A. Not to my knowledge.

By Mr. Parsons:

Q. You saw the car that was sitting there in the third lane, before the accident, didn't you?

A. (Pausing) I don't remember.

Billy C. Lear.

Q. You don't remember that car, even. What cars were in the third lane? Any? Going east.
A. Must have been.
Q. What?
A. Must have been.
Q. But you don't know?
A. Just exact make of them I can't remember.
Q. You don't know. What cars were in the second lane, if any?

The Court: Frankly, I don't know what you mean by the first lane, third lane, second lane.
Mr. Parsons: From the south side of the street, your Honor. I should have made it plainer. There are four lanes. You understood what I am talking about?
The Court: Which way would you number,
page 56 } north to south or south to north?
Mr. Parsons: East-bound.

By Mr. Parsons:
Q. What cars were in the third lane east-bound as you approached Church Street, the third lane from the curb, if any?

The Court: Well, there aren't but two east-bound lanes.
Mr. Parsons: There are four, Judge.
The Court: Four east-bound lanes? Four lanes for east-bound traffic on City Hall Avenue?
Mr. Parsons: Maybe I am wrong. Is that east?
The Court: That is east.
Mr. Parsons: There are four lanes east-bound.
Mr. White: There are three and one turning lane, your Honor.
The Court: I am sorry. All right. I never go beyond Court Street.

By Mr. Parsons:
Q. What cars, if any, were in the third lane east-bound, the third lane from the right curb, if you know?
A. After the accident I remember—
Q. I am talking about before the accident.
A. I don't remember.
Q. Do you remember what was in the second lane? Remember what was in the first lane?
page 57 } A. (No response).
Q. Do you remember any cars moving in the

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opposite direction or standing in the opposite direction?

A. Well, when I was going that way, it appeared to me that traffic was moving with me.

Q. I didn't ask you that. Traffic was naturally moving with you; as you come off Monticello Avenue, when you came up between Snyder's curb and this place, were there any cars standing on the east side of Church Street? That is the side after you cross Church.

A. You mean coming this way?

Q. Yes.

A. Yes, there was.

Q. Were they moving or at a standstill?

A. Everything was at a standstill.

Q. They were at a standstill?

A. The intersection was clear.

Q. They had a red light as well as you had, of course?

A. The light condition I don't remember.

Q. You don't know anything about the red light?

A. I don't remember, sir.

Q. You don't have any memory of even looking at it?

A. I observed all the rest of it.

Q. You could have seen the red light, couldn't you, when you passed around Snyder's curve a couple of

page 58 } hundred feet away?

A. I guess I could have but I don't remember the condition at the instant of the accident.

Q. As a matter of fact, you disregarded the red light and ran into the intersection, didn't you?

A. I never disregard a red light unless the intersection was clear.

Q. Did you disregard the red light in this instance?

A. Sir, I don't remember the condition of the light.

Q. Why is it that you can't remember what light you had when you were supposed to look at the traffic light?

A. I wish I could. I have wondered about ever since it happened. I can't remember it.

Q. You know that when you approach an intersection you should look at the traffic light, don't you?

A. That is right.

Q. But you don't remember and you have no reason other than you just don't remember whether you looked at the traffic light or not?

A. The light condition, sir, I just can't remember it. When the bus pulled out I did everything I could to stop and the light condition I do not remember.

Billy C. Lear.

Q. And when the bus pulled out, you say you were about 40 feet from the intersection line?

page 59 } A. I said when I approached it, 30 to 40 feet, it appeared clear; and just what distance it was when the bus pulled out I don't know.

Q. You didn't even see it pull out?

A. Sure I saw it pull out.

Q. Where were you then?

A. I don't know exact feet. I can't tell you.

Q. As a matter of fact, you didn't see the bus until it was right in front of you, you said, didn't you?

A. I saw it as it pulled out.

Q. And where were you when it pulled out?

A. Where was I?

By The Court:

Q. How close were you to Church Street, your ambulance, to Church Street, at that time?

A. Well, I don't know, sir. When I approached the intersection, about it seemed to me 30 or 40 feet, as I approached it there was no traffic in the intersection, it appeared that the traffic was stopped. Suddenly between that distance and the intersection it pulled out, and the distance I can't tell you.

By Mr. Parsons:

Q. When you first saw the bus, it was in front of you?

A. As it pulled out from behind that brick wall. Suddenly it came out and there it was, and I did everything I could to stop.

page 60 } Q. Did you know there was a traffic light in the island before you went down there that day?

A. A traffic light, but the condition I don't remember.

Q. What?

A. There is a traffic light in the center of the island but I don't remember the condition. It might have been—

Q. You knew it was there, though?

A. I had been through there several times.

Q. You had been through there before?

A. Yes, sir.

Q. And you knew that it was a traffic light in the center of that island?

A. But the condition I do not remember.

Q. December 19th you were asked this question:

"Q. Don't you know, as a matter of fact, that there is a red

light stationed on the island portion on the east side of that intersection looking you right in the face?"

Your answer: "Still, sir, I can't tell you, because I don't know."

A. The condition of the light, the light condition.

Q. I didn't ask you about the condition; you have added that now.

A. That is what I thought I said.

Q. Did you say this, what I have just read to
page 61 } you? Do you want to read it?

A. Well, if I said, I guess I said it but the condition of the light, sir, I can't remember. I can't tell you something that I don't know. I am telling you the truth.

Q. You were in the fourth lane from the righthand side as you passed into the intersection, weren't you?

A. Apparently. It appeared that way.

Q. And did you turn to the right?

A. Pardon?

Q. Did you turn your ambulance to the right before the accident, or the left, either one?

A. I don't understand what you mean.

Q. Did you turn the ambulance direct to the right or to the left or go straight ahead?

A. When I approached the intersection?

Q. Yes.

A. I pulled out around the traffic, the best I remember.

Q. Just before the accident happened, did you turn your car in either direction left or right, or go straight ahead?

A. (Witness pausing).

Q. If you know.

By The Court:

Q. Did you change your direction?

A. As I pulled around the traffic I was going towards the hospital.

page 62 } Q. Mr. Lear, he wants to know did you turn your wheel to the right or the left or did you go straight across Church Street. As I can see it, there are three answers you could give: "Yes, I turned to the right," "I turned to the left," "I don't recall," "I went straight"—four answers. Now, tell us.

A. As I proceeded around that traffic—

Q. Did you turn to your right as you entered Church Street?

A. (Witness pausing).
Q. If you don't recall, say so.
A. Not that I know of. I don't remember the exact turn.

By Mr. Parsons:
Q. Now, let me call your attention to your evidence again, page 18 of the transcript, testimony given December 19, 1956. (Reading)

"Q. How far was that police car ahead of you when you say you saw the bus the first time?
"A. How far ahead of me? (Pause) Sir, I could not give you a definite answer. I could not give a definite answer.
"Q. Can you tell me whether it was fifty feet or one hundred feet, seventy-five feet, or forty feet?
"A. I would say it was around forty feet."

A. That is what I—
page 63 } Q. Is that correct?
A. That is what I said I guess it was.
Q. If it was correct then, it is correct now, isn't it?
A. I don't remember exactly there, sir.
Q. Well, you said that in this. Do you want to see it?
A. I guess I said it if it is down there, no doubt.
Q. You admit you said it?
A. If it is down there, I did.
Q. Well, it is down here all right.
The Court: I am going to recess for lunch at this time. Be back at 2:00 o'clock. I want counsel and Miss Alfriend please to come in my chambers.

(The following occurred in the Judge's chambers, with one juror present, Mr. Donald Maxwell:)

The Court: Your name is Maxwell?
Mr. Maxwell: Yes, sir.
The Court: What are your initials?
Mr. Maxwell: D. V., Donald Maxwell.
The Court: Mr. Donald Maxwell, who is a member of the jury panel, after he had heard a portion of the evidence realized that he knew something about the case and he informed Mr. Nowitzky (Deputy Sergeant) to that effect and Mr. Nowitzky told me. Mr. Maxwell, you will have to tell us what you knew about the case beforehand.

Billy C. Lear.

Mr. Maxwell: Mr. Hodges came—I am a sales-
page 64 } man, Sears Roebuck, selling television sets, and
Mr. Hodges came into the store there one day and he purchased a TV set from me and he didn't know how to operate the set or anything. I couldn't explain it to him so I went out to his house and delivered the set and explained to him how to work it. And he told me at that time that he was suing the VTC for an accident that he was in. And naturally that is all I knew about it; told me he was in an accident in an ambulance, but more than that I didn't know. I thought I had better bring it up, though.

The Court: I appreciate your doing so. There was no reason for your having realized beforehand because you were not examined on your *voir dire.* Is there any motion that any counsel wish to make?

Mr. Eason: No, sir, I have no objection to his remaining. Nothing has been done that I can see that would affect his decision in the case.

The Witness: No.

Mr. Parsons: Did he tell you the facts of the accident?

Mr. Maxwell: No, sir. He just told me that he was paralyzed on one side due to the accident. As far as how it occurred or anything like that he didn't say.

Mr. Parsons: Do you think that would affect you in any way?

page 65 } Mr. Maxwell: I don't believe so, no, sir. I don't think it would.

Mr. Parsons: You will be guided by the evidence?

Mr. Maxwell: By the evidence; I will try to do that.

Mr. Parsons: Do you think that you can just forget you had any—

Mr. Maxwell: I think I can.

Mr. Parsons: Your Honor, I will leave it up to you.

The Court: Thank you very much, Mr. Maxwell. Be back at 2:00 o'clock.

(Thereupon, Court adjourned for lunch.)

page 66 } AFTERNOON SESSION.

(Met pursuant to the morning session, with the same parties present as heretofore noted.)

Mr. Parsons: These two officers, if your Honor please, were summoned by both the parties. Between counsel we

have stipulated that the testimony of Officer Pope would corroborate that of Officer Pugh, and both of us will excuse Mr. Myrick; so these gentlemen can go home.

The Court: All right, Mr. Parsons. You were cross examining.

By Mr. Parsons:

Q. Mr. Lear, you went out to the place to get Mr. Hodges from his home, you said?

A. I can't understand you.

Q. You went out to the home to get Mr. Hodges, at his home?

A. Yes, sir.

Q. You took him down to the Naval Air Station, did you?

A. Yes, sir.

Q. And there you took him to the Medical Officer in Charge, who came out to the ambulance and examined him?

A. He gave him some kind of shot.

Q. What is that?

A. I say he came out and gave him some kind of shot.

Q. He came out and went in the ambulance?

page 67 } The Court: He came out and gave him some sort of a shot.

By Mr. Parsons:

Q. Oh. That was in the ambulance?

A. Yes, sir.

Q. He was the Medical Officer in Charge at the station?

A. As far as I know he was.

Mr. Parsons: That is all, gentlemen.

Mr. Eason: If your Honor please, I should like to ask another question.

The Court: Very well.

RE-DIRECT EXAMINATION.

By Mr. Eason:

Q. Does the Medical Officer in Charge or, rather, the doctor that came into the ambulance and gave the plaintiff a shot as you say, did he give you any instructions one way or the other whether it was an emergency run, whether it was to be an emergency run?

A. He didn't say, during—

Billy C. Lear.

Mr. Parsons: The very subject I have been asking.
Mr. Eason: I asked him did he give any, one way or the other, whether it was an emergency or not an emergency run.

By Mr. Eason:
Q. Did the doctor say anything to you about—
page 68 } A. He did not.
Q. —the run?
A. No, sir.

Mr. Parsons: Doctor Okel?
Mr. Eason: That is right.

By Mr. Eason:
Q. The doctor didn't tell you?

The Court: He has already answered the question. He said no.

By Mr. Eason:
Q. All right. I want to know something more about the corpsman that rode with you, with these two patients, to the hospital. To what organization was he assigned?
A. At that time?
Q. Yes.
A. He was assigned as a corpsman.
Q. To what organization?
A. Naval Air Station.
Q. What?
A. He was—the dispensary there at the Naval Air Station.
A. Right.
Q. What was his duty in going with you, with the patients to the hospital?

page 69 } Mr. Parsons: We object. I don't see how it is possible for him to know.
The Court: He is a member of the same United States Navy. He may know the duties of a corpsman. If he doesn't, I assume he will say he doesn't. Go ahead. What were his duties?

By Mr. Eason:
Q. What was the purpose of his being with you?
A. They assigned him to the patients, to take care of the patients that were in the ambulance.

Billy C. Lear.

Q. What if anything did that corpsman say to you in reference to whether or not the run was an emergency run?

Mr. Parsons: The same objection.
The Court: Overruled.
Mr. Parsons: Exception.

By the Court:
Q. What did he tell you?
A. When we left the station to pick him up, he told me it was an emergency run. When we left the station to deliver them to the hospital, he also said it was an emergency run.

Mr. Eason: No further questions.

Mr. Eason: If your Honor please, we have taken a deposition from the medical O. D. that was on duty on the night of—

page 70 } The Court: You want to read the deposition?
Mr. Eason: Sir, I would request that Miss Alfriend read them. She is the reporter and instead of my reading them or Mr. Parsons' reading them, I had rather Miss Alfriend read them, if she will.
The Court: Anybody can read alike. I will assume that any one of you can read it properly. You read it if you wish it read.
Mr. Eason: Thank you, sir.
The Court: Start with the examination; don't read the caption.
Mr. Eason: Yes, sir.
The Court: You explain what it is. It is the doctor who was—go ahead.
Mr. Eason: Yes, sir. This is the deposition of the medical O. D. at the U. S. Naval Dispensary on the night of the accident. He was a reserve officer. He is now in private practice at Atlanta, Georgia, and this deposition was taken from him. Appearances for the plaintiff—
The Court: Never mind; go ahead, read the questions and answers.

(At this point Mr. Eason read the deposition of Dr. Benjamin B. Okel to the Court and jury.)

The Court: I am going to mark these Plaintiff's Exhibit 3.

Dr. Charles O. Barclay, Jr.

page 71 } (The depositions of Dr. Benjamin B. Okel were marked Plaintiff's Exhibit 3.)

The Court: Counsel come up a minute.

(Counsel conferred with the Court.)

DR. CHARLES O. BARCLAY, JR.,
called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Eason:

Q. Sir, will you please state your name?

A. I am Dr. Charles O. Barclay, Jr., and I am a physician.

Q. Dr. Barclay, are you a licensed physician to practice as such in the state of Virginia?

A To practice in Virginia, yes, sir.

Q. Dr. Barclay, will you please tell the Court and the jury the university you graduated from?

A. The University of Virginia.

Q. What date was that?

A. In 1950.

Q. Dr. Barclay, state briefly what education, training and experience you have had since you graduated from the University of Virginia in 1950?

A. I had a rotating internship in the U. S. Naval Hospital in Portsmouth for one year and I have been in
page 72 } private practice since then.

Q. Are you connected with the hospitals in this area?

A. I have hospital privileges in the Portsmouth hospitals, Portsmouth General and Maryview. I have my patients in those two hospitals.

Q. Doctor, since you have graduated, what has been the nature of your practice?

A. General practice.

Q. Have you had experience in examinations to determine the cause of death?

A. Yes, sir.

Q. Have you had considerable experience along that line?

A. I have, sir.

Q. Dealing with death or injury?

A. I have served as a medical examiner for the last seven years.

Dr. Charles O. Barclay, Jr.

Q. For whom?
A. For the Commonwealth of Virginia, in this area.
Q. Now, Dr. Barclay, do you know the plaintiff, Clarence J. Hodges, in this case?
A. Yes, sir.
Q. How did you happen to meet him?
A. I was requested to examine him while he was a patient at the Naval Hospital in Portsmouth, Virginia.
Q. And what was the purpose of your examina-
page 73 } tion?
A. To ascertain his condition at that time and to attempt to determine the cause of it.
Q. Did you actually examine him?
A. Yes, sir.
Q. Did you take from him the past history of his—
A. Yes, sir.
Q. —complaints, that sort of thing?
A. Yes, sir.
Q. What was the history that he gave?
A. My examination—I had seen him once prior to my examination, a few days prior to that and talked to him between that and my examination, which was done on the 11th of March 1957. He had given—he gave me a history of having in the past had heart trouble; and then on the night of November 2, '56, while a patient in the Naval ambulance he told me of an accident the ambulance was in. He also related at that time that he had received a cut on his head. He was carried on to the Naval Hospital in Portsmouth and admitted. Now, the following day, the 3rd of November, '56, he informed me that he developed a left hemiplegia, which is a paralysis of the left side of his body, which is still present, as you notice.
Q. You say you examined him. What examination did you make?
A. I gave him a regular physical examination—heart,
lungs, blood pressure and so forth, and noted his
page 74 } deformity; that is, his paralysis of his left arm
and leg.
Q. What damage, if any, did you note? What were your findings?
A. Well, he has a left hemiplegia: a person paralyzed on the left side. He definitely has a generalized artereosclerosis, and from his history and his hospital charts he has had heart attacks in the past, apparently well healed at the time

of my examination. He was suffering no ill effects of the heart at that time as far as I could ascertain.

Q. Doctor, I believe you say that he gave you a history of having received a head injury. Did you examine him in connection with that?

A. Well, that is a rather difficult thing to examine for that with—at the time. It is the end result I was looking at. That is his paralysis. He had no visible sign of a head injury at the time of my examination. However, he has a residual injury that, with all the history obtained from him, it certainly is to me a very strong presumptive evidence that the man had some trauma to his head.

Q. Doctor, can you tell us from your examination what produced the paralysis, what caused his paralysis?

A. He obviously has some brain injury.

Q. Has some brain injury?

A. Yes, sir.

page 75 } By the Court:

Q. You mean from the blow that—

A. Now, your Honor, that is impossible for me to answer.

Q. Well, it may be impossible but we are not allowed to consider it unless you can say in your opinion it was probably caused by the accident.

A. I think that is—

Mr. Parsons: May I ask a question?

The Court: Yes, sir.

Mr. Parsons: Ordinarily I don't believe a general practitioner is qualified to answer that type of question. That comes from a specialist.

The Court: I am going to overrule your motion on the qualification. That is a question of argument for the jury, the weight to be attached to his testimony rather than the qualifications. But what I am trying to find out now is whether or not the doctor could state with the certainty required by law that this was caused—

By the Court:

Q. What in your opinion is this gentleman suffering from now that was caused by the accident which occurred on November 2, 1956?

Mr. Parsons: To his head. That is what we are talking about. The injury was to the head.

Dr. Charles O. Barclay, Jr.

A. Head injury. Your Honor, if I may diverge
page 76 } a moment; as I stated, this patient has a generalized artereosclerosis.

By the Court:

Q. That is paralysis, as I understand?

A. That is not; no, sir. That is a hardening of the blood vessels. A blood vessel carries the blood through your body just like a waterpipe carries the water through your home. If I may use this comparison, a waterpipe may be rusty on the inside, half of its bore may be taken up with rust. As long as that pipe is left alone it may supply water for years; but if that pipe is beaten on and jolted, it is a good chance a piece of that rust will flake off, break off and occlude or close the pipe. I could see very easily—at least I feel that such a case could happen to an artereosclerotic blood vessel, if it receives some trauma. It may easily form a clot within itself or a piece of the calcium deposits within the lumen or opening of the vessel may break off and occlude it, which could very easily or which would cause a paralysis.

Q. Doctor, here is the situation we are in. The only symptoms that the jury would be allowed to consider are those which you or some other medical expert—I don't know that you are the only one that the plaintiff intends to introduce—can state in their opinion were caused by the accident in question.

A. Again, your Honor, I can only state—

Q. I am not blaming you for not being able to state; I am telling you what I ruled on.

page 77 } A. Yes, sir.

By Mr. Eason:

Q. Dr. Barclay, tell us what in your opinion probably caused the paralysis to this man.

A. With the history given me, I feel that there is a very strong presumptive evidence that a blow on the head could have caused an occlusion or thrombosis of his vessel.

The Court: Here is what you say: From the history that was given me, I feel that there is a presumption that the blow on the head could have caused.

The Witness: Yes.

The Court: When you say "could" you are dealing in possibilities. We deal in probabilities. Now, if that is the best you can say, it is the best you can say.

Dr. Charles O. Barclay, Jr.

The Witness: Your Honor, I believe that is it.

The Court: I don't know what you mean by "believe that is it."

By the Court:

Q. You mean you believe it was caused by the accident, or do you believe that is the best you can say? What do you mean by that? I frankly don't know.

A. Your Honor, you are pinning—

By Mr. Eason:

Q. Dr. Barclay, if I may, your Honor: I am not attempting to contradict Dr. Barclay at all but I do have a letter from Dr. Barclay on this and I would ask him to refresh his memory as to the wordage that he used in the second paragraph of that letter.

page 78

The Court: Doctor, you may examine that letter. I don't want you to read it. You may examine it and then you may start examining him again. Do not quote from the letter but you may examine it to refresh your memory.

The Witness: Your Honor—

The Court: One minute. You examine the letter and then we will start the examination again.

(Witness examining).

A. Your Honor, may I *amake* this statement? I feel that the blow on the head contributed materially to the man's condition. That is it.

Mr. Parsons: What did he say, Judge?

A. (Continuing) I feel, sir, that the blow on the head contributed materially to this man's condition; namely, this paralysis.

By Mr. Parsons:

Q. A blow on the head?

The Court: "The blow" he said.

A. The blow.

The Court: "I feel that the blow on the head contributed

materially to this man's condition." Then he said, "That is the paralysis."

page 79 } The Witness: Yes, that is the paralysis.

The Court: Go ahead.

By Mr. Eason:

Q. Dr. Barclay, do you feel that the paralysis was most probably the result of the blow on the head?

Mr. Parsons: Judge—

The Court: I sustain the objection; leading. Ask him what he does feel. Don't put words in his mouth.

Mr. Parsons: Opinion.

The Court: Ask him his opinion.

By Mr. Eason:

Q. Dr. Barclay, do you have an opinion as to what probably caused the paralysis?

The Court: Hasn't he just answered that?

A. I think that was answered.

Mr. Eason: All right, sir. If it is answered, then I don't need to go into it.

By Mr. Eason:

Q. Now, Dr. Barclay, what is this man's condition at the present time?

A. Mr. Hodges definitely has a left hemiplegia or left paralysis.

Q. What is the extent of his disability, sir?

A. He certainly is unable to pursue any gainful occupation, anything concerning any manual labor.

page 80 } Q. Is that condition temporary or permanent?

A. That is permanent, sir. Now, I see no change in him today than what I saw in him when I examined him in March of '57.

Mr. Eason: That is all.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Doctor, you are a general practitioner?

Dr. Charles O. Barclay, Jr.

A. That is correct.

Q. You don't have any specialty?

A. I have no specialties. I treat it all.

Q. This man had this hardening of the arteries or artereosclerosis; it had no connection or causel relationship to this accident?

A. I didn't—?

Q. The artereosclerosis, did it come from other causes, causes other than this accident?

A. That is a degenerative thing that occurs to us as we get older. It is more—progress is more rapid in some than in others.

Q. It doesn't relāte to this accident, does it? It is not caused by the accident?

A. I can't—I can't get your question, Mr. Parsons.

Q. The artereosclerosis was of long standing, wasn't it?

A. Oh, yes, sir, that is correct.

page 81 } Q. It wasn't produced by the accident that he was in?

A. The artereo—no, sir. The accident did not give him the artereosclerosos.

Q. The accident had nothing to do with such artereosclerosis as he has now?

A. No, sir. That is a long standing thing, sir.

Q. And all of your opinoin is based upon his statement to you?

A. That is correct, sir; the history he gave me and my findings at the time. I did not treat the man at the time, sir.

Q. That is the only medical evidence you had of his previous condition, what he told you?

(At this point there was a brief interruption, after which the following occurred:)

By Mr. Parsons:

Q. Doctor, all of that, you had just that and nothing else: his statements to you and your examination?

A. And his hospital chart which I reviewed.

Q. The hospital chart?

A. Yes.

Q. With reference to this accident—

A. Yes, sir.

Dr. Charles O. Barclay, Jr.

Q. —only. Doctor, did he tell you that some months prior to or probably three months prior to the accident,
page 82 } he had some difficulty with his left arm, that side, the left side of his body?

A. No, sir.

Q. He didn't report that to you?

A. No, sir.

Q. Did he tell you that he had some impaired use of the left hand over a period of three months prior?

A. Impaired use of the hand?

Q. Yes.

A. No, sir.

Q. Left hand?

A. No, sir.

Q. He didn't tell you about it. Doctor, a man with a heart attack should be kept quiet and free from excitement and noise, should he?

A. As the treatment you mean, sir, over a period of time?

Q. Well—

A. Rest, quiet and so forth is very essential in the treatment.

Q. He should not be subjected to undue noise or extra hazardous activity?

A. Well, you have to get—a man with a heart attack, you have to keep him flat right in bed for awhile.

Q. You should not create a lot of noise around him, should you?
page 83 } A. No, sir. The quieter you keep him, the better.

Q. And if a man was being driven around in an automobile, it should be handled with considerable caution and slowly, and not with speed?

A. Not with what, sir?

Q. He should move slowly and not at some speed?

A. Now, if he is in the first stages of his initial attack, sometimes it is essential to attempt to get him to a hospital or get him to somewhere where he can receive treatment.

Q. Let's suppose a man—the evidence here is that the man was taken to the dispensary and there he was examined by a doctor on duty and he was given some sort of treatment and he routinely was being sent to the hospital. He would naturally need quiet, wouldn't he?

A. It would certainly be preferable, yes, sir. The less you move these patients, the less you do to excite them or get them more nervous, the better for them.

Dr. Charles O. Barclay, Jr.

Q. Any vehicle in which he was riding should be handled with considerable caution?
A. Oh, surely.
Q. Avoiding speed and noise?
A. There again, sir, now you are assuming he isn't in the throes of an acute attack where he is in severe pain and cyanotic and so forth.
Q. The evidence is that he was not; he had been
page 84 } treated for it.
A. Well, you certainly would take it very easy with them. In fact, even with one critical, you are going to take it as easy as you can.
Q. This gentleman is not completely paralyzed; he is walking around with a cane; it is just a partial hemiplegia?
A. He has a foot drop. He has his arm is down. I don't know if he could raise it alone now.
Q. He walks around with a cane?
A. He can get around, yes, sir. He is not a complete bed patient. He is not what you say completely paralyzed.
Q. He is able to be up and about?
A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Eason:
Q. Dr. Barclay, I understood your testimony to be that he was totally and permanently disabled because of the paralysis; is that—
A. I don't—

The Court: He said he was totally and permanently disabled from engaging in a gainful occupation.

A. I don't see the man could carry on a gainful occupation, the state he is in.

The Court: Any further questions? Come down.
Mr. Eason: That is all, your Honor.

page 85 } Mr. Parsons: I believe I will wait until he gets through.
The Court: Very well; next witness. Mr. Parsons said he has determined not to put his physician on at this time.
Mr. Parsons: I will wait until you finish.

GEORGE H. PHILLIPS,
called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Eason:

Q. Mr. Phillips, will you state your full name, please, sir?

A. George Hilliard Phillips.

Q. And what is your occupation, sir?

A. Teller in the National Bank of Commerce.

Q. Mr. Phillips, did you witness the accident which happened on November 2, 1956?

A. Yes, sir.

Q. At the intersection of City Hall Avenue and Church Street, involving a Navy ambulance and the Virginia Transit Company bus, in which Mr. Hodges, the plaintiff, was riding as a passenger in the ambulance?

A. Yes, sir.

Q. Did you witness that accident?

page 86 } A. Yes, sir.

Q. Where were you when the accident occurred?

A. I was sitting up with the driver.

Q. In the ambulance?

A. In the ambulance with the driver, yes, sir.

Q. Now, Mr. Phillips, how did you happen to be in the ambulance?

A. Well, I had got a slight stroke before and I went down to the dispensary at the Air Station and they had checked me over and suggested, the doctor did, that I go to the hospital for a checkup that night, for a thorough examination; and that is why I was in the ambulance.

Q. Mr. Phillips, when did the driver turn the siren on, on the ambulance?

A. Well, it seemed to me it was just about leaving the dispensary there at the Air Station when—I know it was before we was out of the gate on the highway.

Q. Could you tell whether or not he had his emergency blinker light on, also?

A. I couldn't tell about the lights but I did hear the siren.

Q. You did hear the siren?

A. Oh yes.

Q. From the time he put the siren on, at the Air Station, was it then continuous? Was it continuously

page 87 } sounded until the time of the accident?

A. Yes, sir.

Q. It was?

George H. Phillips.

A. (The witness nodded).

Q. Mr. Phillips, as you approached Church Street, on City Hall Avenue, tell the Court and the jury what you saw in reference to this accident.

A. Well, I know when we was coming up to the intersection that Lear had slowed down; and he had slowed down just before we entered the intersection. To me it didn't seem like he was going more—about 15 to 20 miles an hour.

Mr. Parsons: What is he talking about?

Mr. Eason: The ambulance in which he was riding.

A. In the meantime when he did put the brakes on, I looked up and, of course, I glanced to my left. As I did, then I could see the bus coming in view there at the intersection, coming—headed south.

By Mr. Eason:

Q. When you first saw the bus, was it beyond the brick wall or did you see the bus by looking across the brick wall?

A. Well, I couldn't distinguish it, not too good, but it seemed that I did see part of it before it emerged out.

Q. The top of the bus?

A. Yes.

Q. Now, Mr. Phillips, if you would, step down
page 88 } here, please, sir, and I understand you were not
driving the ambulance but tell us what you remember seeing in reference to other traffic in the intersection and what you saw in reference to other cars, if any, that were entering the intersection, and what lane Mr. Lear took as he proceeded into the intersection. You might use these two pencils, this one to represent the bus, and just use it in this manner, show the lane in which you feel he was, and where the bus was and approximately where the impact occurred; how did the accident happen?

A. Well, as the bus—it seemed the bus came into the intersection this—of course, we was going in here (demonstrating) and it happened just like that (demonstrating). And that is whenever the ambulance hit the rear of the bus. And that is the way we were going, just like that, sir.

Q. Were you able to or did you note any apparent injury to Hodges in the accident? Take your seat.

A. Well, I—I didn't notice anything after I got hit. I know I remember crawling out of the ambulance and hanging

on I thought a police car. I am not sure what it was I was hanging onto. And someone, oh, a couple—somebody got ahold of me and put me in the ambulance or something. Anyway, that is all I remember of that part.

Q. Well now, you say you were sitting up front on the front seat with the driver?

A. That is right.

page 89 } Q. Where was Mr. Hodges in the ambulance as you were proceeding down City Hall Avenue?

A. He was in the back of the ambulance, in the stretcher.

Q. On the stretcher?

A. Yes, sir.

Q. Who else was back there, if anybody, with him?

A. He had a corpsman back there with him. I remember the corpsman back there.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Mr. Phillips, as this ambulance approached City Hall and Church Street, on City Hall Avenue, did you see a red traffic light up ahead some feet?

A. I didn't even notice; no, sir.

Q. Would you admit that you could have seen it if you had looked?

A. Well, I—perhaps I could have seen a lot of things if I had looked that way, but I didn't look ahead; I looked to my left.

Q. You actually were relying entirely on the driver?

A. Well, yes; yes, I was, yes.

Q. You weren't paying any attention to anything else?

A. Well, I wasn't on the alert whatsoever; not as far as that was concerned, no, I wasn't.

Q. You weren't bothered with that?

page 90 } A. Because I imagine if you had been in the same fix I was at that time, you would have been just about the same way, I judge.

Q. I will take issue with you, Mr. Phillips. I would have done differently.

The Court: Never mind, both of you. It doesn't matter what you would have done and it doesn't matter what you would have done.

Mr. Parsons: I think you are right, Judge. He shouldn't have said it but he said it. I think I have a right—

George H. Phillips.

The Court: Let's go on.

By Mr. Parsons:

Q. When tne ambulance came around the side of the bend—you know where that is? That is about 200 feet from the intersection, isn't it?

A. Approximately, yes, sir.

Q. Do you know what traffic was in the different lanes?

A. No. I wouldn't—I didn't notice the traffic. All I know about—

Q. Do you know what lane the ambulance was in?

A. It was in the—in the third one, on the right, from the right, yes, sir.

Q. Did you see what you thought was a police car in the third lane?

page 91 } A. No, I didn't notice any police car; no, sir.

Q. When you came up to the intersection, as you approached the intersection, what speed did you say the ambulance was going?

A. Well, I would judge approximately—maybe 15 miles. That is whenever he, coming up. Of course, in the meantime he was putting his brakes on, too.

Q. You were going 15 miles an hour when he put the brakes on?

A. Well, yes, approximately; yes, sir.

Q. Where was the front of his ambulance when he put the brakes on?

A. Well, it seemed—

Q. At the cross-walk, or where?

A. It seemed to me it would be about 25, 30 feet.

Q. 25 or 30 feet from the cross-walk?

A. Yes, sir; from the beginning of the intersection, yes, sir.

Q. Behind the—

A. Yes, sir.

Q. —pedestrian cross-walk, is that what you mean?

A. Yes, sir.

Q. You were not paying any particular attention; how did you happen to see the bus?

A. I—that is what I mentioned just now. I said

page 92 } whenever he put the brakes on, I looked up. As I looked up, I looked toward my left. That is when I seen the bus coming into, toward the intersection.

Q. You saw it coming in?

George H. Phillips.

A. I didn't look into my right; I just glanced to my left, yes, sir.

Q. You saw it coming into the intersection at that time?

A. That is right.

Q. Now, I believe you have heretofore testified that you paid no attention to the speed of the bus?

A. Well, I—I couldn't hardly judge the speed of it.

Q. You said before you didn't know anything about it, didn't you?

A. About the speed of the bus?

Q. Yes.

A. Well, I—I couldn't judge exactly just what it was making.

Q. The only speed you mentioned in your previous testimony was that of the ambulance? Do you recall that?

The Court: Is it any different from what he said today, Mr. Parsons?

Mr. Parsons: What?

The Court: Is it any different from what he said today? I will not allow you to use previous—

Mr. Parsons: I am just trying to find out.

page 93 } The Court: Don't try to find out unless you know. You can't use previous testimony unless it conflicts with what was said on the stand. Otherwise you would have to read every answer he has given before.

Mr. Parsons: Let me refresh my memory a little bit and I may have.

The Court: Would you like to take a recess while you refresh it?

Mr. Parsons: No, sir. I don't think it will take that long.

The Court: Let's go on.

By Mr. Parsons:

Q. You didn't say anything to the driver about it, did you?

A. No, sir.

Mr. Parsons: Your Honor, I believe that is about all.

Mr. Eason: If your Honor please, Clifton V. Duvall, the corpsman, was subpoenaed, and the City Sergeant's office called me and advised that he was not found, that he is now

in Japan. I should like the record to show that he was subpoenaed and that he was not available, sir.

The Court: Very well.

Mr. Eason: That is the reason we don't have him.

Mr. Parsons: I tried to find him, too, Judge; I
page 94 } coudn't find him.

The Court: All right. Next witness.

HARRY R. HARRISON,

called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Eason:

Q. Mr. Harrison, would you state your name, occupation and residence, please, sir?

A. Harry R. Harrison, the operator of the Harrison Boathouse at Ocean View.

Q. What is your residence?

A. 400 West Ocean View Avenue.

Q. City of Norfolk?

A. Yes, sir.

Q. Mr. Harrison, do you know Clarence J. Hodges, the plaintiff in this case?

A. Yes, I do.

Q. How long have you known him, sir?

A. About eight years, I believe.

Q. Do you know where he was employed just prior to this accident on November 2, the accident that occurred on November 2, 1956? Do you know where he was employed just prior to that?

A. I think the week before he was running a taxi; but up until about a week before it happened he was
page 95 } running one of my boats, during the summer, that summer.

Q. About a week before the accident he was running one of your boats?

A. Yes, sir.

Q. At the time did you have occasion to observe his physical condition while he was operating one of your boats about a week before the accident?

A. Yes. It was all right.

Q. How do you happen to—tell us something about your observation of his physical condition, if you can.

A. Well, one main thing, it was a lady fell off the boat

Harry R. Harrison.

By Mr. Eason:
Q. Mr. Harrison, what do the operators usually make?

Mr. Parsons: I object to that.
The Court: Sustained.

By Mr. Eason:
Q. Have you operated one of those boats yourself?
A. Not recently.
Q. All right. Well now, did you see Mr. Hodges again after he left your employ and just prior to the accident?
A. I saw him on the morning of the 2nd. I think it was the day before the accident happened.
Q. The day before?
A. Yes.
Q. What was his condition at that time?
A. He was all right, walking around. I spoke to him coming through the yard there and I spoke to him. He lived just about a half a block across from me.

Mr. Eason: That is all.
The Court: All right, Mr. Parsons.
Mr. Parsons: No questions.

Mr. Eason: We rest.
Mr. Parsons: I want to make a motion if your Honor please. Excuse the jury while we make a motion.
page 98 } The Court: Ladies and gentlemen, step in the hallway.

(The following occurred in the absence of the jury:)

The Court: Mr. Parsons, Mr. Eason states that he would like to put on the stand the plaintiff to show what his average earnings were over a period of time prior to the accident. I have told him if we continue I will allow him to do it.
Mr. Parsons: If your Honor please, we move the Court to strike the plaintiff's evidence because there has been no evidence of negligence on the part of this bus operator. Furthermore, there has been no evidence of a violation of the ordinance upon which they rely.
The Court: What ordinance are you speaking of now?
Mr. Parsons: The City ordinance.
The Court: Why not?
Mr. Parsons: The only evidence about the siren and the

he was operating, a lady weighed about 250 pounds. He went overboard and saved her life.

By the Court:
Q. Did you see all this?
A. No, sir, but I had—

Mr. Parsons: I ask to have it stricken out.
The Court: What did you say?
Mr. Parsons: I ask that it be stricken from the record.
The Court: Disregard that, ladies and gentlemen.

By Mr. Eason:
Q. You say he was working for you about a week before the accident?
A. Up until about a week, yes.
page 96 } Q. Did you observe him—
A. Yes.
Q. —at any time during the period of the week before the accident, that he was in your employ, did you observe him? Was he able to move around, did you observe what his physical condition was?
A. He was in good health. He couldn't have run that boat unless he was in good health.
Q. All right. Why did he stop working for you?
A. The season ended. Our season ended then. It was over for that season.
Q. Now, how much was he making at the time that he was working for you?
A. Well, I couldn't tell you exactly because he run the boat, he paid me the rent for the use of the boat; and I know about what he made. After he paid his help and all, he made somewhere between eighty and a hundred dollars a week.

Mr. Parsons: I don't think he can testify to that. He doesn't know.
The Court: I agree with you. I was wondering why you hadn't objected to it before. Disregard it, ladies and gentlemen. This gentleman, as I gather it, could tell us what he paid for the boat; he couldn't tell the earnings except as he may have heard or may be able to ap-
page 97 } proximate from long experience with other operators. You will have to disregard that.

blinker light that is of any particular importance is that it was blowing all the way from the base to the time of the accident. But the only evidence that could have affected the operator of another vehicle is that that occurred at the time it rounded the corner here. In other words, no operator of a vehicle is required, just because he hears a siren blowing, to stop, nor does that ordinance require him to stop

page 99 } until there is reasonable cause to believe that it is coming within some territory that would cross his path.

The Court: Why do you say that? "Upon the approach of any police or fire department vehicle, or ambulance, giving audible signal by siren" et cetera.

Mr. Parsons: "Approach," yes; but the approach has to be such that the operator of the other vehicle has reason to believe that the City vehicle or ambulance is coming within his territory.

The Court: Didn't Officer Pugh testify that he heard it? And I believe it was your cross examination brought out the point; I am not sure about that. He heard it either between Atlantic and Bank Street he said one time, and another time I think he said between Bank and Court Street, after he had stopped at the intersection of Church.

Mr. Parsons: If your Honor please, my memory of what the officer said was that he heard it before he saw it. That was the first statement.

The Court: He certainly said he heard it when it was between Bank and Court. I remember that perfectly.

Mr. Parsons: Well, let's assume that he did.

Mr. Eason: Sir, he said he pulled over to the right, too, as you remember.

The Court: Well, he didn't pull over to the

page 100 } right for the ambulance.

Mr. Eason: That was his testimony, sir.

The Court: Not my understanding of it. He stopped because of the traffic light.

Mr. Eason: No, sir. Also he testified that he pulled over. I am certain of it, your Honor, that he testified—

The Court: I am not interested in what he did, anyhow; whether he violated the law is not of any moment in this case.

Mr. Eason: All right.

Mr. Parsons: I think that we have got to relate it to the bus operator. If your Honor please, that is what I am trying to do.

Harry R. Harrison.

The Court: Well, the officer said he was within a very few feet of it, of where the bus was when it entered this intersection, and he said he heard this ambulance approaching certainly when it was between Bank and Court Street but he did not see it until it rounded the turn which is east of Court Street.

Mr. Parsons: The turn is west of Church Street about 200 feet.

The Court: He didn't see it until then but he heard it approaching.

Mr. Parsons: That is the question I am trying
page 101 } to get clear.

The Court: That is what he said.

Mr. Parsons: Upon final examination he said that he wouldn't know whether that sound was coming from a car on Cumberland Street or on Plume Street or anywhere else and he wouldn't recognize that as an ambulance coming in his direction until it had reached that curve.

The Court: He said he didn't recognize it as what it was until it reached the curve, of course. He heard a siren. But I think the jury would have a right to conclude that the drive of this bus—I don't say they will conclude it, I say they have a right to—that the driver of this bus either heard or in the exercise of reasonable care should have heard this ambulance as it approached. Necessarily, when I hear a siren—there may be some difference between a police, a fire engine or an ambulance siren; that I can't answer—but when I hear a siren approaching, I hear it getting louder, I know that it is one of those vehicles that are allowed to operate on an emergency and can exceed the speed limit and to which you should give right of way, and I pull up to the right. Now, if I waited until I saw the vehicle, sometimes you can't see it until it is right on you. I don't wait until I see the vehicle and pull off to the right. When you hear
page 102 } the siren and can tell by the noise that the volume is increasing, then it is your duty to pull off to your right and stop.

Mr. Parsons: By some means the plaintiff claims this was an emergency.

The Court: I am not holding that this was an emergency.

Mr. Parsons: That ordinance isn't applicable.

The Court: You mentioned the ordinance, not the statute. Here is what you say and here is what the ordinance says.

Mr. Parsons: Read the top of it, what it applies to. It only applies in the case of emergency.

Harry R. Harrison.

The Court: I don't see it here.

Mr. Parsons: Wait a minute. I will show it to you. "Whereas, it is the judgment of the Council that ambulances while engaged in emergency calls * * *"

The Court: Where is that?

Mr. Parsons: Right here.

Mr. Eason: It is not in the ordinance itself.

Mr. Parsons: They admit it has to be an emergency. That is the reason they are trying to prove it. There is no evidence of emergency.

The Court: I reckon the preamble is part of the ordinance but am I to understand that if I hear an ambu-
page 103 } lance coming—

Mr. Parsons: It only has it in case of emergency, if your Honor please. Now, the police and fire department vehicles can have it without an emergency. That is the only way you can construe that ordinance.

The Court: There is evidence that it was an emergency. Mr. Lear said that the corpsman told him it was an emergency. The corpsman means the medical corpsman. We all know that that is the term that is used in the Navy. As a matter of fact, whether we know it or not it has been testified that this corpsman was in charge of the patients. He told him it was an emergency.

Mr. Parsons: I understand that your Honor let it in. Where is the deposition? Your Honor let it in and they have themselves shown who and only who it is who can declare an emergency and how an emergency is handled, by this deposition. Okel said—

The Court: Was that on direct testimony?

Mr. Parsons: What? That is his testimony that he offered in this deposition.

The Court: I understand. Was it direct or cross examination?

Mr. Parsons: Direct. He first said he did not declare this an emergency, and said the method pursued. "If a case is declared an emergency in the sense of using
page 104 } an ambulance as an emergency vehicle, the medi-
cal officer of the day"—that was Dr. Okel—"is to inform the Naval Air Station officer of the day of that being the case, and he makes arrangements for the station police to accompany the ambulance, and he also makes arrangements for the city police to meet the ambulance at the gate and accompany it to its destination"; and he was asked in this case, he said no.

Harry R. Harrison.

The Court: We are not trying it on the rules of the Navy, we are trying it on the statute of the state of Virginia and the ordinance of the City of Norfolk; and the ordinance said "in emergency." And the driver acted on the statement of the only medical man attached to the ambulance, who informed him that there was an emergency.

Mr. Parsons: I understand your Honor's approach to the corpsman but here is the only man who could tell whether there was an emergency and who can declare an emergency.

Mr. Eason: The doctor didn't say that one way or the other.

Mr. Parsons: The evidence is that there couldn't have been any emergency. If there was any emergency of any effect, it was to go slow and observe whether—

The Court: Is that your only ground to strike the evidence?

page 105 } Mr. Parsons: No, sir.

The Court: All right; give me your others.

Mr. Parsons: The evidence clearly shows, if your Honor please, not only was there no violation of the City ordinance but that at the time the bus driver had reason to believe from either hearing it or seeing it that an ambulance would cross his path or cross the section he was about to travel over, he then did exactly what that ordinance required him to do: he moved on across the street so he could clear the intersection, as the ordinance requires.

The Court: Where is that?

Mr. Parsons: It requires him to do it: "clear of any intersection."

The Court: That was after he had gotten into the intersection.

Mr. Parsons: That is true.

The Court: This ambulance was within 40 feet of the intersection before or as he went across it. We can't divorce ourselves from what is common knowledge to everybody. We all know that these ambulance signals can be heard for several blocks. Now, this ambulance was proceeding along City Hall Avenue from Monticello across Bank, across Court, and toward Church; and this bus was proceeding

page 106 } south on Church Street. The jury would have a perfect right to conclude that the bus driver either heard or in the exercise of reasonable care should have heard the siren long before then and, again, we cannot divorce ourselves from what we know in everyday life. We know that when a siren is approaching us, the volume of

sound increases and that thereby you can tell it is approaching. I am going to overrule your motion.

Mr. Parsons: If your Honor please, I want to call your attention further to the ordinance. This ordinance also provides: "This provision shall not operate to relieve the driver of a police or fire department vehicle or ambulance from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequences of an arbitrary exercise" of that duty.

The Court: If you are going to ask me whether or not in my opinion Mr. Lear was guilty of negligence, I will state yes.

Mr. Parsons: There isn't any question about it. He is not sued. He is not here involved. What I am trying to present to your Honor is this: This man has no right of way as such, except that he could go through if it appeared to him that it wouldn't injure anyone. But now if he approached with the light being red when he was 200 feet away, it

page 107 } was perfectly patent to him if he looked—I don't know whether he did or not; he says he didn't see—

The Court: I am absolutely in agreement with you that under the testimony I have heard, Mr. Lear had no right to run through a red light. But that does not say that the Virginia Transit Company operator did not contribute to the accident when he failed to stop when he should have stopped.

Mr. Parsons: Let's come down to the probable cause.

The Court: Both of them; they are concurring causes.

Mr. Parsons: Let's come down to what is the real cause. Here is a bus operating south-bound, going along in the ordinary course of events. He has to stop on the south side of the street. He comes up to an intersection and here is an ambulance 200 feet away.

The Court: Where is the ambulance 200 feet away? 40 feet away when he came out there.

Mr. Parsons: Not according to the operator that they put on the witness stand.

The Court: Didn't the operator say it was 40 feet?

Mr. Parsons: No, the operator was within 200 feet.

The Court: What did he say, gentlemen?

Mr. Eason: The officer said when he saw the ambulance. it came around the curve, that was about 200 feet away. But your Honor—

Harry R. Harrison.

page 108 } The Court: What did the operator say? That is all I asked you.

Mr. Parsons: The operator of the ambulance, I mean.

The Court: I asked you, but what did the operator say, the operator of the ambulance?

Mr. Eason: How far was he away when he first saw the bus? I don't know if he said exactly.

The Court: I think he said 40 feet.

Mr. Eason: He did say something about 40 feet, yes, sir.

Mr. Parsons: Behind the police car 40 feet.

The Court: He never said where he was with reference to the police car because he said he never recognized the police car as such.

Mr. Sharp: That is right.

Mr. Parsons: Let me read it to you, what he admitted he said. (Reading)

"Q. How far was that police car ahead of you when you say you saw the bus the first time?

"A. How far ahead of me? Sir, I could not give you a definite answer."

Then the question:

"Q. Can you tell me whether it was fifty feet or
page 109 } 100 feet, seventy-five feet, or forty feet?

"A. I would say it was around about forty feet."

Now, that is 40 feet behind the police car.

Mr. Sharp: No.

The Court: I don't know what that says except that you read it.

Mr. Parsons: I read it to him; he admitted it.

The Court: No, he didn't. He may have admitted he said it but a previous inconsistent statement is not evidence; it merely goes to weaken what he said from the stand. From this stand today he said he was about 40 feet from the intersection when he first observed the bus coming into the intersection.

Mr. Parsons: He says he could stop in 35 feet.

The Court: All right; he didn't. As I said before, if I were called upon to decide, I would say that Mr. Lear was guilty of negligence which was a proximate cause of this

accident. Likewise, there is evidence from which the jury can conclude that the bus driver was also guilty of negligence which was a proximate cause of the accident.

Mr. Parsons: If your Honor please, let me go back.

The Court: I am not interested in Mr. Lear's negligence. He is not being sued.

page 110 } Mr. Parsons: I am only interested in it as a sideline because I am interested in trying to show you that the operator of this bus was not negligent. What was the reasonable cause of this accident? It is perfectly apparent by the driver's own testimony that he could see a red light when he was 200 feet away. It was his duty to see it. The operator of the bus or of any other vehicle had a right to presume that he would see and that he would put his vehicle—

The Court: Does that allow the operator of the bus to continue in the face of an approaching ambulance which is blowing a siren and flashing its light?

Mr. Parsons: I understand that attitude, if your Honor please; but I don't think you get to the question that I am bringing to you. Here is a bus and here is an ambulance. The ambulance is 200 feet back, blinking its blinker light and blowing its siren. The ordinance requires and he must use caution if he has a red light; he can't just do what this officer said he did.

The Court: From the evidence I heard—

Mr. Parsons: The bus operator, as such, has a perfect right to assume that any ambulance that is approaching, even 200 feet away, would be under such control that if something entered that intersection, he could stop.

page 111 } The Court: The bus operator ought not to be moving if he heard that siren and therefore he would have no right to make any assumption. He ought to stop, if he either heard it or should have heard it. That is for the jury, not for me. But it is impossible; I have heard people get up and say they didn't hear these fire sirens when they were 100 feet away. I am further than that away when they go out on Plume Street; it almost knocks me off the bench. In my opinion, the whole question is whether or not he heard or should have heard. I don't think this Virginia statute applies, perhaps for several reasons. One complete reason to my mind, it has not been shown that this ambulance was carrying liability insurance in the amount of $25,000.

Mr. Eason: If we bring the suit in behalf of the ambulance driver, we would have to comply with that statute.

The Court: I disagree. These exceptions shall apply only when the exemptions don't apply. Well, that is my opinion. I overrule your motion, Mr. Parsons.

Mr. Parsons: Exception.

The Court: I point out to you that there has been no evidence of any pecuniary loss.

Mr. Eason: Well, I should like to put Mr. Hodges on for the limited purpose of establishing his pecuniary loss.

The Court: Very well. I will allow you to do it. Bring the jury back.

page 112 } (The following occurred in the presence of the jury:)

The Court: All right; proceed.

CLARENCE J. HODGES,

the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. Eason:

Q. Mr. Hodges, will you state your name, please, sir?

A. Clarence Julian Hodges.

Q. Are you the same Clarence J. Hodges that brought this suit against the Virginia Transit Company?

A. Yes, sir.

Q. Mr. Hodges, the accident in this case, it appears from the evidence, happened on November 2, 1956?

A. Yes, sir.

Q. What was the amount of your earnings just prior to the accident? Tell us depending on whether you were working on a monthly basis, a weekly basis; what were your earnings at the time of the accident, just prior to the accident?

A. Well, I figure in average $70 a week, but I will have to cut that down in two parts. I worked as a fishing party boat captain for Mr. Harrison. My average earnings there depends, of course, upon the weather, which was about $80 or $90 a week if the weather was good. On the cab company, where I worked for them, my average per week was about $40 per week.

Clarence J. Hodges.

page 113 } CROSS EXAMINATION.

By Mr. Parsons:

Q. You worked for the cab company for how long?

A. Well, off and on, sir, I have been working about 15 years with the cab company.

Q. You just worked periodically?

A. Well, yes, sir. And then—

Q. For the boats, I mean.

A. When the boats were laid up, I went right to work for the cab company.

Q. You worked a month at a time on the boat?

A. Well, in during the season, which is approximately five months, I worked full time.

Q. On the boat?

A. Yes, sir, in the summer.

Q. You operated a motorboat?

A. Yes, sir, 40-foot motorboat.

Q. That was operated by a pushbutton motor to start it with?

A. Well yes, it was operated by a marine motor which you started just like you do a car.

Q. You didn't have to crank it or anything?

A. No, sir.

Q. Your duties required you to take the boat out for the fishermen to fish off the side?

page 114 } A. Required to bring it from one pier to the other and the parties were mostly booked and taken away from the pier out to fishing grounds and bring them back.

Q. That is all you had to do?

A. No, that wasn't all I had to do. The safety of the passengers were fully in my hands, which I had to watch out for very close.

Q. You watched out for the passengers—

A. Yes, sir. I had 14 rescues.

Q. —so they could get off easily?

A. Yes, sir. I had 14 rescues from Chesapeake Bay.

Q. You told Dr. Sawyer when you saw him, the previous incident?

A. I don't believe I—

Mr. Eason: If your Honor please, I called this witness for the limited purpose of establishing his earnings. I object

Dr. Walter W. Sawyer, Jr.,

to the line of cross examination that is now being attempted by Mr. Parsons.

The Court: Very well. I will allow Mr. Parsons to call him as an adverse witness.

Mr. Parsons: I just asked him if Dr. Sawyer knew his previous history before this accident?

A. I don't remember I mentioned it to or not to Dr. Sawyer that I took out fishing parties.

page 115 } By Mr. Parsons:

Q. I am talking about the condition of your health. You told him the condition of your health before?

A. My condition of my health was good.

Q. Did you tell him about it when you went to see him? He asked you about it, didn't he?

A. I believe I told him my condition was all right.

The Court: He is asking you if you told him about your condition, not asking you what you told him.

The Witness: I think so. I believe I mentioned, sir.

By Mr. Parsons:

Q. He asked you about your history, the history of your health, didn't he, and you talked to him about that?

A. He asked me about the condition of when the paralysis started, so on and so forth.

Q. And you told him?

A. I told him what, yes, sir, approximately.

Mr. Parsons: That is all.

The Court: Do you wish to examine him on that?

Mr. Eason: No, sir.

The Court: All right; Mr. Eason rests.

Mr. Parsons: Call Dr. Sawyer.

page 116 } DR. WALTER W. SAWYER, JR.,

called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Examined by Mr. Parsons:

Q. You are Dr. Walter W. Sawyer, Jr.?

A. Yes, sir.

Q. Doctor, are you engaged in any specialty?

Dr. Walter W. Sawyer, Jr.,

A. I am in the practice of neurological surgery.

Q. Where did you receive your education, Doctor?

A. I received four years of my training here at De Paul Hospital, and Norfolk General Hospital, and I was in practice one year with Dr. Thomson in neurosurgery, and then I had three years—a year and a half I should say, at the University of Virginia, in neurological surgery, and a year and a half at McQuire Hospital, Richmond, neurological surgery.

Q. What hospitals or organizations are you a member of?

A. Well, I am on the staff of all the hospitals in Portsmouth and Norfolk, and also belong to the Norfolk County Medical Society.

Q. Do you belong to any organization of neurological surgeons?

A. No, sir.

Q. You have had all those years' experience?

A. I—the requirements to take the boards, sir, are two years of practice. I have had one year in practice
page 117 } as yet—before you are allowed to take your board.

Q. Doctor, you were called on to examine Mr. Hodges. Will you tell us first when you examined him?

A. I examined him on the 27th day of March of 1958, in my office.

Q. At your office?

A. Yes, sir.

Q. When you examined him, did you make inquiry of him as to what his previous condition was before the accident?

A. Yes, sir.

Q. What did he tell you with reference to difficulties, if any, with his left side before the accident or any attack of hemiplegia or semi-paralysis?

A. Prior to the accident he said that he had had for several months he had had some tingling and numbness in his arms and toes—in his arm I should say and in his leg and toes.

Q. The left side?

A. On the left side, and that he had had some transitory weakness of the left arm.

Q. For how long before the accident?

A For approximately three months prior to the accident.

Q. Doctor, will you tell us first whether or not you found that he had this semi-paralysis on the left side when you

Dr. Walter W. Sawyer, Jr.,

examined him, or hemiplegia or whatever you
page 118 } call it?

A. I didn't understand your question, sir.

Q. Was his condition on his left side—as they claim now—attributable or directly caused by or causally connected with the history of the accident which he had?

A. I could find no relationship as far as the accident itself, sir.

Q. I didn't understand you.

A. I could find no relationship as far as the accident and the findings of the paralysis.

Q. There was no relationship you say, between the accident and the condition you found him in, in your opinion?

A. That was my feelings.

(At this point there was a brief recess, after which the following occurred:)

CROSS EXAMINATION.

By Mr. Eason:

Q. Dr. Saywer, could not the tingling that you spoke of be from artereosclerosis?

A. I think it probably was, sir.

Q. Do not many people experience this without being paralyzed?

A. It is possible, sir.

Q. Could you say the blow on the head could not in any way shake a calcium fleck loose in his head?

A. I think if it had shaken one loose you would
page 119 } have found the results immediately afterwards, sir.

Q. Do you feel absolutely that the blow on the head could not have shaken something loose in a blood vessel in this man's head?

Mr. Parsons: If your Honor please, I don't get the drift of this.

The Court: Do you object?

Mr. Parsons: Yes.

The Court: I sustain the objection. Of course, anything is possible.

Dr. Walter W. Sawyer, Jr.,

By Mr. Eason:
Q. Doctor, do you not observe all head injuries for at least 24 hours to see what is going to happen?

Mr. Parsons: I object to that.
The Court: I will allow that. He asked him—repeat the question.

By Mr. Eason:
Q. I say do you not observe all head injuries for at least 24 hours?

The Court: What?

By Mr. Eason:
Q. (Continuing) To see what is going to be the result of the head injury, what is going to develop.

The Court: What is the relevancy of this particular question? This gentleman did not see the patient until—

page 120 } By the Court:
Q. When, Doctor?
A. March 27 of '58.

Mr. Eason: The history was, sir, the next morning he was paralyzed. He got hit on the head the night of the 2nd; the next morning this man was paralyzed.
The Court: You can ask him the relevancy of that, what that indicates; but I am going to sustain the objection as to whether or not he observed all head injuries.

By Mr. Eason:
Q. Doctor, is it not true that some people will fall and it may be several days before any real head injury shows up?

Mr. Parsons: I object.
The Court: I will allow that.
The Witness: You permit to answer?
The Court: Yes.

A. Yes, sir, that is true.

Mr. Parsons: Exception.

Raymond W. Shearon.

By Mr. Eason:

Q. Doctor, does not a subdural hematoma often do this?

Mr. Parsons: I object.

The Court: Often do what?

Mr. Eason: The first question was: Is it not true that some people fall and it may be several days be-
page 121 } fore any real head injury shows up. And then following that: Does not a subdural hematoma often do this?

The Court: What is a subdural hematoma?

The Witness: You want me to explain?

Mr. Eason: The doctor can tell us.

By the Court:

Q. Well, tell me that. I can't pass on the question without knowing what it is. What is it?

A. That is a clot beneath the covering of the brain and on the surface of the brain.

The Court: Your question is, does it not take several days?

Mr. Eason: Yes, sir.

The Court: I will allow that.

Mr. Parsons: Exception.

By Mr. Eason:

Q. Does not a subdural hematoma often do this?

A. A subdural hematoma can produce the same results, yes, sir.

Mr. Eason: That is all.

Mr. Eason: If your Honor please, if the defense has no other medical witnesses, then we could now excuse Dr. Barclay. Do you have any other medical testimony?

Mr. Parsons: I have doctors that are going to
page 122 } testify to facts, not medicine.

Mr. Eason: All right, sir. Then we will excuse Dr. Barclay.

RAYMOND W. SHEARON,

called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Raymond W. Shearon.

Examined by Mr. Parsons:

Q. Mr. Shearon, you work for the Virginia Transit Company?

A. Yes, sir.

Q. You are a bus operator?

A. Bus operator.

Q. Were you on a bus at the corner where this accident happened, when it happened?

A. Yes.

Q. Between the ambulance and the bus, another bus of the company?

A. Yes.

Q. Where was your bus located? What were you doing?

A. I was sitting still, loading passengers.

Q. Doing what?

A. Loading passengers.

Q. Sitting where?

A. At City Hall and Church.

Q. What corner?

A. On the right corner going out, heading

page 123 } east.

Q. You were then on the southwest corner?

A. Down right there at Snyder's.

Q. Come down here, let the jury see where you were. Here (indicating) is City Hall Avenue; this is Church Street. Now, point out to the jury what lane and where you were, where your bus was standing.

A. This is going—

Q. This is going toward the bridge.

A. I was on the right here, right in the bus stop.

Q. You were right along there?

A. Yes.

Q. And were you moving or at a standstill?

A. Standstill.

The Court: Excuse me, gentlemen. I couldn't see where he said he was. What corner?

Mr. Parsons: He was at the southwest corner, Judge, across the street from St. Paul's.

The Court: I know where the southwest corner is.

By the Court:

Q. Were you standing on Church Street or standing on—

Mr. Parsons: City Hall.

Raymond W. Shearon.

(The witness nodded).

By the Court:
Q. Which?
A. City Hall.

page 124 } By Mr. Parsons:
Q. Your bus was standing at the bus stop on the southwest corner of City Hall Avenue?
A. (The witness nodded).
Q. At the first lane of traffic?
A. (The witness nodded) The next to the curb.
Q. What was your bus doing? What was happening on your bus?
A. It was sitting still; it was sitting still.
Q. Was anybody getting on or off or anything?
A. (The witness nodded) I let on some.
Q. Passengers were getting on?
A. Yes, getting on.
Q. Now, did you see the accident?
A. Did I see it?
Q. Yes.
A. (The witness nodded).
Q. Before you saw the accident, did you hear a siren blow?
A. No.
Q. What?
A. Not until it got right even with my bus.
Q. You heard a siren when?
A. When it got right even with my bus.
Q. What do you mean by that? Passing your
page 125 } bus?
A. Yes.
Q. Is that the first time you heard it?
A. The first time I heard it.
Q. You were sitting in your bus, the motor running?
A. (The witness nodded).

Mr. Ward: Speak up, don't nod.

A. Yes, I was sitting in my bus, the motor running.

By Mr. Parsons:
Q. The passengers were getting on your bus?
A. Yes, sir.

Fannie Brown.

Q. You don't know anything about the speed of the ambulance, or do you? I don't know whether you—
A. No, I couldn't say about the speed of it.
Q. What caused you to look around?
A. Well, I didn't—I didn't look around.
Q. When you heard the noise?
A. No. I was looking what hit him at—
Q. What?
A. I never did look around behind me.
Q. You looked toward the accident when you heard it happen?
A. Yes.
Q. Did you actually see it happen? You noticed it after you heard the noise?
A. Oh, I saw it happen; I saw it when it hit.
page 126 } Q. What part of the bus did the ambulance strike?
A. Right at the back wheel.
Q. Right at the back wheel? Witness with you.

Mr. Eason: No questions.

MRS. FANNIE BROWN,
called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Examined by Mr. Parsons:
Q. Fannie, I call your attention to an accident that happened at the corner of Church and City Hall; do you recall that?
A. Yes.

The Court: Let's start out right, now. You talk as loud as I am talking when you answer; then everybody will hear you. Go ahead.

By Mr. Parsons:
Q. Where were you when this happened?
A. I was on the Money Point bus.
Q. The Money Point bus?
A. Yes.
Q. What bus is that? In which direction was it going?
A. Well, it was going west. Wasn't it? West?
Q. Going towards the bridge?
A. (The witness nodded).

Fannie Brown.

page 127 } By the Court:
Q. West on what street?

Mr. Parsons: I don't know that she knows west and east.

A. West on City Hall.

By Mr. Parsons:
Q. You were on City Hall?
A. Yes.
Q. And was it going towards the bridge, pointed towards the bridge?
A. That is right.
Q. Was the bus moving or at a standstill?

The Court: Let's clear that up right now.
Mr. Parsons: She was on Shearon's bus.
The Court: If she was going this way, she probably wasn't going west.
Mr. Parsons: West is this way (indicating).
The Court: Exactly. She was going this way (indicating); she said west; she means east.
The Witness: East. I am sorry.
The Court: That is all right. I am not blaming you.

By Mr. Parsons:
Q. You were going on the Money Point bus, going towards the bridge, is that right?
A. Yes.
page 128 } Q. And was the bus moving or at a standstill?
A. At a standstill.
Q. Did you notice the traffic lights or not?
A. Yes.
Q. How were they?
A. It was green for the traffic to go—
Q. —Church Street?
A. —up Church Street.

Mr. Eason: Of course, caution Mr. Parsons not to put words in the witness' mouth.
The Court: He just asked how was the traffic light. That is all I heard him ask. I didn't hear the answer. What was her answer?

Fannie Brown.

The Witness: It was green.

By the Court:
Q. Green for what?
A. For the traffic to go up and down Church Street.

The Court: Go ahead.

By Mr. Parsons:
Q. Did you see the ambulance before the accident?
A. I didn't see the ambulance before it hit the bus.
Q. Did you hear any siren blowing before the accident If so, when?
A. Just before it hit the bus.
Q. Just before it hit the bus. Where were
page 129 } you? Were you inside the bus?
A. Yes.
Q. Sitting down or standing up or what?
A. Sitting down.
Q. About how far in?
A. Oh, about middle-way.
Q. About middle-way; on which side? Do you remember?
A. Right behind the driver.

Mr. Parsons: Witness with you.
Mr. Eason: No questions.
The Court: You may be excused now. You may stay here or go home.
Mr. Parsons: Just a moment.

By Mr. Parsons:
Q. When you heard the siren, where was the bus in reference to City Hall Avenue?

The Court: What bus? The bus she was sitting in?
Mr. Parsons: No, the bus that was in the accident.

By Mr. Parsons:
Q. Where was the bus that had the accident?
A. The bus that the ambulance hit was middle-way; I would say middle-way of the street.
Q. Middle-way of the street?
A. That is right.
Q. Middle-way of City Hall Avenue?
page 130 } A. That is right.

Mr. Parsons: That is all.
Mr. Eason: No questions.

EARL G. GILLESPIE,
called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Examined by Mr. Parsons:
Q. Mr. Gillespie, where are you employed?
A. I am an investigator for the Naval Air Station, Norfolk.

By the Court:
Q. Investigator for what?
A. Naval Air Station, Norfolk.

By Mr. Parsons:
Q. How long have you been located at the Naval Air Station as an investigator?
A. For twelve years.
Q. As an investigator, what are your duties with reference to the ascertainment of what happens in an accident?
A. We investigate accidents and make determinations, make recommendations, form opinions.
Q. As such, do you have to acquaint yourself with the duties of the different people involved in accidents?
A. Yes, sir.
page 131 } Q. Will you tell the Court and the jury the duties and who has the duty of determining an emergency ambulance operation?

Mr. Eason: I object to that question, sir.
The Court: Let me see. Wasn't that question asked by you?
Mr. Eason: Actually, the question has been answered in the deposition, to the effect that the doctor can do it.
The Court: Who conducted this examination?
Mr. Parsons: We took the examination but he introduced it.
The Court: Oh, you took the examination?
Mr. Parsons: We took the deposition.
The Court: I misunderstood. So you were the one that asked him?
Mr. Parsons: No. It is his deposition, your Honor, when he adopts it.

Mr. Sharp: Not necessarily.

The Court: I said you were the one that asked the question, or your attorney?

Mr. Parsons: My associate did.

The Court: I will allow the question. This gentleman has as a part of his duties to inform himself of the regulations. Go ahead.

page 132 } By Mr. Parsons:

Q. State to the Court and jury the requirements. Who performs the duty—

A. The medical officer of the day dispatches the ambulances from the Naval Air Station infirmary.

Q. Does he determine the seriousness of it, whether it is an emergency or not?

A. Yes.

Q. Well now, you haven't heard the deposition; but what happens when he determines there is an emergency? What does he do then?

The Court: What does who do?

Mr. Parsons: The medical officer of the day.

A. He notifies the station officer of the day, who in turn is instructed to obtain a police escort.

Mr. Eason: If your Honor please, if this testimony is permissible, then—

The Court: I will allow that first question. I am going to rule that the other is immaterial.

Mr. Parsons: That is what is in that deposition there, your Honor.

The Court: All right. If you wish I will strike it from that deposition, too. On motion, I will strike it from this deposition.

Mr. Eason: If your Honor please, I move that page 133 } it be stricken.

The Court: No; you introduced it. I am ruling that is not admissible. Next question.

Mr. Parsons: I don't want to strike the deposition.

The Court: I just said I should be glad to do it if you made the motion.

Mr. Parsons: I am not going to make the motion.

The Court: Go ahead.

Ellen Harrison.

By Mr. Parsons:
Q. What is the duty of the corpsman? Does he have anything to do with the operation?

Mr. Eason: If your Honor please, this man is not in a position to state the duty of a corpsman.

By the Court:
Q. You don't know the duties of corpsmen prescribed by the United States Navy?
A. No, sir.

The Court: That answers that.
Mr. Parsons: Did he say he did?
The Court: Did not.

By Mr. Parsons:
Q. Upon your investigations, in the course of your duties do you ascertain what is required of the corpsman?
Mr. Eason: I object.
The Court: I sustain the objection as to that.

page 134 } By Mr. Parsons:
Q. Do you know the duties of the corpsman, what he has to do?

The Court: That has been answered. It has been covered. He said he did not. I asked him the question myself.
Mr. Parsons: That is all.
Mr. Eason: No questions.

Mr. Parsons: I should like an exception shown to not allowing me to introduce proof of what the corpsman's duties are, your Honor.

ELLEN HARRISON,
called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Examined By Mr. Parsons:
Q. Mrs. Harrison, where do you live?
A. I live 2841 Shelter Road, South Norfolk.
Q. Were you on the scene of an accident that happened at the corner of Church and City Hall Avenue in November 1956?

Ellen Harrison.

A. Yes.
Q. Where were you?
A. I was on the bus at City Hall and Church Street waiting to go across. We were waiting for the light to change.
Q. What was the condition of the light?
page 135 } A. We had red light and the—
Q. Red light for you?
A. That is right.
Q. Where was your bus?
A. Where was our bus at?
Q. Yes.
A. Our bus was at the corner of Church and City Hall Avenue.
Q. Was it on City Hall or on Church?
A. It was on City Hall.
Q. On City Hall?
A. Yes, sir.
Q. Where was it located on City Hall with reference to the driveways, three or four driveways? Was it next to the curb or where?
A. It was next to the curb.
Q. While you were standing there did you see or observe an accident?
A. Yes, sir.
Q. What between?
A. Beg pardon?
Q. What accident? Who had the accident?
A. The bus and the ambulance.
Q. Did you see the bus crossing City Hall
page 136 } Avenue?
A. Yes, sir.
Q. Where was the bus in City Hall Avenue when you knew anything about their actions?
A. It was crossing the intersection.
Q. Crossing the intersection?
A. Yes, sir.
Q. Did you hear a siren blow at the time?
A. I did not hear the siren blow until it had got even with our bus.
Q. But as it came by your bus, you heard the siren?
A. Yes, sir.
Q. Until that time you had not heard it, you mean?
A. No, sir.

Mr. Eason: No questions.

DR. WILLIAM C. ANDREWS,

called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Examined By Mr. Parsons:

Q. You are Dr. William C. Andrews?

A. That is correct, sir.

Q. You are a practitioner in the city of Norfolk?

A. I am.

Q. How long have you been practicing, Doctor?

A. I have been practicing in Norfolk five years.

page 137 } Q. Did you see an accident at the corner of City Hall and Church Street, November 1956?

A. Yes, sir, I did.

Q. Doctor, I shall appreciate it if you would tell the Court and jury just what you were doing, what you saw and what the ambulance was doing, and what the bus was doing that had the accident.

A. We were returning from a medical meeting over at the Naval Hospital and had come over the bridge-tunnel from Portsmouth and as we approached Church Street the light turned red and we stopped at the light, waiting for it to change back. After we stopped, a bus proceeding along Church Street towards Main entered the intersection, the light being green in his direction; and as the bus was entering, we saw in the distance on City Hall proceeding towards us a flashing light on an ambulance.

Q. Until that time had you had any notice or knowledge of any ambulance siren or any ambulance coming?

A. No, sir, I didn't.

Q. That was when it was coming around that curve just at Snyder's about 200 feet away?

A. It was coming around the curve by Snyder's, I don't know the distance there.

Q. Did the ambulance pay any attention, make any effort to stop?

page 138 } A. Apparently not, sir. It didn't stop until after the bus was hit. The bus crossed out of line of vision and next thing we saw the ambulance hit the rear end of the bus as it was getting across the intersection. The bus—

Q. But as the bus was entering and you saw the other one down there, the lights were in plain view?

A. Yes, sir, I could see the light. I did not hear any siren until after the bus had crossed our path of vision.

Mr. Parsons: Witness with you.

By The Court:
Q. You say "our." You were with whom?
A. My brother was with me, sir.

Mr. Eason: No questions.

DR. MASON C. ANDREWS,
called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Examined By Mr. Parsons:
Q. You are Dr. Mason Andrews?
A. Yes, sir.
Q. You are a practicing physician in the city of Norfolk?
A. Yes, sir.
Q. How long have you been practicing, Doctor?
A. Eight years.

page 139 } Q. Were you at the scene of an accident at the corner of City Hall and Church Street November 2, 1956?

A. Yes, sir.
Q. Doctor, without my asking the question, if you will just tell the Court and the jury what happened, where you were and where the bus and ambulance were.
A. We were on City Hall Avenue returning from the Portsmouth bridge-tunnel, headed west. We were in the lane which is closest to the island in the center—it is marked, the small partition there, the stop for the stoplight. Our attention was undiverted. We were looking ahead waiting for the light to change. We saw a bus entering the intersection. We then became aware that an ambulance was approaching around the corner, the curve, the angle in the street just beyond the buildings which are back of Snyder's. We were—had no reason not to be aware of any ambulance approaching and the minute that it was apparent, it was also apparent that the bus was entering the intersection. The red light was flashing; the siren blew and the ambulance continued on. The bus obstructed our view shortly after the ambulance appeared and then there was the crash, which followed shortly afterward.
Q. Until the time you saw the ambulance come around the bend or curve, as you call it, had you had any knowledge or any reason to know from any kind of noise or otherwise, that an ambulance was approaching that area?

Dr. Mason C. Andrews.

A. No, sir. We had no suspicion that the am-
page 140 } balance was approaching the area until that moment.

Mr. Parsons: Witness with you.
Mr. Eason: No questions.

Mr. Parsons: We rest, if your Honor please.
Mr. Eason: We rest.
The Court: Ladies and gentlemen, I am not going to hold you here any longer today. Be back tomorrow at ten o'clock, please. You gentlemen stay here and I will take up instructions.

(The following occurred in the absence of the jury:)

Mr. Parsons: If your Honor please, I want to renew the motion to strike the plaintiff's evidence, on the same grounds and by reason of the additional testimony that has been offered.
The Court: Overruled.
Mr. Parsons: Exception.

(The Court took up the instructions with counsel.)

(Thereupon, court adjourned until 10:00 A. M. of the following day, July 10, 1958.)
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NORFOLK, VIRGINIA
July 10, 1958, at 10:00 A. M.

(Met pursuant to adjournment of the preceding day, with the same parties present as heretofore noted.)

(The Court then read the instructions to the jury, exceptions being noted by counsel to the respective instructions, as follows:)

Mr. Parsons: The defendant objects and excepts to the granting of any instructions on behalf of the plaintiff because the evidence was insufficient to warrant submission of the question of liability to the jury. The sole, immediate and effectual cause of this accident was the negligence of the

driver of the ambulance being operated for the Navy Department.

The defendant excepts to the instruction P-1 because it is incomplete with reference to Section 27-72 of the City Code and ignores the emergency feature, and does not take into consideration the element of necessity that the signal shall be such as to give a warning to the operator and that the operator have time and opportunity after hearing the warning to stop and pull to the curb before entering the intersection.

The defendant excepts, of course, to the granting of all the instructions on behalf of the plaintiff, on the grounds that there should not be granted any, for the reasons
page 142 } stated on the motion to strike the evidence and for the additional reasons that are stated herein, that there was no evidence upon which the jury could properly find a verdict for the defendant.

The defendant specifically excepts to the instruction P-2 because it submits to the jury the question of whether or not the bus operator failed to keep a proper lookout. In the first place, the instruction does not define what a proper lookout is. In the second place, there is no evidence that the bus operator failed to keep a lookout. There is no evidence that he could have seen the ambulance until after the front part of his bus had entered into the intersection, because the stone wall is seven feet high and he would not sit that high on the seat in the bus; and he could not be required to do that which was impossible for him to do. Further, this instruction authorizes the finding of a verdict for the plaintiff on the failure to keep a lookout and is misleading because that of itself in this case would not and could not warrant giving a verdict in behalf of the plaintiff. There would have to have been evidence of other conditions before any such verdict could be authorized.

The defendant specifically excepts to Instruction P-3 because there is no evidence upon which to base it nor is there any evidence upon which to base the theory that
page 143 } the bus operator heard or in the exercise of reasonable care should have heard the ambulance siren and he failed thereafter to comply with Section 27-72 of the City Code of Norfolk, Virginia. Furthermore, the Court states as a matter of fact that if the bus driver heard it or in the exercise of reasonable care should have heard it, he was guilty of negligence, which constitutes a finding that he was guilty of negligence as a matter of law and ignores entirely the question of whether or not when he heard it or should have heard it there was reasonable ground to believe or that the operator would have reasonable ground to be

warned that the ambulance was approaching and would enter the intersection; because the evidence shows otherwise, that the siren from that ambulance could have been coming from Plume Street nearby, Cumberland Street nearby or Court Street nearby and could even have been going in a different direction.

The defendant, in addition to the general exception to all instructions, excepts to Instruction P-7 because there is no evidence in this case of mental suffering or pain.

The defendant excepts to the refusal of the Court to grant Instruction DY as offered because that instruction was proper in all of its aspects and particularly was the Court wrong in striking out that portion of the instruction which page 144 } would have told the jury that the bus operator, although he heard a siren, saw a red blinker, had a right to assume that the ambulance was complying with the law by operating at such speed and under such control when proceeding against a red light that would enable the ambulance driver to avoid an accident at the intersection.

The defendant excepts to the modification of Instruction D-3 because it destroys the effect of the instruction and puts it on an entirely different basis and ties it in with Section 27-72 of the City Code which is not related, and since there was no improper speed, the instruction should not have been so modified.

The defendant excepts to the striking out in Instruction D-10 of the words "direct, immediate and effectual" contained in the instruction as offered.

The defendant excepts to the modification by the Court of Instruction D-14 because it is a direct expression from the Court of an opinion of the Court not based upon any evidence in the case and is a generalization, and as a generalization need not have been used; and the same question of proceeding into the intersection in violation of Section 27-72 was covered in other instructions presented by the plaintiff. This modification destroyed the purpose and reason of this instruction D-14 and it should not have been done. page 145 } Furthermore, the amendment to the instruction is in the nature of an assumption by the Court that the defendant's bus did proceed into the intersection in violation of Section 27-72 of the Code of Virginia.

The defendant excepts to the modification of Instruction D-18 and to the failure to grant it as offered. Particularly, the defendant excepts to the striking out of the words "immediate and effectual" cause and the language which said that the evidence must be "satisfactory to the jury in support of the charges made."

The defendant excepts to the refusal of the Court to grant Instruction DZ as offered and in modifying it and then granting it, because as offered it was a correct instruction and properly set forth the defendant's theory of its defense. Particularly, the Court erred in striking out that part of the Instruction DZ that would have told the jury that the bus had a right to assume that the driver of an ambulance was operating at such speed and under such control that he could stop, turn aside, or otherwise avoid the accident.

The defendant excepts to the refusal of the Court to grant the following instructions for the defendant:

DX This instruction should have been granted because the mere sounding of a siren and blinking of a
page 146 } red light is not in itself a compliance with the City ordinance and he must have been operating at such speed and under such control so as to not endanger the life or property of others. This is specifically set forth in the ordinance itself.

The defendant excepts to the refusal of the Court to grant Instruction D-1 on behalf of the defendant because it properly sets forth the doctrine of remote and proximate cause and also sets forth the proposition that if the failure of the ambulance driver to stop and obey the traffic signal was the sole, immediate and effectual proximate cause of the accident complained of, the plaintiff could not recover even though they also found that the bus operator was guilty of negligence. This instruction is clearly correct and is applicable to this type of case where there is a possible contention that there are two people guilty of negligence, one who may be termed the first tort feasor if he failed to take proper action upon hearing a siren sounded or seeing a blinker light; and the second one, whose negligence thereafter insulated and intervened and made his negligence the sole, immediate and effectual proximate cause, and the negligence of the bus operator, if any, the remote cause.

The defendant excepts to the refusal to grant Instruction D-2 because there is no evidence upon which to
page 147 } submit the question of careless and negligent operation to the jury.

The defendant excepts to the refusal to grant Instruction D-4 because there is no evidence that the bus operator failed to keep a proper lookout or that failure to keep a proper lookout could have had anything to do with the accident.

The same applies to Instruction D-5 with reference to keeping the bus under proper control. There was no evidence, as

D-5 told the jury, that the defendant failed to keep its bus under proper control.

The defendant excepts to the refusal of Instruction D-6 because it states the fundamental law and should have been granted to the defendant on its theory of the case, and it sets forth that the Navy ambulance was required to obey the traffic laws and the ordinances of the City of Norfolk with the same effect and degree as the defendant bus operator and the Navy ambulance could not fail to obey the command of a red light. And even where an emergency existed, he could only disobey a red light, having first controlled the speed and movement of his ambulance so that he could pass through the red signal without endangering the safety of other vehicles or persons approaching. And this instruction set forth what the plaintiff was required to prove and closed by telling

page 148 } the jury that if they found from the evidence that if the Navy ambulance had observed the requirements stated therein, no accident would have occurred, the plaintiff could not recover.

The defendant excepts to the refusal of Instruction D-11 because it would have told the jury that the ambulance driver had no right to disobey a red signal except under certain conditions such as an emergency and even then told the jury under what conditions an ambulance driver could disobey a red signal under the law, that he would have to have due regard for the safety of persons and property; otherwise, failure upon the part of the ambulance driver to stop before entering the intersection constituted negligence as a matter of law and that such negligence would constitute the direct, immediate and effectual proximate cause of the accident.

The defendant excepts to the refusal of the Court to grant Instruction D-12 because that instruction is based upon evidence in the case that the bus operator had a green light and reached the intersection prior to the time the Navy ambulance reached it, and had entered and crossed the intersection so far that the ambulance struck it at or near the rear end, and then under such circumstances the defendant was not guilty of any negligence, and the immediate and effect-

page 149 } ual cause of the accident was the negligence of the Navy ambulance.

The defendant excepts to the refusal to grant Instruction D-13 because it would have told the jury that the bus operator if he had a green light and had moved into the intersection in accordance with the command of the law in such case, and when he neared the intersection the Navy ambulance had not yet reached the intersection, then the defendant's bus operator was guilty of no negligence in entering the intersection

under such circumstances even though the operator of the Navy ambulance was sounding his siren in such manner that it was heard or could have been heard by the bus operator, and that the sounding of the siren does not permit the operator of an ambulance to disobey the red signal and enter an intersection without regard to the safety of other persons.

The defendant excepts to the refusal to grant Instruction D-15 because that instruction would have told the jury that the bus operator had a right to assume under the facts and circumstances of the case that the Navy ambulance was not acting in an emergency and that the operator of the Navy ambulance would reduce and control his speed so that he could pass the signal light with due regard for the safety of others and would not carelessly or arbitrarily disobey the red signal.

The defendant excepts to the refusal to grant
page 150 } Instruction D-17 because here again it states the fundamental law and was to the effect that if the bus operator had a green light and the operator of the Navy ambulance had a red light, then the defendant's bus operator was not required to stop, look and listen before entering the intersection but it was the duty of the operator of the Naval ambulance to stop and remain stopped as long as the red signal was against him and that the defendant's bus operator had a right to assume that the operator of the Navy ambulance would comply with the law, and this would be true regardless of whether he was sounding a siren that could or should have been heard by the operator of the defendant's bus.

The defendant excepts to the refusal of Instruction DA because this instruction sets forth three things that the plaintiff was required to prove: First, that the Navy ambulance was acting in an emergency; second, that the bus operator heard or should have heard a siren blown by the Navy ambulance at a time and place that would be a warning to him that the ambulance was approaching the intersection of City Hall Avenue and Church Street and thereafter he had failed to stop at the curb before entering the intersection and negligently failed to do so; and further that the negligence of the operator was the proximate cause of the accident. It should be remembered that the plaintiff in this case con-
page 151 } tends that the bus operator was guilty of concurring negligence because admittedly the driver of the Navy ambulance was guilty of negligence as a matter of law. This would make a set of two tort feasors under the plaintiff's theory of concurring negligence. Normally, the first tort feasor would have been the bus driver, and the sec-

ond one the Navy ambulance, and this instruction sets forth the law as laid down in *Hubbard* v. *Murray,* 173 Virginia 448, at Pages 455 and 456, and as cited with approval in the Edgerton case, 186 Virginia 642, at Page 657. Plainly, the defendant had a right to have this question submitted to the jury as stated in the instruction.

The defendant excepts to the refusal to grant Instruction DB because it would have aided the jury in determining the meaning of the term "proximate cause." Since there was no other instruction in the case that defined it, it was error not to define it to the jury.

The defendant excepts to the refusal of Instruction X-2 because it properly states the law of remote and proximate cause and should have been granted.

(The case was argued by counsel; the jury retired to consider its verdict and returned with the following: "We, the jury, find in favor of the plaintiff for the sum
page 152 } of $14,500.")

Mr. Parsons: If your Honor please, we move the Court to set aside the verdict and enter up judgment for the defendant or in the alternative to grant a new trial on the ground that the law and evidence does not sufficiently support the verdict and there is no evidence upon which to base a verdict and for the errors apparent in the face of the record as and when it may be transcribed, in the introduction of evidence, the refusal of evidence, and for errors in instructions.

(The motion was overruled and exception duly taken by Mr. Parsons to the ruling of the Court.)

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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