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Record No. 4972

In the Supreme Court of Appeals of Virginia at Richmond

CLARENCE E. SMITH, ETC.

v.

NEW DIXIE LINES, INCORPORATED, ET AL.

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

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. 4972

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 28th day of November, 1958.

CLARENCE E. SMITH, ETC., Plaintiff in Error,

against

NEW DIXIE LINES, INCORPORATED, ET AL., Defendants in Error.

From the Law and Equity Court of the City of Richmond

Upon the petition of Clarence E. Smith, an incompetent, who sues by Gordon P. Williams, guardian, a writ of error is awarded him to a judgment rendered by the Law and Equity Court of the City of Richmond on the 5th day of June, 1958, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and New Dixie Lines, Incorporated, and others were defendants; no bond being required.

RECORD

* * * * *

Filed in the Clerk's Office the 14th day of August, 1957.

Teste:

EDW. G. KIDD, Dep., Clerk.

MOTION FOR JUDGMENT.

To the Honorable Judges of the Law and Equity Court:

1. Clarence E. Smith, hereinafter called the plaintiff, moves the Court for judgment against New Dixie Lines, Incorporated, a Virginia Corporation, having its principal office in the City of Richmond, Virginia, hereinafter called the first defendant, Francis C. Proctor, hereinafter called the second defendant and Penn-Dixie Lines, Incorporated, A Pennsylvania Corporation of York, Pennsylvania, hereinafter called the third defendant, and each of them, for damages in the amount of THREE HUNDRED THOUSAND ($300,000.00) DOLLARS due the plaintiff by reason of the following facts:

2. On or about the 24th day of November, 1955, plaintiff was a passenger in an automobile being driven eastwardly on U. S. Highway No. 360 in Chesterfield County, page 2 } Virginia, at and about the same time that first defendant's tractor-trailer truck was being driven in a westerly direction on said highway by said defendant's agent, servant and employee, on, for and about the business of the first defendant and the second defendant, as the servant, agent and employee of the third defendant, was driving a tractor-trailer truck owned and operated by the third defendant on, for and about the business of the third defendant, westwardly on said highway and the defendants did so negligently operate said tractor-trailer trucks as to cause a collision between the car in which plaintiff was riding and the vehicle of the first defendant.

3. As a result of negligence of the defendants and each of them and the ensuing collision, plaintiff was severely injured in and about his face, head, neck, back, arms, legs and other parts of his body, internally, externally and permanently, and as a consequence of said injuries, plaintiff has suffered, and in the future will so suffer great physical

pain and mental anguish together with large monetary losses in being required, in the past and in the future, to seek medical, hospital and surgical attention in his efforts to be cured and in being prevented, in the past and in the future, from following his usual affairs, and in having his earning capacity permanently destroyed.

4. All to the damage of the plaintiff in the amount of THREE HUNDRED THOUSAND ($300,000.00) DOLLARS for which he respectfully asks judgment.

CLARENCE E. SMITH
By GORDON P. WILLIAMS
Of Counsel.

* * * * *

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GROUNDS OF DEFENSE.

Comes now the defendant, New Dixie Lines, Incorporated, by counsel, and for its Grounds of Defense to the Motion for Judgment filed herein states as follows:

1. Said defendant denies that it is indebted to the plaintiff in any amount.
2. Said defendant denies paragraphs 2, 3 and 4 insofar as they relate to it.
3. Said defendant denies that it or any of its agents, servants or employees were guilty of any negligence that proximately caused or efficiently contributed to cause the plaintiff's alleged injuries.
4. Said defendant alleges and avers that the driver of the vehicle in which the plaintiff was riding was guilty of negligence that was the, or a, proximate cause of the accident.
5. Said defendant alleges and avers that even if it were guilty of negligence as alleged, which is specifically denied, the plaintiff was guilty of contributory negligence that would bar a recovery herein.
6. Said defendant alleges and avers that other parties for whom it is not responsible were guilty of negligence that was the, or a, proximate cause of the accident.
7. Said defendant alleges and avers that the acci-
page 8 } dent in question was unavoidable.

WHEREFORE, said defendant demands that this action against it be dismissed.

NEW DIXIE LINES, INCORPORATED
By RICHARD Z. WILLIAMS
Of Counsel.

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* * * * *

Received and filed Aug. 29, 1957.

Teste:

LUTHER LIBBY, Clerk.

GROUNDS OF DEFENSE OF THE DEFENDANTS, FRANCIS C. PROCTOR AND PENN-DIXIE LINES, INCORPORATED.

The grounds of defense of the said defendants:

(1) That they deny that the sum of Three Hundred Thousand ($300,000.00) Dollars or any other sum is due the plaintiff by these defendants.

(2) That they admit that an accident occurred at the time and place mentioned in the motion for judgment but specifically deny that they owned, operated or controlled any of the vehicles involved therein.

(3) That they do not know whether the allegation of fact that the plaintiff was a passenger in one of the automobiles involved in the collision mentioned in paragraph 2 of the motion for judgment exists.

(4) That they otherwise deny each and every allegation of paragraphs 2, 3 and 4 of the motion for judgment insofar as they are directed to these defendants.

(5) That these defendants were guilty of no act
page 10 } or acts of negligence which constituted a proximate cause of any injuries or damages to the plaintiff.

(6) That if the plaintiff was a passenger in one of the automobiles involved, the driver of said automobile was guilty of negligence which was the sole, or a, proximate

cause of the accident in question, and that the plaintiff is chargeable with such negligence.

(7) That without admitting but expressly denying that they were guilty of any negligence whatever, nevertheless, say that the plaintiff was guilty of contributory negligence which constituted a proximate cause of any injury or damages sustained by him.

(8) That the incidents complained of were the result of an unavoidable accident.

(9) That other parties for whom these defendants were not responsible, were guilty of negligence which was the sole, or a, proximate cause of the accident in question.

It is certified that the original of this grounds of defense of the defendants, Francis C. Proctor and Penn-Dixie Lines, Incorporated, was mailed to the Clerk of this Court for filing, and copies thereof were mailed to Gordon P. Williams, Esquire, counsel of record for the plaintiff and Richard L. Williams, Esquire, counsel of record for the defendant, New Dixie Lines, Incorporated, this 28th day of August, 1957.

FRANCIS C. PROCTOR and
PENN-DIXIE LINES, INCORPORATED
By ERNEST G. GARRETT, JR.,
(MAY, GARRETT, MILLER AND NEWMAN), Counsel,
1233 Mutual Building,
Richmond 19, Virginia.

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* * * * *

INTERROGATORIES.

The plaintiff calls upon the defendant, New Dixie Lines, Incorporated, to answer upon oath the following interrogatories to be used in evidence at the trial of this action:

1. At what time did you, New Dixie Lines, Incorporated, first receive a report of the collision involving your truck on U. S. Route 360, November 24, 1955?

2. Did someone on your behalf go to the scene of the accident immediately following the collision, and, if so, state the name and address of such person or persons?

3. Did you, or anyone on your behalf, interview any other

persons or persons who were at the accident scene, and, if so, state the names and addresses of all such witnesses.

CLARENCE E. SMITH
By GORDON P. WILLIAMS
WILLIAMS, WILLIAMS,
WILLIAMS & WILLIAMS
1016 Mutual Building
Richmond, Virginia.

Received and filed Feb. 5, 1958.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

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Received and filed Feb. 5, 1958.

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

INTERROGATORIES.

The plaintiff calls upon the defendants, Penn-Dixie Lines, Incorporated, and Francis C. Proctor, to answer upon oath the following interrogatories to be used in evidence at the trial of this action:

1. State whether or not at the time of the collision in which plaintiff was injured or previously thereto a lease agreement existed between Francis C. Proctor and Penn-Dixie Lines, Incorporated. If so, attach a copy of said agreement if available, if copy is not available, state the full terms including the term of said agreement, method of compensation, etc.

2. State the name of the owner or owners of the equipment being operated by Francis C. Proctor westward on U. S. Route 360, November 24, 1955, the date of the collision in which plaintiff was injured, including both tractor and trailer.

3. State whether or not the trailer hauled by defendant Francis C. Proctor was loaded or unloaded and if loaded, the weight and type of cargo being carried.

(a) State where the trip began and to where the load was being taken; also name the consignee and consignor of said load and furnish the undersigned with copies of the way bills, invoices and any other similar pertinent papers used in connection with the shipment.

(b) Also, furnish the undersigned with the driv-
page 14 } er's log list showing the travel route of Francis C. Proctor for the 48 hours immediately preceding the collision of November 24, 1955 in which plaintiff was injured, including the time and location of commencing any trips and the times and places of stopping, and the length of time spent at the stops; in connection with this, kindly produce the original or a duplicate copy of the route schedule kept by the drvier, personally, as required by the I. C. C.

CLARENCE E. SMITH
By GORDON P. WILLIAMS
WILLIAMS, WILLIAMS,
WILLIAMS & WILLIAMS
1016 Mutual Building
Richmond, Virginia.

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MOTION TO QUASH AND DENY INTERROGATORIES.

The defendants, Penn-Dixie Lines, Incorporated and Francis C. Proctor, by counsel, move the Court to quash service upon these defendants of interrogatories by the plaintiff and to deny the plaintiff's answers as requested upon the following grounds:

(1) That the interrogatories are not relevant to the issues in the case.

(2) That the interrogatories have been unnecessarily delayed.

(3) That process was served on counsel for the defendants, they being non-residents, on February 6, 1958, requiring answers on February 10, 1958, and that even if the matter

requested is relevant, it is impossible for these defendants and their counsel to marshall the information requested within the time set forth.

(4) That they are not such as the defendants would be bound to answer upon a bill of discovery as is required by Section 8-321 of the Code of Virginia and subsequent acts.

(5) That they are improper.

FRANCIS C. PROCTOR and
PENN-DIXIE LINES, INCORPORATED
By ERNEST G. GARRETT, JR.
(MAY, GARRETT, MILLER and NEWMAN)
Counsel
1233 Mutual Building,
Richmond, Va.

Received and filed Feb. 6, 1958.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

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MOTION TO QUASH INTERROGATORY SUMMONS.

Comes now the defendant, New Dixie Lines, Incorporated, and moves the Court to quash the Interrogatory Summons filed herein by reason of the following:

1. That the information requested in the Interrogatories is irrelevant and immaterial to the case.
2. That the request for the information is untimely.
3. That the said defendant has heretofore answered interrogatories propounded by the plaintiff by order of this Court which covers the information now requested.
4. That the said defendant does not have time to obtain the information requested herein before the trial date.

WHEREFORE, the said defendant moves the Court to quash the interrogatories propounded herein.

NEW DIXIE LINES, INCORPORATED
By RICHARD L. WILLIAMS
Of Counsel.

Received and filed Feb. 7, 1957.

Teste:

LUTHER LIBBY, JR., Clerk.

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This day again came the parties, by their respective attorneys, and the motion of the defendant, New Dixie Lines, Incorporated, to quash interrogatories being argued, the court doth sustain said motion, to which action of the court the plaintiff by his attorney, excepted. Thereupon the motion of the defendants, Francis C. Proctor and Penn-Dixie Lines, Incorporated, to quash the interrogatories propounded by the plaintiff to them being argued, the court doth overrule said motion, to which action of the court the defendants, Francis C. Proctor and Penn-Dixie Lines, Incorporated, by their attorney, excepted, but said defendants shall have until the 18th day of February, 1958, to answer.

Enter Feb. 7, 1958.

R. L. Y

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ANSWERS TO INTERROGATORIES.

The answers of the defendants, Penn-Dixie Lines, Incorporated and Francis C. Proctor to certain interrogatories heretofore directed to them (the said answers being keyed to the respective interrogatories):

(1) A lease agreement did exist and a copy thereof has been furnished plaintiff's counsel.

(2) The tractor operated by Mr. Proctor was owned by him and the trailer was owned by the defendant, Penn Dixie Lines, Incorporated.

(3) The trailer was loaded with canned food stuffs weighing approximately twenty eight thousand pounds.

(a) The trip began at York, Pennsylvania and the load was to be taken to Orlando, Florida. Copies of the way bill have been furnished plaintiff's counsel.

(b) The I. C. C. requires that a driver keep his log only thirty days and the franchise holder keep it for one year. These times have now expired and these defendants are unable to locate the logs, assuming they have been destroyed. Mr. Proctor stopped at Transit Truck Center, Laurel, Maryland and at Jarrell's Truck Center, Ladysmith, Virginia.

FRANCIS C. PROCTOR
PENN DIXIE LINES, INCORPORATED
By ERNEST G. GARRETT, JR.,
(MAY, GARRETT, MILLER and NEWMAN)
1233 Mutual Building,
Richmond 19, Virginia.

Received and filed Feb. 18, 1958.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

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Received and filed Apr. 15, 1958.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

BILL OF PARTICULARS.

In response to second and third defendants' call for a bill of particulars, plaintiff now comes and says as and for his bill of particulars as follows:

1. The facts of the accident relied upon by the plaintiff are as alleged in the plaintiff's motion for judgment herein and the running of defendants' vehicles at excessive rates of speed, with bright lights in the face of oncoming traffic and passing each other on or approaching the crest of a grade, causing plaintiff's driver to lose control of his vehicle in taking emergency steps in his efforts to avoid an apparently impending disaster which resulted in the collision between the car in which plaintiff was riding and the vehicle of the first defendant, from which collision plaintiff sustained the grievous and permanent internal and external injuries herein complained of.

2. The acts of negligence charged to the defendants are excessive speed under the circumstances, failure to keep a proper look out, failure to keep their vehicles under proper control, and their further negligence in failing to observe the requirements of the applicable laws made and provided among which are the following laws of the Code of Virginia of 1950 as amended: Section 46-209 sub-section 2, Section 46-208, Section 46-227, Section 46-225, Section 46-228, Section 46-229, and Section 46-279.

page 30 } 3. The nature and extent of the injuries sustained by the plaintiff are as alleged in the plaintiff's motion for judgment and more particularly described along with the *sequellae* as well as is known at present and put in lay language as follows:

(1) Numerous lacerations and abrasions about the face and scalp, severe brain concussion with profound and prolonged unconsciousness.
(2) Severe brain injury.
(3) Insertion of a nasal tube for feeding.
(4) By-lateral openings cut in the skull.

(5) Permanent impairment of the plaintiff's mental faculties.

(6) Fracture of the middle third of the right femur.

(7) Fracture, comminuted, middle third of the left femur.

(8) Segmental compound fracture of the middle and upper third of the left tibia with a six-inch wound over the medial third of the leg.

(9) Fracture of both bones of the lower right leg.

(10) Plaintiff was required to submit to a bone graft operation as a result of the injury to the lower part of his left leg.

(11) Due to the injury to the lower part of plaintiff's left leg, he has a marked deformity and impairment in his ability to walk and is required to wear a brace to support his ankle and lower leg.

4. The following is an itemized statement of the actual losses asserted by the plaintiff, but because of the continuing nature of the injuries and the permanence of them, the listed items are by no means complete:

(1) Dr. William E. Daner	$ 775.00
(2) Dr. Charles E. Troland	270.00
(3) St. Philip's Hospital	1,908.95
page 31 } (4) St. Philip's Hospital, from October 10, 1956 to October 18, 1956	136.00
(5) Dr. James Asa Shield	185.00
(6) Tucker Hospital Incorporated	25.00
(7) Thomas G. Powell, for foot brace	45.00
(8) Carter's Funeral Home, Clarksville, Virginia, for ambulance service	229.00

The foregoing total $3,501.95.

In addition to the foregoing, plaintiff has been unable to earn anything for his own support and as a consequence has become indebted to others and more particularly has relied on his father for his main support and has incurred an indebtedness to his father in an approximate sum exceeding $3,000.00.

CLARENCE E. SMITH
By GORDON P. WILLIAMS
Of Counsel.

I certify that on April 15, 1958 I delivered a true copy of the foregoing pleading to each counsel of record.

GORDON P. WILLIAMS.

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ORDER SUBSTITUTING PARTY PLAINTIFF.

This day came the parties by counsel and on motion of Gordon P. Williams, Guardian of Clarence E. Smith, that he be substituted as plaintiff, and it appearing by certificate to be filed herewith that Gordon P. Williams has qualified in the Circuit Court of the County of Charlotte, Virginia, as guardian of Clarence E. Smith and given bond accordingly, and no reason being suggested to the contrary, it is ordered that Gordon P. Williams, Guardian of Clarence E. Smith be substituted as party plaintiff for the said Clarence E. Smith in this action, pursuant to Rule of Court 3:17, and the motion for judgment is ordered amended accordingly.

Enter May 12, 1958.

J. H. R.

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INTERROGATORIES.

The plaintiff calls upon the defendant, New Dixie Lines, Incorporated, to answer upon oath the following interrogatories to be used in evidence at the trial of this action:

1. State whether or not Francis C. Proctor operating a truck on and about the business of Penn-Dixie Lines, Incorporated is one of the parties referred to in your grounds of defense paragraph 6 as being "guilty of negligence that was the, or a, proximate cause of the accident."
2. If your answer is Yes, state the facts upon which you rely for this answer.
3. State from whom this information was obtained.
4. State when said information was obtained.
5. State where said information was obtained.

6. If said information was obtained through statements of witnesses, give the names and addresses of all of said witnesses together with the names and addresses of all persons present when said statements were made.

CLARENCE E. SMITH
By GORDON P. WILLIAMS
Guardian of Clarence E. Smith.

Received and filed May 22, 1958.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

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MOTION TO QUASH INTERROGATORY SUMMONS.

The defendant, New Dixie Lines, Incorporated, by counsel, moves the Court to quash the Interrogatory Summons filed herein by reason of the following:

1. That the information requested is irrelevant and immaterial.
2. That the information requested is not such as would be required on a bill of discovery.
3. That the Interrogatory Summons was unreasonably delayed, and even if proper, does not give the defendants sufficient time to answer thereto.
4. That the information requested has already been ruled upon by the Court in connection with the same case, and that counsel for the plaintiff is now harassing this defendant.

NEW DIXIE LINES, INCORPORATED
By RICHARD L. WILLIAMS
Of Counsel.

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ORDER.

This day came the plaintiff and the defendant, New Dixie Lines, Incorporated, by counsel, and the Court having heard argument of counsel upon the interrogatories propounded by the plaintiff to the said defendant, as well as upon the said defendant's motion to quash the summons returnable on May 23, 1958.

It is Ordered that the defendant answer interrogatory number (1), which the defendant agreed to answer and avowed its answer would be "yes," and further that it answer interrogatory No. (2), as to its general theory of the negligence of the defendants Francis C. Proctor and Penn Dixie Lines Incorporated, but is not required to give the detailed facts constituting said negligence, and therefore as to said interrogatories the defendant's motion to quash is overruled, and it is further ordered that the said defendant's motion to quash interrogatories Nos. 3, 4, 5, and 6 is sustained and the said interrogatories are ordered quashed.

Enter 6/2/58.

J. H. R.

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ANSWERS TO INTERROGATORIES.

Comes now the defendant, New Dixie Lines, Incorporated, pursuant to the interrogatory summons filed herein and states as follows its answers to questions 1 and 2:

1. The parties referred to in paragraph 6 of this defendant's Grounds of Defense included the plaintiff and all occupants riding in his car as well as any other persons or persons in proximity to the accident that had any part relating thereto, and if Francis C. Proctor qualifies in this regard, he would be one of the parties referred to in said paragraph.

2. The information upon which paragraph 1 is based came in part from impressions created by statements made by Martin A. Martin, who represented the plaintiff, and Cleveland Wood immediately following the accident and from

other impressions that arose from discussing and investigating the case.

NEW DIXIE LINES, INCORPORATED
By RICHARD L. WILLIAMS

Received and filed Jun 4, 1958.

Teste:

LUTHER LIBBY, JR., Clerk.

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Virginia:

In the Law and Equity Court of the City of Richmond, the 5th day of June 1958.

This day came again the parties, by counsel, and came also the jury sworn in this case, pursuant to their adjournment on yesterday, and having fully heard the evidence of the plaintiff, upon motion of the defendants, by counsel, to strike the plaintiff's evidence, the Court doth sustain said motion, and the jury was altogether discharged from further consideration of this case.

Therefore, it is considered by the Court that the plaintiff recover nothing of the defendants, but that the defendants recover of the plaintiff their costs by them about their defense in this behalf expended.

To all of which action of the Court the plaintiff, by counsel, objected and excepted.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: Luther Libby, Jr., Clerk, Law and Equity Court of the City of Richmond.

The plaintiff, Clarence E. Smith, by his attorney, hereby gives notice of his appeal from that certain Final Order entered in the above styled case on June 5, 1958 in which judgment was rendered for both defendants.

The following are the assignments of Error:

(1) The Court erred in striking plaintiff's evidence as to each defendant.

(2) The Court erred in entering summary judgment for each defendant.

(3) The Court erred in the refusal of proper evidence offered by the plaintiff.

(4) The Court erred in admitting improper evidence offered by the defendants.

(5) The Court erred in its rulings on the interrogatories issued to each defendant.

(6) The Court erred in its refusal to admit the pleadings, interrogatories and answers thereto in plaintiff's first suit against defendant New Dixie Lines, Incorporated.

GORDON P. WILLIAMS
Guardian of Clarence E. Smith.

I certify that on July 21, 1958 I delivered a true copy of the foregoing pleading to each counsel of record.

GORDON P. WILLIAMS.

Received and filed Jul 21, 1958.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

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page 6 }

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Mr. Thomas Williams: On day before yesterday, Judge Rives did this.

"The plaintiff calls upon the defendant, New Dixie Lines, Incorporated, to answer upon oath the following interrogatories to be used in evidence at the trial of this page 7 } action:

"1. State whether or not Francis P. Proctor, operating a truck on and about the business of Penn-Dixie Lines, Incorporated is one of the parties referred to in your grounds of defense paragraph 6 as being 'guilty of negligence that was the, or a, proximate cause of the accident.' "

The Court required that answer to be made and Mr. Parker was representing Mr. Richard Williams and he said the answer is "Yes." He granted that answer.

Then question 2: "If your answer is Yes, state the facts upon which you rely for this answer."

The Court qualified that in granting the request and stated that the answer is limited to the general theory of the legal defense. Now then this is his answer, which does not meet the requirement of Judge Rives, and this is the answer which he filed yesterday afternoon:

"Comes now the defendant, New Dixie Lines, Incorporated, pursuant to the interrogatories summons filed herein and states as follows its answers to question 1 and 2:"—

The Court: Is that the Penn-Dixie or New Dixie?

Mr. Thomas Williams: New Dixie.

1. The parties referred to in paragraph 6 of this defendant's Grounds of Defense included the plaintiff and all occupants riding in his car as well as any other person page 8 } or persons in proximity to the accident that had any part relating thereto, and if Francis C. Proctor qualifies in this regard, he would be one of the parties referred to in said paragraph."

I move the Court to strike that answer out because it had already been answered before by the word "Yes." This is a qualification and an attempt to eradicate the affirmative answer of "Yes" to the interrogatory granted by the Court.

The Court: What kind of an answer did you want, Mr. Williams? What were you hoping for?

Mr. Thomas Williams: Yes or no.

W. E. Bristol.

The Court: I mean the second question.

Mr. Thomas Williams: The second question: "The information upon which paragraph 1 is based came in part from impressions created by statements made by Martin A. Martin, who represented the plaintiff, and Cleveland Wood immediately following the accident and from other impressions that arose from discussing and investigating the case.

Now that is not a theory of the defense as required him to be put in by Judge Rives, and I think it is by-passing the question and the proper answer. We would like to have the Court require him to answer in accordance with the limited requirement of Judge Rives, which was limited to the general theory of the defense and not to a statement of a page 9 } lot of hearsay things that had nothing to do with it.

The Court: The motion will be denied.

Mr. Thomas Williams: May we take an exception to the Court's direction?

The Court: Yes, sir; it is understood that an exception is noted.

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W. E. BRISTOL,

was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. You are Trooper W. E. Bristol of the Virginia State Police?

A. Yes, sir.

Q. Trooper Bristol, how long have you been engaged in that capacity?

A. A little over five and one-half years.

Q. That is in the patroling of highways and investigating accidents?

A. Yes, sir.

Q. November 24, 1955, were you engaged about your duties?

A. Yes, sir.

Q. As such were you called to the scene of a collision in-

W. E. Bristol.

volving an automobile and tractor-trailer on U. S. Route 360 some distance west of Swift Creek?

A. I was.

page 12 } Q. Will you state what vehicles you found there and occupants when you arrived?

A. When I arrived at the scene, I found two vehicles had been involved in this crash. One was a Pontiac, which was operated by Kenneth Hayes; the other was a tractor-trailer, operated by Floyd Green and owned by New Dixie Freight Lines.

Q. At the time, did you learn that it was Kenneth Hayes operating the car?

A. No, I did not, not at that time.

Q. What were the positions of the parties with regards to the vehicles?

A. Well, there were two other parties in the Pontiac that were still in the car when I arrived. Hayes was out walking around.

By The Court:

Q. Who were they? You say there were two other parties in the Hayes vehicle, in the Pontiac.

A. Would you like their names now?

By Mr. Gordon Williams:

Q. Yes.

A. One was Cleveland Wood and Clarence Smith.

Q. What were their positions in the car?

A. Cleveland Wood was jammed over towards the steeringwheel, practically underneath of the steering-

page 13 } wheel, and Smith was on the right side. All of them were in the front seat.

Q. From that position, did you draw a conclusion as to who was driving?

A. From all outward appearances, it appeared to me that Cleveland Wood was driving the automobile. I had talked to him at the hospital and I asked him who was driving and he said at that time he was. Later on, I received a call from his father who stated that Cleveland Wood was not driving the vehicle, Kenneth Hayes was.

Q. What was the condition of Cleveland Wood when he said that?

A. He was in a state of shock. He was—

Q. Did you believe that he knew what he was saying when you asked him?

W. E. Bristol.

A. Well, he appeared to answer my questions clearly, but I had reason to believe that he was driving at that time.

Q. At that time?

A. Yes, sir.

Q. And subsequently did you learn differently?

A. Yes, I did. After a telephone call from his father.

Q. Did you then make an investigation, find markings in the road, and so forth?

page 14 } A. Yes, sir.

Q. What were the markings and just where were they located?

A. I observed the skid marks in the eastbound lane that were left by the vehicle which was operated by Hayes of approximately 120 feet. They were in the eastbound lane. They went off partly on the shoulder and then back across to the westbound lane in front of the tractor-trailer. There were gouge marks in the highway at the approximate point of impact in the westbound lane.

Q. Where did the vehicles come to rest with regard to that approximate point of impact?

A. They were approximately 40 feet west of the point of impact.

Q. This shoulder, the wheels of the eastbound vehicle made the markings that you found there?

A. Yes, sir.

Q. Were the right wheels partly on the shoulder?

A. Yes, sir.

Q. What was that shoulder? Was it a solid surface or gravel or what?

A. It was solid. There was some loose gravel on top of the shoulder. It wasn't a gravel shoulder or dirt, it was a built-up shoulder, but there was some loose on

page 15 } top of it.

Q. I hand you a photograph, which I believe purports to looks eastbound. Do you recognize that?

Mr. Garrett: May I see that?

Mr. Gordon Williams: Excuse me, Gentlemen.

Mr. Garrett: We have those.

By Mr. Gordon Williams:

Q. Do you recognize what is shown in that photograph, sir?

A. Yes, I do.

Q. Would you describe what is there?

A. This photograph shows a picture of the skid marks.

W. E. Bristol.

Q. What direction are you looking at in that picture?
A. That is looking east.

Mr. Gordon Williams: I would like to ask that that be accepted as a plaintiff exhibit.
The Court: Plaintiff Exhibit 1.

(The photograph was received in evidence as Plaintiff Exhibit 1.)

By Mr. Gordon Williams:
Q. I offer you another photograph; do you recognize that?
A. That shows the scene looking west.
page 16 } Q. You can see the scene in there and the markings?
A. Yes, it shows the scene, it shows the position—it shows the point of where the car came to rest.
Mr. Gordon Williams: I would like to ask that that be accepted in evidence as Plaintiff 2, if Your Honor please.
The Court: Plaintiff No. 2.

(The photograph was received in evidence as Plaintiff Exhibit 2.)

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page 17 }

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By Mr. Gordon Williams:
Q. You recognize that scene?
A. I do. It shows the skid marks left by the Hayes vehicle at the approximate point of impact.
Q. And it was in the westbound lane?
A. Westbound lane, looking west.

The Court: Plaintiff Exhibit 3.

(The photograph was received in evidence as Plaintiff Exhibit 3.)

By Mr. Gordon Williams:
Q. Do you recognize that as the tractor involved in this?
A. Yes, sir, it is the New Dixie tractor.

Mr. Gordon Williams: I ask that that be accepted as Plaintiff Exhibit 4.

page 18 } (The photograph of the New Dixie tractor was received in evidence as Plaintiff Exhibit 4.)

By Mr. Gordon Williams:
Q. Do you recognize that as the Hayes or Pamplin vehicle?
A. Yes, sir, it is.

(The photograph of the Pontiac car was received in evidence as Plaintiff Exhibit 5.)

By Mr. Gordon Williams:
Q. Did you check the registration? Whose vehicle was the Pontiac?
A. Registered in Rosa Lee Pamplin, Route 3, Chase City.
Q. Did you learn of any witnesses to this accident?
A. No, sir, I did not.
Q. Did you learn of any other vehicles?
A. I did not, no, sir
Q. In the course of your investigation, did Pamplin say anything about what caused this accident?
A. His only statement to me, when I talked to him, was that he saw two sets of headlights and he applied his brakes. After that, he doesn't know what happened.
page 19 } Q. Did the other passenger, Cleveland Wood, make any statement or did you ask him? Do you recall anything?
A. Right offhand, I don't recall anything to that effect.
Q. Wasn't Clarence Smith unconscious at the time, the plaintiff in this case?
A. When I arrived at the scene, I don't recall if he was unconscious or not. I believe he was. I think his position was on the right side and I believe he caught most of the impact. If I remember, he was unconscious.
Q. It took some time to get him out, didn't it?
A. Yes, sir, it did.
Q. The width of that highway, what is the width of this highway?
A. I believe it is approximately 20 feet 3 inches wide.
Q. And that was one lane for each direction of traffic?
A. Yes, sir.
Q. So that each lane would have been half that?
A. Yes, sir.

W. E. Bristol.

Q. Mr. Bristol, would you point out on here these markings that you have described in your testimony. Point them out on these photographs, Plaintiff Exhibit 1. Come over here and show it to the jury, if you please, sir.

page 20 } A. This is the section of Highway 360 looking east showing the eastbound lane and skid marks left by the Pontiac operated by Hayes. On down here on the shoulder and then on across to the westbound lane.

Q. This is No. 2.

A. This shows the same section of highway looking west, westbound lane here. This part over here is the point of impact or just west of the approximate point of impact.

Q. I believe you mentioned the gouge marks in the road; are they shown in this picture No. 3?

A. It does, it shows the approximate point of impact and skid marks by the Pontiac and the gouge marks, as I mentioned before, in the westbound lane.

Q. These are the vehicles, the tractor No. 4—

A. This is the New Dixie Lines' tractor-trailer involved, showing the damaged portion to the front.

Q. And the Pontiac No. 5?

By Juror No. 4:

Q. What is this?

A. This shows the approximate point of impact in the westbound lane, the skid marks left by the automobile and these gouge marks at the approximate point of impact.

Q. This is going west?

A. This is going west and this is east. That is

page 21 } in the westbound lane.

Q. Whose tracks are these?

A. Those are left by the automobile. This is a photograph of the automobile involved.

By Juror No. 1:

Q. Two automobiles involved?

A. One automobile and one tractor-trailer. This was not taken at the scene.

By Juror No. 6:

Q. When were these photographs taken?

Mr. Gordon Williams: If Your Honor please, he asked me to answer that. Do you know, Mr. Bristol?

W. E. Bristol.

Mr. Richard Williams: They were taken by Jack Lewis, photographer, at the scene of the accident.

Mr. Thomas Williams: When?

Mr. Richard Williams: Either the day of the accident or the night of the accident or the next morning, I think it was. The next morning I believe it was. 11-25-55 is on the back.

By Mr. Gordon Williams:

Q. Mr. Bristol, were they taken that night while you were there?

page 22 } A. No, sir, none of these, not to my knowledge.

Q. How long were you there, sir? Approximately what time did you get the call and what time did you arrive and did you learn when it happened?

A. I received a call approximately 8:55 p. m. At that time, I was over on U. S. Route 60, approximately 6½ miles west of Richmond. I arrived at approximately 9:10 p. m. I couldn't state for sure how long I was at the scene, but it was quite a long time, to get the wreckage cleared up.

Q. Did you learn when the accident had happened?

A. Approximately 8:45; between 8:40 and 8:45 p. m.

Q. Do you recall approximately how long you were there?

A. No, sir, I don't. Possibly a couple hours, at least.

Q. Did you get the name of F. C. Proctor there at the scene?

A. No, sir, I did not.

Q. Were there other vehicles there?

A. There were. There were several other tractor-trailers and automobiles parked up and down the highway.

Q. Did any of them offer any name or explanation of anything?

page 23 } A. Not to my knowledge, no, sir.

Q. Did you inquire as to whether anyone else knew anything about it?

A. Yes, sir, I did, and I gained no information.

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CROSS EXAMINATION.

By Mr. Richard Williams:

Q. Trooper, I forgot how long you said those skid marks were in the eastbound lane before they cut suddenly in the westbound lane.

A. I only have a total of 120 feet of skid marks. I don't

know how far they were in the eastbound lane before they cut across to the westbound lane, but it was about 120 feet.

Q. Did they cut across abruptly?

A. They kind of swerved; it was no sharp cut. After the vehicle went off on the shoulder, it swerved back to the left.

Q. It was just a short distance from where they started swerving back on the road to where the car was hit; isn't that correct? Just a matter of a few feet after it went off the shoulder and then cut across the road in the westbound lane; that was just a few feet before it was finally hit?

page 24 } A. The exact number of feet I don't—

Q. But it wasn't much distance there?

A. No, sir.

Q. You never found any evidence at all that Mr. Green, the driver of the tractor-trailer that belonged to New Dixie, that was going west and hit this automobile, ever left his proper lane of travel?

A. No, sir, it did not.

Q. As a matter of fact, he had pulled to the right as far as he could?

A. Yes, sir.

Q. In an effort to avoid this thing, and this car shot right in front of him?

A. Yes, sir.

Q. And was hit broadside?

A. Yes, sir.

Q. You were talking about having difficulty ascertaining the name of this driver. The whole time you were there at the scene of the accident, part of your duties is to ask who is driving the car, is it not?

A. Yes, sir.

Q. So you can talk to him?

A. That is correct.

Q. Did I understand you to say that Hayes was

page 25 } walking around when you got there?

A. That is correct.

Q. And the whole time that you were led to believe there at the scene of the accident that Wood was the driver, Hayes was standing there and knew that he was driving; isn't that correct?

A. That is correct.

Q. And all he had to do was tell you that he was the driver, had he been of a mind to do so, and you would have known right from the start who was the proper driver?

A. That is right, yes, sir.

W. E. Bristol.

Q. In addition to the work that you had to do to finally determine the true driver, you also talked to the other parties in the automobile to find out what they knew about the accident; isn't that correct?

A. Yes, sir.

Q. You talked to Hayes there immediately and then when Wood and Smith recovered to a point where they could talk you made a special trip to the hospital to talk to them; isn't that right?

A. I talked to Wood now at the hospital, that same night, and, as I stated before, his condition was not such that I don't believe he could give me a clear statement. However, he apparently, to me, would answer my questions correctly.

page 26

Q. Then did you go back to see him later or was that the only time you ever talked to him?

A. I believe, if I recall correctly, that was the only time I talked to him.

Q. But at no time did Wood or Hayes or Smith, or any of the three occupants of that car, ever say to you that this New Dixie truck had its light on high beam; isn't that right? That was never suggested to you?

A. That is right.

Q. And the first time you ever heard about that is when it was mentioned here in court today; isn't that right?

A. Well, I had heard—

Mr. Thomas Williams: If Your Honor please, he is leading this witness. While he is on cross-examination, this is new matter and I think he is entirely telling him what to say. I object to it.

Mr. Richard Williams: I withdraw the questions.

By Mr. Richard Williams:

Q. From the point where this accident happened, Trooper, looking west from the point of impact to the crest of the hill, you can see up there 5- or 600 feet, can you not, or you can see a car approaching for about that distance?

page 27

A. I would say approximately that far, yes, sir, the exact distance, I don't know.

Q. Did you find anything in the way of a whiskey bottle or anything in the car that you had trouble locating the driver of?

A. There was a broken bottle on the right side behind the front seat.

W. E. Bristol.

Q. Had some of the contents in that bottle been bumped out in the car?

A. It was broken. The odor of alcohol was strong around it.

Q. You don't know how much it had in it before it was broken?

A. No, sir.

Mr. Richard Williams: No further questions. Thank you.

By Mr. Garrett:

Q. Trooper, Wood said he was driving when you interviewed him at the hospital, as I understand?

A. That is correct.

Q. And then later you found out that Hayes was driving?

A. Yes.

page 28 } Q. I think Hayes also went under the name of "Pamplin;" I heard Mr. Williams mention somebody named Pamplin.

A. Yes, that has been brought to my attention, too.

Q. So Hayes has two names?

A. Evidently. I think Pamplin is one of his relatives' names. I don't know the exact story behind it.

Q. Hayes, I believe, was admitted to the hospital as Pamplin for some reason, wasn't he?

A. I don't know.

Q. When you talked to Wood, you say you got, you thought, correct answers from him. Did he say how fast he was driving?

A. Not to my knowledge, no, sir.

Q. Did you make any note of that?

A. I have none at all.

Q. Later, you caught up with Hayes, after Wood's father called you, as I understand it?

A. Yes, sir.

Q. Did Hayes say how fast he was traveling?

A. So far as I know, he didn't. I have no record of that at all.

Q. These skid marks, Officer, as I understand it, the vehicle apparently first went off on its right, dropped off of the hard surface onto the shoulder?

page 29 } A. There is no drop, it just went off. The shoulder is even with the highway.

Q. Into the gravel part?

A. Yes, sir.

W. E. Bristol.

Q. And then came back on the road and across into the path of the New Dixie truck?

A. Yes, sir.

Q. Can you say, sir, whether the skid marks were after it came back on the highway or can you tell us about that?

A. I think the skid marks started just before it went off on the shoulder and continued down to the point of impact.

Q. In other words, it went off and came back on and then across?

A. Right.

Q. And those skid marks were a total of 120 feet?

A. Yes, sir.

Q. I know, Officer, if you will come over here, pictures are somewhat deceiving, but can you show in the photograph where the 120 feet begins? This looks like a short distance, and I am wondering if it is a deception of the photograph.

A. I don't believe it will show at the beginning on this photograph.

page 30 } Q. I am looking at photograph No. 3.

A. This one shows (Plaintiff's Exhibit 1)—

Q. Hold it just a minute. Would you lay that aside a moment. Is that the same as the other one you were looking at, but lighter?

A. Yes, it is.

Mr. Garrett: Your Honor, may we have this marked as an exhibit? I want to give you three, sir.

By Mr. Garrett:

Q. You identify these also as being duplicates of the others, but lighter?

A. Yes, sir.

Mr. Garrett: All right, sir.

The Court: I will assign one of the defendants the first half of the alphabet in the matter of identifying exhibits. I will make these A, B, and C.

(The three photographs were received in evidence as Defendant's Exhibits A, B, and C.)

By Mr. Garrett:

Q. Officer Bristol, I hand you now Defendant Exhibit C, which is duplicate of No. 5 that I was showing a

page 31 } moment ago. Does that show the skid marks more plainly?

W. E. Bristol.

A. Yes, sir, it shows them. You can see skid marks left on the shoulder here coming back up this way, and skid marks also left by the left wheels here, and how they go down on the shoulder, then back across the east and westbound lane.

Q. Do they come out of the picture down here at the bottom?

A. Yes, sir, slightly. You can see the marks slightly through here. I believe, if I may see this other picture, I think they might show up a little plainer at that one point. There has been very little difference, but they do come out.

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page 41 }

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The Court: The Court is going to admit the testimony as to the charge of careless and reckless driving, the posting of the cash bond, and its forfeiture.

• • • • •

page 42 }

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Mr. Gordon Williams: It has always been held, to my knowledge, that the proof of happenings or occurrences in a criminal proceeding have no bearing in the trial of a civil suit, and the only authority that he is relying on is *Lamb* v. *Butler,* and that is a case involving a revocation and the use of something by admission there. I think it is entirely proper.

The Court: It will be understood that exception is noted.

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By Mr. Garrett:

Q. Officer Bristol, after you determined that Hayes was the true driver, what did you then do?

A. I secured a warrant for him charging him
page 43 } with reckless driving.

Q. Did you visit Hayes?

A. I did at the hospital.

W. E. Bristol.

Q. Did you then present him with the warrant?
A. Yes, sir.
Q. Did he realize the significance of it?
A. Yes, sir.
Q. What was the disposition of that warrant?
A. After I had served the warrant, he was taken before a magistrate to post bond, and on trial date it was disposed of in Chesterfield County Court.
Q. Did he appear when the charge was made?
A. He did not appear.
Q. He forfeited his bond?
A. That is correct.
Q. And the Court convicted him?
A. Yes, sir.

Mr. Gordon Williams: I object to that, if Your Honor please, that is entirely improper.
Mr. Garrett: It is a matter of record.

By the Court:
Q. You were there, were you?
A. Yes, sir.

The Court: Objection is overruled.
page 44 } Mr. Gordon Williams: We take an exception.

By Mr. Garrett:
Q. Officer Bristol, you were kind enough to meet with me out at the scene, I believe, in February just before this case was continued and Mr. Charles Fleet, an engineer, was there with us?
A. Yes, sir.
Q. You were present when he made the calculations on these charts I believe, were you not?
A. Yes, sir.
Q. Has the road changed any since the time of the accident?
A. Yes, sir. That is now a dual four-lane highway.
Q. And the part that this accident happened on, is that still in use?
A. It is.
Q. And for what purpose?
A. That is for westbound traffic.
Q. Other than the fact that it is now altogether west-

bound instead of being two-way, has there been any change in the grade or anything of that nature?

A. No, sir. That road remained the same.

Q. They just created another road across the grassplot to use for eastbound?

page 45 } A. Yes, sir.

Q. At the time of the accident, were there any traffic markings on the highway itself, lines and so forth?

A. Yes, there were.

Q. Could you tell us, sir, what type of line was there?

A. I believe there was a broken line. The exact distance, I do not recall.

Q. Has that been changed since then, if you recall?

A. That remained the same.

Q. Still remains the same?

A. Yes, sir.

Q. And was the same when Mr. Fleet made these charts or the measurements for the charts?

A. Yes, sir.

Q. I believe you said that you observed a broken whiskey bottle in the car?

A. That is correct.

Mr. Garrett: I want to introduce this photograph, Mr. Williams.

Mr. Gordon Williams: If Your Honor please, I think we would probably have to have a conference out of the hearing of the jury. I object to this. It is not proof.

The Court: Let me see it.

page 46 } Mr. Gordon Williams: There is no showing as to when the officer saw that or where the vehicle was located when he did see it, if he recalls.

Mr. Garrett: We do not have to identify that.

Mr. Gordon Williams: If he recalls the exact time I think that should be shown first.

The Court: Yes, I think you should lay that foundation.

Mr. Garrett: Yes, sir. I had not gotten to that yet.

By Mr. Garrett:

Q. Officer Bristol, I hand you a photograph, on the back of which is the note "Jack Lewis Studios 11-25-55." That would be the day after this accident. Can you identify that object in there?

W. E. Bristol.

By the Court:
Q. Were you there when it was taken?
A. When this photograph was taken?
A. No, sir.

By Mr. Garrett:
Q. Does that photograph fairly represent what you observed in the car the night of the accident?
A. This has been brought to question and to the
page 47 } best of my own knowledge that was in there the night—

The Court: He is just testifying as to what he saw. We would not need the photograph. He was not there when it was taken.
Mr. Garrett: Your Honor, I think that we should have a complete set of photographs and we only have a part of them in.
The Court: I am going to sustain the objection to it.
Mr. Garrett: All right, sir. I will have this introduced by the photographer.

By Mr. Garrett:
Q. Where was the bottle that you saw located in the car, Mr. Bristol?
A. It was in the floorboards behind the front seat on the right side.

Mr. Gordon Williams: If Your Honor please, I think he should be asked where he saw it.

By the Court:
Q. How long after you got there was it that you saw it?
A. The exact time, I don't know, I don't recall, sir.
Q. Could you approximate it?
page 48 } A. No, sir.
Q. How long were you there all told?
A. Well, as I stated before, it must have been at least two hours, approximately two hours at the scene.
Q. Sometime within a two-hour period?
A. Yes, sir.

W. E. Bristol.

By Mr. Garrett:

Q. As I understand it, Officer, during the course of your investigation you observed the whiskey bottle in the car?

A. I did.

Q. Did you smell alcohol at the scene?

A. Yes, sir, in the car.

Q. In the car?

A. Yes.

Q. Did you observe alcohol on any of the occupants of that car?

A. I couldn't pinpoint anyone having consumed alcohol, as to who had been drinking, if any.

Q. You couldn't tell which one?

A. No, sir.

Mr. Thomas Williams: If any, he said.

By Mr. Garrett:

Q. You talked to Hayes at the scene; did you ask him who was driving?

page 49 } A. I did.

Q. And you got no reply that he was driving?

A. No statement as to who was driving.

Mr. Garrett: I believe that is all, Mr. Bristol.

RE-DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. Mr. Bristol, when Hayes was walking around there at the time when you first arrived, was he injured? Did you observe his injuries?

A. As I recall, I think he had some slight lacerations.

Q. Where were they located?

A. I believe it was about the face and head.

Q. When you saw him later at the hospital, did he readily admit that he had been driving the car when you served the warrant on him?

A. Yes, sir.

Mr. Garrett: Just a minute. Your Honor, I do not understand that the witness testified that he went immediately to the hospital and then served a warrant on Hayes. I understood—

W. E. Bristol.

Mr. Gordon Williams: I did not ask him if he
page 50 } did.
Mr. Garrett: I understood that Woods' father called him sometime later.
The Court: You can clear that up on cross examination.
Mr. Gordon Williams: Your Honor, the officer testified that he had served him later.
The Court: If there is any doubt about it, it can be cleared up on further cross examination.
Mr. Gordon Williams: That is all we have. Thank you.

RE-CROSS EXAMINATION.

By Mr. Richard Williams:
Q. It was about a week later when you finally got around to serving a warrant on Hayes?
A. That is correct. I didn't serve the warrant on him the night of the accident, it was later.
Q. And that wasn't until Woods' father finally got into the act and said, "Well, my boy wasn't driving, it must have been Hayes"; isn't that correct?
A. That is correct. He called me several times at my home.
Q. And after you got assistance from down in the country
from Woods' father then you went back to Hayes
page 51 } and said, "How about it?" and then—
A. Yes, sir.
Q. And then you had the dead wood on him and he said he was driving.

Mr. Thomas Williams: I object to his comments, if Your Honor please.
The Court: Objection is sustained.
Mr. Richard Williams: No further questions. Thank you.

RE-DIRECT EXAMINATION.

By Mr. Gordon Williams:
Q. There was no compulsion on Pamplin, no court order, that brought him to Richmond so that you could serve the warrant, was it?
A. No, sir. He had to report to the Medical College, I think, for examination.

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MARVIN KENNETH PAMPLIN,
was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. You were in here when the clerk swore the other witnesses, were you not?

A. Yes, sir.

page 53 } Q. You are Marvin Kenneth Pamplin?

A. Yes, sir.

Q. Kenneth, there seems to have been some confusion. Would you explain about your name Pamplin and how that came about?

A. Well, when I first sent for Social Security my sister sent it in Hayes.

Q. How did you have that name?

A. My father was a Hayes and my mother was a Pamplin. They were never married.

Q. You have since adopted the name Pamplin; is that correct?

A. Yes, sir.

Q. You live with your mother?

A. Yes, sir.

Q. And you have brothers and sisters?

A. Yes, sir.

Q. Were you living there in November 1955?

A. I was living there.

Q. Where is that home? Would you speak up loud enough so that they can hear you? Where is your mother's home?

A. Chase City, Virginia, out on Highway 47 between Chase City and South Hill.

Q. Are you living there now?

page 54 } A. I am living in Jersey now, 171 Perrow Street, Orange, New Jersey.

Q. Speak up loud enough and distinctly so that they can hear you. Were you employed or are you employed now in New Jersey?

A. Yes, I am.

Marvin Kenneth Pamplin.

Q. What is your employment there now?
A. I work for Red Coble, do mechanic work.
Q. C-o-b-l-e, isn't it?
A. Yes, sir.
Q. And were you employed at the time this collision occurred in 1955?
A. Yes, I was working for Allen Coleman running a tree saw.
Q. This gentleman is trying to record what you are saying and these folks want to hear, so speak louder so that they can hear you. You were operating a tree saw then?
A. Yes, sir.
Q. Were you operating the car coming to Richmond from Chase City on Thanksgiving Day 1955?
A. Yes, I was.
Q. State who was in your car with you and the positions that they were seated in the car.

page 55 } A Cleveland Wood was sitting in the middle, Clarence Smith was setting on the right-hand side, and I was driving.

Q. Where had you come from and where were you going?
A. I came from home, over town, and I picked up Cleveland. We decided we would go up to Clarence's house. We went up to Clarence's, which is at Red Oaks, and picked him up and went down to Wood's house and he told him he was on his way back to Richmond to go to work. He was working for Estes. He left there and come on back to Chase City and on up to Richmond.
Q. What time did you leave down there?
A. We left Chase City, we came through it, about anywhere from ten to six, maybe five or six minutes after six.
Q. What was your purpose in coming besides Cleveland coming to work here in Richmond?
A. Well, the weekend before then I had met a girl when she was down in Chase City that was going down here in Richmond. Her name was Gladys. And I was coming down to see her that night.
Q. And she had been visiting there in Red Oaks?
A. Yes, she was spending the night with Mary.
Q. Mary who?
A. Smith.

page 56 } Q. Who is Mary Smith?
A. She is Clarence's sister.
Q. How fast were you driving before this collision occurred?

Marvin Kenneth Pamplin.

A. I was driving about 50.

Q. State what occurred or what you observed just prior to or at the time of this collision or what happened.

A. Well, as I approached the hill, I guess I was running about 50 miles an hour. I saw the lights of a trailer. He dimmed his lights and I dimmed mine. Then directly after I saw him, his lights, I saw another set of headlights. He flicked his back on bright and then both sets were bright. They were pretty close to me so I jammed in on my brakes and pulled over to my right and my car, I don't know what happened from then on. I know the next I knew I was in the hospital.

Q. Were you injured?

A. Yes, I was.

Q. What and where were your injuries?

A. I had 7 stitches I think in my eye, some here in my hand, and some in my face up here.

Q. Do you remember talking to anyone at the scene?

A. No, sir.

Q. Following the crash?

A. No, I do not.

Q. Did Clarence Smith, the plaintiff here, have
page 57 } anything to do with the driving of the car?

A. No, he did not.

Q. Was there any exchange of money or offer of anything or understanding or agreement or payment of anything to come up here?

A. No.

Q. When you saw the first set of lights, could you tell what type or sort of vehicle it was?

A. I could only tell it was a trailer truck by the top lights around on the body.

Q. When you saw the second lights, could you tell what that was?

A. No, I couldn't. I couldn't tell whether it was a truck or a car . I didn't know what it was.

Q. Why?

A. It was too light, both sets of lights was too bright.

Q. Would you say that last loud enough that everyone could hear you?

A. I couldn't tell what the first—what the last set of lights were because they were too bright and they were on my side of the road. I couldn't tell whether it was a car or truck.

Q. How far were they away from you?

Marvin Kenneth Pamplin.

A. They were only a short ways off in front.
page 58 } They were on my side of the road.

Q. Did you know then or do you know now who was the operator of the truck of that other set of lights on your side of the road?

A. No, I do not and I don't know now. I only know it was a tractor or trailer.

Q. Did you know that of your own knowledge then?

A. No.

Q. You have since learned that from me?

A. Yes.

Q. Were you able to tell when the second set of lights appeared, bright lights on your side of the road, the condition of the lights of the other vehicle?

A. No, I wasn't, no more than when he first dimmed them he threw them back on bright when the second set started around.

Q. Could you tell how fast these vehicle were running?

A. I will say the one was pulling around, the second set of lights pulling around, was over 50.

Q. Had you done any drinking?

A. No, I had not.

Q. How old were you at the time of this collision?

A. I was nineteen.

Q. What is your age now?
page 59 } A. Twenty-one.

Q. Was there any bottle in your car that you knew of?

A. I do not know.

Mr. Garrett: I suggest that Mr. Williams not lead his witness, Your Honor.

By Mr. Gordon Williams:

Q. Were you the only one that used your car or did others use your car?

A. Well, all of us used it.

Q. Who are the "all of us" that you referring to?

A. My brother, three sisters.

Q. What is your brother's name?

A. Henry Pamplin and James Pamplin.

Q. There are two of them?

A. Two of them.

Q. What are their ages?

A. Henry is twenty-seven and James twenty-five.

Marvin Kenneth Pamplin.

Q. Is that now or then?
A. Now.
Q. And you are now what age?
A. Twenty-one.
Q. Had anyone in the car had anything to drink?
A. No, they had not had anything to drink.
page 60 } Q. Did you or did any of them to your knowledge do any drinking at that time or around that time?
A. No, they didn't.
Q. How well were you acquainted with Cleveland Wood and Clarence Smith prior to this collision?
A. Well, Cleveland and I have been knowing one another practically all of our lives and I have been knowing Clarence a couple of years.
Q. What was Clarence's condition as a person prior to the collision? Do you recall?
A. Clarence was a very nice fellow, he always was quiet and everything, he was very attractive, he was all right.
Q. Was he different from others in any way?
A. No, he wasn't.
Q. Have you had an opportunity to observe him since this collision?
A. Yes, I have once.
Q. When was that?
A. When I was down here before.
Q. What did you observe that he was different in any way then?
A. Yes, he is now, he is a lot different.
Q. Speak louder and tell us what difference you observed.
A. Well, you can be talking to Clarence and
page 61 } Clarence he will talk back to you and then he will turn off and talk about something else that is not even mentioned. He doesn't remember anything.
Q. When is your first recollection of a conversation with the police officer, Trooper Bristol?
A. Why, I came back down to the hospital with Cleveland.
Q. When was that? Approximately, if you don't recall exactly.
A. I think it was a week later. I think Cleveland was coming back to remove the stitches, the bandages, off of his head.
Q. You saw the trooper then?
A. Yes, sir.

Marvin Kenneth Pamplin.

Q. And that was your first recollection of the conversation with him?

A. Yes, sir.

Q. What did he ask you then and what did you tell him?

A. He asked me then was I driving the car or Cleveland driving, and I told him I was driving.

Q. What did he do?

A. He went out on the highway out there on the other side of Richmond some place to a service station and he asked the man how much it was and he told him

page 62 } $40—$41. I think I had—

Q. What happened then? Speak loud enough so they can all hear you.

A. And they took me over to Chesterfield jail there and I stayed there all night and I told my mother to bring me some money down and they brought me some money—

Q. How did you tell your mother from jail?

A. The man that brought Cleveland down to remove the stiches from his head, I sent word back by him to tell her to bring it down.

Q. And she sent the money up there?

A. Saturday morning, yes, sir.

Q. What did they tell you, you would have to come back or anything?

A. No, they didn't.

Q. Did you know anything about coming back to court at a later date or anything like that?

A. No, I didn't.

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CROSS EXAMINATION.

By Mr. Richard Williams:

Q. You can read and write, can't you, Kenneth?

A. Some.

Q. How far did you go in school?

A. Seventh grade.

Q. They teach you to read and write by the time you get to the seventh grade, don't they?

A. Yes, and no.

Marvin Kenneth Pamplin.

Q. This warrant that charges you with driving an automobile in a reckless manner on a public highway and causing an accident says that the said Marvin Kenneth Hayes; now you all—

page 64 }

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Mr. Richard Williams: Your Honor, I am going to tender this in evidence. It is an abstract of the judgment warrant convicting him in Chesterfield and I tender it in
page 65 } evidence as an exhibit on behalf of the defendant New Dixie Lines. The language that I propose to incorporate in my question appears on this document, so the record will be complete.

Mr. Gordon Williams: We object to the use of that in offering it in evidence.

The Court : And not offering it as a part of any witness' testimony.

Mr. Richard Williams: It is self-proving, Your Honor. It is a certified copy from the clerk under seal of the records of Chesterfield.

The Court: Let me have it.

Mr. Richard Williams: It is self-proving under the Code, I believe, as an official record.

Mr. Gordon Williams: If Your Honor please, this witness was not present at the time this record was made. The only thing he did in connection with that was post a bond. I think it is improper to have that received in evidence for any purpose.

The Court: You object to it being admitted in evidence?

Mr. Gordon Williams: Yes, Your Honor.

The Court: What are the grounds of the ob-
page 66 } jection?

Mr. Gordon Williams: That it is strictly hearsay and has no bearing; it is immaterial and irrelevant and has no bearing.

The Court: You say it is hearsay?

Mr. Gordon Williams: It is hearsay on there. So far as this witness is concerned, whatever transpired is nothing to his knowledge and it is also immaterial and irrelevant to the issues of this case.

The Court: It is cumulative of the officer's testimony, perhaps. I am going to admit it for what it is worth. This

will be Defendant's Exhibit M. I will divide the alphabet and give you the lower half and Mr. Garrett the upper half.

(The certified copy of the judgment warrant was received in evidence as Defendant Exhibit M.)

Mr. Thomas Williams: May we have an exception?
The Court: Yes, it is understood that exception is noted.

By Mr. Richard Williams:
Q. I hand you a document that has been marked page 67 } Defendant's Exhibit M and ask you if that looks like the charge that was served on you by the officer when he found you in the hospital and took you out to the jail and before a justice of the peace? Does that appear to be the same thing?

By the Court:
Q. Or did you see it at that time?
A. I did not.
Q. Did you read any papers at that time?
A. No, I did not.

Mr. Thomas Williams: A little bit louder.
The Court: I understood him to answer in the negative.

By Mr. Richard Williams:
Q. A copy of a paper was given to you and a receipt was given to you for the money that you paid to the justice of the peace?
A. A copy? The only thing that was given to me was a receipt that showed that I paid there when they let me out.
Q. And that warrant that was served on you by the trooper, you do not remember anything about that at all?
A. No, I do not remember getting anything.
Q. And you just paid your money out, or your mother paid the money out, and you just took the receipt and went on your way?
page 68 } A. I went on. He gave me back everything that I had in my pocket.
Q. Didn't you know that the officer was charging you with reckless driving and not having an operator's permit?

Marvin Kenneth Pamplin.

A. I knew he was charging me with no permit.

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By Mr. Richard Williams:

Q. Kenneth, I understood you to say that when you came over the hill going east on Route 360 you saw one truck down the hill from you in the opposite lane; is that correct at first?

A. Yes, he was—at first, it was one set of headlights and he was on his side, the lights. He dimmed his lights and I dimmed mine.

Q. And he was on his proper side of the road?

A. Yes, sir.

Q. And when you saw him at that time his lights were on high beam; is that correct?

A. Yes.

Q. And your lights were on high beam?

A. That is correct.

Q. And you dimmed your lights and he dimmed his lights?

A. Yes.

* * * * *

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Q. There was nothing about the lights of this vehicle that you saw at that time other than the fact that they were on high first and were dimmed that was out of the ordinary; is that correct?

A. That is correct.

Q. And then as you came on closer to that car or to that tractor-trailer, and I believe you said that you knew that one was a tractor-trailer because of the running lights on it?

A. Yes, sir.

Q. Then as you got closer to it, you then saw for the first time a second set of lights; is that correct?

A. Yes.

Q. And then you applied your brakes; is that correct?

Marvin Kenneth Pamplin.

A. Yes.
Q. Running at a speed of 50 miles per hour?
A. Yes.
Q. And your car went off the road on the right?
A. Yes, I pulled it to the right.
Q. You cut it to the right. Were your brakes operating normally?
A. Yes, the brakes were good.
page 71 } Q. When you applied your brakes, they did not cause your car to go to the right?
A. I pulled it to the right.
Q. You cut it to the right?
A. Yes, I thought the trucks were close—
Q. When you first came over the hill—

Mr. Thomas Williams: He didn't finish his answer. "The trucks were close" and you didn't let him finish.
Mr. Richard Williams: Let him finish it.

A. When I hit the brakes, the trucks were close and the second set of lights had started to pass the first set of lights and were up side by side, and I hit the brakes and pulled off to the right.

By Mr. Richard Williams:
Q. What distance were they away at that time?
A. It was a short distance in front.
Q. Would you say 40 feet or 50 feet? Reduce it to feet so we will have some idea of what you mean by a short distance.
A. Well, yes, I would say maybe 50, 40 or 50, feet.
Q. That the first truck was away from you when you saw the second set of headlights; is that correct?
A. Yes.
Q. Let's go back up the road to the time that
page 72 } you first came over the hill. When you first came over the hill and saw only the one truck, how far was that down the road from you, 5- or 600 feet?
A. No, I wouldn't say it was that far.
Q. From the time that you come over the hill, you can see, looking to the east, all of the way down to Swift Creek Bridge, can you not?
A. It may be, I just don't know how far you can see.
Q. It is a straight stretch of road other than being slightly downgrade that you were going?

Marvin Kenneth Pamplin.

Mr. Gordon Williams: Your Honor please, he has asked the question and gotten an answer. I do not think it would be right to argue with the witness.

Mr. Richard Williams: Read the question back. I don't know whether I am or not.

(The following was read:)

"Q. From the time that you come over the hill you can see looking to the east all of the way down to Swift Creek Bridge, can you not?

"A. It may be, I just don't know how far you can see.

"Q. It is a straight stretch of road other than
page 73 } being slightly downgrade that you were going?"

Mr. Richard Williams: Your Honor, I do not think that is argument.

The Court: Objection is overruled.

By Mr. Richard Williams:

Q. As you came over the road going slightly downgrade, the road is perfectly straight and you can see all of the way over the bridge over Swift Creek?

A. Yes, you can.

Q. And as you came over the hill, there was nothing to prevent you from seeing headlights of approaching vehicles for at least as far down as the creek itself?

A. Beg your pardon, you mean two sets of lights?

Q. No, seeing any set of lights. As you came over the hill and looking down toward the bridge, there were no curves or dips in the road to obstruct your view?

A. Yes.

Q. All the way down to the bridge?

A. Yes.

Q. And at that time you did see the headlights on this one truck which were on bright but were later dimmed?

A. Yes.

Q. And at that point could you estimate how many feet away that truck was from you when you first saw it?

A. I say maybe 300 feet.

page 74 } Q. And you had dimmed your lights, but at that time had not applied your brakes or anything?

A. No, I didn't because the other truck was not up beside of it until this time practically I dimmed my lights it started by.

Marvin Kenneth Pamplin.

Q. You do not recall talking to the police officer there at the scene of the accident; is that correct?

A. No, I do not.

Q. How do you recall this speed that you said the passing truck was going at 50 miles an hour, I believe that you said that the second truck was going.

Mr. Thomas Williams: He said more than 50 miles an hour.

By Mr. Richard Williams:

Q. (Contining) More than 50 miles an hour. Is it easier to remember that than it is talking to the police officer?

A. If you are meeting a truck and another truck passing, you are running about 50 and a car is passing, it would have to be coming pretty fast for it to get by this other truck.

Q. But you don't know, that is the speed you are guessing at?

A. No, I do not know it was his speed, but I will say he was practically running 50 or more.

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By Mr. Richard Williams:

Q. When the officer saw you one week later, do you recall talking to him then? Is that correct?

A .Yes, sir.

Q. And at that time when you gave him your name you gave it as Marvin Kenneth Hayes?

A. They already had my name, they looked in my billfold and got it off of the Social Security card that I had that the name was Marvin Kenneth Hayes.

Q. And that warrant that was just introduced page 76 } in evidence showed your name as Marvin Kenneth Hayes, which was the name you had given to the officer?

Mr. Thomas Williams: He didn't give him the name, he said he got it off of the Social Security card. He didn't say he gave it to the officer.

By Mr. Richard Williams:

Q. Did the officer ever ask you what your name was?

Marvin Kenneth Pamplin.

A. No, I don't think he did. I never remember telling him if he did.

Q. How did you happen to strike up the conversation where you showed him your Social Security card? There must have been some talk.

Mr. Gordon Williams: I object to that. He didn't say he struck up a conversation, he said he got it out of the billfold.

The Court: Objection overruled.

By Mr. Richard Williams:

Q. (Continuing) Where did he get it?

A. When I went to the hospital he took it out of my pocket and when I left they gave it back to me and it had my name in it.

Q. One week later when you came back to town you saw the officer a second time; is that correct?

A. Yes, I saw the officer when I came back to
page 77 } town.

Q. And at that time did he ask you what your name was?

A. I don't think the officer did but the man where we went out at the store, he asked me what was my name.

Q. And did you tell him that your name was Marvin Kenneth Hayes?

A. I told him my name was Marvin Kenneth Pamplin.

Q. Marvin Kenneth Pamplin?

A. That's correct.

Q. And if that warrant shows that your name is Marvin Kenneth Hayes, he made it out incorrectly; is that right?

A. Beg your pardon?

Q. I say, if that warrant lists your name as being Marvin Kenneth Hayes, the justice of the peace or whoever you gave your name to made a mistake in filling it out?

A. That is right. He should have had Pamplin.

Q. Yes, because you had in fact registered at the hospital as Kenneth Pamplin; isn't that right?

A. I do not know because when I knew anything they were putting stitches in my hand and filled my face with stitches and was putting them in my hand.

Q. But you don't recall giving your name to the hospital as Kenneth Pamplin?

A. No, I do not.

page 78 } Q. After you went off the road on the right, did you cut your wheels back to the left in order to get across the road where you were finally hit?

Marvin Kenneth Pamplin.

A. I don't know what happened after we went out to the right. The lights was so bright you couldn't see.
Q. You have no recollection after that time?
A. No.

* * * * *

By Mr. Garrett:
Q. Which of the trucks do you say had the bright lights on just before you collided?
A. Before we hit?
Q. Yes.
A. Well, both had bright lights on before we hit.
Q. The front vehicle you say had bright lights on too?
A. He threw them back on bright.
Q. That was in your face then. Is that correct?
A. Yes, it was in my face. That was the first one.
Q. If that was bright, how could you see the second lights?
A. You could see because it was on your side of the road.
Q. Didn't you say that you didn't know whether
page 79 } it was a car or a truck that was passing?
A. Yes, sir.
Q. Do you contend that this passing truck was up alongside of the first truck at the time of the collision?
A. Yes, it was. I don't know where it was after the lights were so bright, I couldn't see.
Q. How far was the second truck from you when you maintain it pulled out?
A. It was just a little ways in front when I pulled out to the right, it was just a short ways in the front.
Q. Would you say 50 or 100 feet or what?
A. No, it would be less than 30 feet of me, maybe not that far.
Q. Thirty feet?
A. Yes, sir.
Q. Which truck hit you, the one being passed or the one doing the passing?
A. I do not know.
Q. You do not know?
A. No, sir.
Q. Did you observe a truck pulled in behind the truck which collided with your car after the accident happened? In other words, after you got out, did you get out and see that there

Marvin Kenneth Pamplin.

were two tractor-trailers there, one pulled out be-
page 80 } hind the other?

A. No, I don't remember anything after the accident.

Q. Do you deny that you talked with the trooper at the scene?

A. I am not denying it, but I don't remember it if I did.

Q. Did you give the trooper the name Hayes? Is that where he got that?

A. I don't remember telling the trooper anything.

Q. Did you later tell the trooper your name was Hayes?

A. No, sir, I don't think so. I don't remember telling him that later.

Q. Where do you say that he got that name? You made some explanation for that a while ago. Where do you say that he got that name?

A. What, Pamplin or Hayes?

Q. Hayes.

A. He got it out of my pocketbook over at the hospital.

Q. And the hospital has you as Hayes?

A. That's right.

Q. Isn't it true that you were admitted to the hospital as Pamplin?

A. I don't know, but they taken my pocketbook
page 81 } and everything at the hospital and got my name
out of it.

Q. You explained the whiskey bottle in your car by saying that there are others that use the car; is that your explanation of that?

A. Yes; my brothers could have left it in there, some of them uses the car, and my sisters used it, too.

Q. And you did not drink any whiskey the day of this accident?

A. No, I have never drank no whiskey.

Q. Do you know whether the whiskey may have belonged to Smith or to Wood?

A. They did not get in with any whiskey.

* * * * *

By Mr. Garrett:

Q. They may not have purchased it that day, but do you know whether they had it in their possession when they got in your car?

Edward Kidd.

A. They did not have it where it could be seen, which I don't think either one of them had.

page 82 } Q. After the accident then, didn't one of the occupants of the car end up in the back seat?

A. I do not know.

Q. You were nineteen at the time of the accident; how long had you been driving?

A. Over a year.

* * * * *

page 89 } EDWARD KIDD,

was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. You are Mr. Edward Kidd, deputy clerk of the Law & Equity Court?

A. That is right.

Q. Mr. Kidd, do you have there with you a file of the suit instituted in behalf of Clarence E. Smith against New Dixie Lines, Incorporated?

A. That is correct.

Q. Do you find in that file an Answer filed by the defendant, grounds of defense filed by the defendant, New Dixie Lines, Incorporated? Do you have that?

A. Filed in November 14, 1956.

Q. Would you read what that answer says—was that grounds of defense sworn to?

A. No, sir.

Q. It was not?

Mr. Garrett: May we see that, Your Honor?

The Court: Certainly.

By Mr. Gordon Williams:

Q. Would you read the clause 5 of the answer?

Mr. Garrett: If Your Honor please, I do not know the purpose of this, but it certainly raises a question

page 90 } that I think His Honor should pass on. I dislike to keep asking the jury to leave, but I do not want, and I know none of us want, to say anything—

Edward Kidd.

The Court: I do too. We have got to make some progress with the case sometime or another. Let me see the document, Mr. Sheriff. Will you gentlemen of the jury step out in the corridor, if you please?

(The jury retired from the courtroom.)

The Court. Paragraph 5 was the one in question?

Mr. Garrett: Yes, sir. That, Your Honor, sets forth an allegation by New Dixie. Bear in mind we are not a party to this suit. That is by New Dixie that some other parties, for whom it is not responsible, were guilty of negligence in the operation of their vehicle that was the sole proximate cause of the accident in question. Now the only conceivable way that could be—

The Court: You represent the Penn-Dixie interest, I believe?

Mr. Garrett: Yes, sir. Is that an admission or an assertion that Penn Dixie or its driver Proctor were page 91 } guilty of negligence? Just in the last advance sheet there is a case, I believe from this court, which held that the admission of one party is not admissible against another party. I cannot think of the name of it, but I am sure I could lay my hands on it in a moment. But that is the only reason that the matter could be admissible, Judge, is to have New Dixie saying that Penn-Dixie is guilty of negligence. Otherwise, it has no point in the case at all, and if it has any other purpose it must be self-serving.

Mr. Thomas Wililams: The grounds of defense say that other parties were involved, not under their control. We then filed interrogatories for them to answer and set out in that clause who those other parties were, and the answer to that was sworn to by Mr. Brothers, the president.

The Court: President of the New Dixie?

Mr. Thomas Williams: Of the New Dixie, yes. He was the one who was sick and could not be here. That is why we are using this.

"Comes now the defendant, New Dixie Lines, page 92 } Incorporated, by counsel, and for its Answers to the interrogatories propounded herein states as follows:

"1. F. C. Proctor, Lake Lure, North Carolina—" That is the first time that his name appears in the case in any way or anybody knew anything about him.

Edward Kidd.

The Court: Proctor was the operator of which truck?

Mr. Thomas Williams: The Penn-Dixie truck.

Mr. Garrett: That is right.

Mr. Thomas Williams: He is the one that appears for the first time under the interrogatories that we got from him and we are using Mr. Kidd to prove that link in the chain of circumstances in the absence of Mr. Brothers who filed the affidavit here under oath. That is why we say it is absolutely pertinent in this case to trace the link of events.

Mr. Gordon Williams: It is not offered for the purpose of proof of anything other than to show how the plaintiff, through this chain of events, obtained the defendant's name.

page 93 His name was left with the other defendant at the scene, so they say, but the officer did not have it and this is the way that we had to get it and it was filed in an answer under oath by the defendant. Then they did not name the other defendant, they just gave one, and we had to then go investigate further to get the name of the Penn Dixie man. I think it is proper.

The Court: Objection is sustained.

Mr. Gordon Williams: We take an exception.

The Court: Is there anything else that you want to prove by Mr. Kidd?

Mr. Thomas Williams: Yes, if Your Honor please.

The Court: If there is anything in the nature of testimony that is objected to we might take that up at this time.

Mr. Thomas Williams: That is what I want to call for.

Q. Mr. Kidd, is there in the file of that case answers to the interrogatories propounded to New Dixie Lines, Incorporated?

A. Yes, filed here May 17, 1957.

page 94 Q. Would you state the answer that appears in that interrogatory to "State the identity of the parties referred to in paragraph 5 of defendant's answer including the names of the owners and the operators of the vehicles involved."

Mr. Garrett: If Your Honor please, I—

The Court: Same objection?

Mr. Garrett: Yes, sir.

The Court: We are merely putting it in the record. The objection is sustained.

Cleveland Wood.

By Mr. Thomas Williams:

Q. (Continuing) State what that answer reads in answer to the interrogatory.

A. Answer to interrogatory 1: "F. C. Proctor, Lake Lure, North Carolina; Cleveland Wood, 19 East 11th Street, Richmond, Virginia; Clarence Smith, Red Oaks, Virginia; Marvin Hayes, Route #3, Box 13, Chase City, Virginia."

Mr. Thomas Williams: We wish to have that evidence in the record, if Your Honor please.

The Court: Objection is sustained

Mr Thomas Williams: May we take an exception to the refusal of the Court to present that for the chain page 95 } of circumstances

* * * * *

CLEVELAND WOOD,
was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. You are Cleveland Wood?

A. That is right.

Q. Where do you live, Cleveland?

A. My home is in Chase City, Virginia. I am now working in Richmond, Virginia. I board now at 16 Overbrook Road.

Q. In November 1955 were you working in Rich- page 96 } mond then?

A. Yes, sir, I was.

Q. And your home was then in Chase City also?

A. That's right.

Q. Were you riding in an automobile with Clarence Smith and Kenneth Pamplin on November 24, Thanksgiving Day, 1955?

A. Yes, sir, I was.

Q. Where were you coming from and where were you going to?

A. I was coming from Chase City, Virginia, and I was coming back to Richmond to go back to work Friday.

Q. Where were you seated in the car?

A. I was setting in the middle in front.

Q. Who was driving the car?

A. Kenneth Pamplin.

Cleveland Wood.

Q. What time did you leave Chase City?
A. It was around six o'clock.
Q. State just what occurred or what you observed. First of all, was there anything out of the way about the way your driver was operating the car?
A. No, there wasn't.
Q. Could you tell how fast he was driving?
A. Approximately 55, around 55.

Q. At the time of the collision, what did you see
page 97 } or observe before the collision?

A. Well, the first was the oncoming lights of the vehicle. I couldn't tell what because I couldn't see the lights. Then when the lights came over the rise, I saw that there was a truck and the driver of the vehicle I was in dimmed his lights and the driver of the first vehicle dimmed his lights. And almost instantly there appeared a second set of headlights which was in our lane of travel.

* * * * *

Q. What did your driver do when that car came in his path?
A. He applied his brakes and seemed to pull to the right.
Q. What happened to your car then?
A. Evidently the left wheels being on the hard surface and the right on the soft shoulder of the road where there were gravels held better than those on the right and the car went back across the road.

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Q. Do you know this or is this a conclusion that you have come to later? Was this something that you knew then or did you conclude it later?
A. About the gravel on the shoulder of the road?
Q. Yes.
A. I was stopped by there later and that is when I saw that.
Q. Do you know just what happened to your car?
A. No. At that time I don't know exactly what happened.
Q. Were you conscious or unconscious after the collision?
A. I was unconscious after the collision.
Q. Where did you regain your consciousness?

Cleveland Wood.

A. At the hospital.

Q. What was the condition of the lights of the second set of lights that came in your path?

page 99 } A. They were bright.

Q. Can you tell us what the conditions were, whether there were any changes in the lights after that?

A. When the second set of headlights appeared, the first set back went back on bright also.

Q. Had you had anything to drink?

A. No, I hadn't.

Q. Did you drink at that time?

A. No, sir, I didn't.

Q. Did you observe or have any reason to observe or believe that your driver was drinking?

A. No, sir, I don't believe he was drinking.

Q. Had you known him to drink at that time?

A. No, sir, I had never seen him drink at that time.

• • • • •

Q. Was there any drinking in the car to your knowledge?

A. No, sir, there wasn't.

Q. Was there any bottle or whiskey of any kind

page 100 } in the car to your knowledge?

A. Not to my knowledge, there wasn't.

Q. Do you know about what time this collision happened?

A. I would say it was around nine o'clock.

Q. What was the condition of the weather?

A. The weather was in good condition, fair.

Q. Do you recall how long after the collision that you waked up?

A. No, sir, I don't.

Q. Do you recall where you were?

A. I was at the hospital.

Q. Where in the hospital?

A. The emergency department.

Q. What were they doing at that time?

A. Well, when I gained conscious there was a doctor and a nurse and a police and the police started asking me some questions, and which I wasn't fully myself, and I answered them the best I could and then I blanked out again.

Q. Did you recall any of those questions?

A. I beg your pardon, sir?

Q. Do you recall or did you recall any of those questions?

A. Well, what he wanted to know was who was driving the

Cleveland Wood.

car and how did it happen.

page 101 } Q. Do you know what your answers were?

A. No, sir, I don't.

Q. Who was driving the car?

A. Kenneth.

Q. At the time of the collision?

A. Kenneth Pamplin.

Q. Had you driven the car at all?

A. No, sir, I hadn't.

Q. Do you know who the second set of lights were that you saw there?

A. At that time I didn't.

Q. Could you identify the vehicle or type of vehicle that it was?

A. That I was riding in?

Q. No, the second set of lights.

A. The only thing I could say there was a vehicle, but I couldn't identify what it was.

Q. How long had you been acquainted with Clarence Smith?

A. At that time about fourteen months.

Q. Were you also acquainted with other members of his family?

A. Yes, sir, I was.

Q. Who were they?

A. Well, I knew all of his family except one of

page 102 } his sisters. I knew his mother, his father, and two of his sisters and two of his brothers.

Q. Which were the sisters?

A. Mary Smith and Dorothy Smith.

Q. What was your acquaintance with Mary?

A. She was a close friend of mine at that time.

Q. Have you had opportunity to observe Clarence since this collision?

A. Yes, sir, I have.

Q. Do you see any difference or change in him between now and before this accident?

A. Yes, sir, there is some difference.

Q. Would you describe and tell what that is?

A. His actions is very much different. He doesn't remember a lot of things like he used to, and general conversations is very much different.

Q. In what way in his conversation different?

A. Since talking to each other a lot of things we talk about, some simple things, and things that doesn't have too much meaning to them.

Cleveland Wood.

Mr. Gordon Williams: That is all.

CROSS EXAMINATION.

By Mr. Richard Williams:

Q. Clarence is doing some farming down your
page 103 } way, isn't he?

A. He is still on the farm, I don't know how much he is doing.

Q. His father is living in New Jersey and he is running the farm as a matter of fact, isn't he?

A. His brother-in-law is there with him.

Q. But he and his brother-in-law run the farm while their father is up in New Jersey; isn't that right?

A. I don't know who is doing the running of the farm, sir.

Q. Does Kenneth Pamplin have an older brother that drinks that might have left that bottle in the car, since you didn't do it?

A. Yes, sir, he does.

Q. And his older brother may have stached it in there?

A. I don't know how it got in there.

Q. As you came east on Route 360, as you came over Swift Run Creek Hill, you can see all of the way to the bridge; isn't that correct?

A. I don't know, sir. I have never noticed it.

Q. You have traveled the road before, haven't you?

A. Yes, sir, I have.

Q. Don't you know you have traveled it both in daytime and in nighttime? Isn't that right?

page 104 } A. Yes, sir, I have.

Q. And when you come over the hill coming towards Richmond you can see from the top of the hill all of the way to the bridge, which is at least a half-mile?

A. I have never noticed that, sir.

Q. You have never noticed that distance that you can see, in the past?

A. No, sir.

Q. When you came over that hill on that night, you saw the one truck in its proper westbound lane; isn't that correct?

A. Yes, sir.

Q. And that truck stayed in its lane as far as you know as long as you remember anything?

A. Yes, sir.

Q. And as soon as you came over the hill, was that truck 5- or 600 feet down the road from you?

Cleveland Wood.

A. I don't know the distance, sir.
Q. Can you estimate it?
A. I would be afraid to say.
Q. That truck dimmed its lights as soon as Pamplin or Hayes or whatever his name is, dimmed his lights; isn't that correct?
A. Yes, sir, it did.
Q. And they both continued on in the same di-
page 105 } rection; isn't that correct?
A. That is right.
Q. And then the next thing you knew you saw a second set of headlights?
A. That is right.
Q. And did they come from behind the first truck that you saw in its westbound lane?
A. Yes, sir, it did.
Q. How many feet were you away from the first truck when you saw that second set of headlights about 30 or 40 feet?
A. I would be afraid to say, sir.
Q. You don't have any recollection of that at all?
A. No, sir.

* * * * *

Q. You remember the one but you don't remember the other; is that correct?
A. The distance is hard to tell when you are
page 196 } traveling, sir.
Q. Yes. Then as soon as you saw that second set of headlights, did the accident happen very quickly?
A. Very soon after.
Q. And you have no recollection after that?
A. No, sir.
Q. Did you ever see the second set of headlights as you came down the hill before they pulled out?
A. No, sir, I didn't.
Q. You and Kenneth and Clarence were all sitting on the front seat. Isn't that correct,
A. Yes, sir.
Q. Were you talking,
A. No, sir, we weren't.
Q. Were you all watching where you were going? Is that correct?
A. Yes, sir.
Q. And helping out with the driving?

Cleveland Wood.

A. No, sir.

Q. What were you doing? Were you and Clarence talking?

A. There was nothing said from—for quite a while before the accident.

Q. Where had you left from at six o'clock?

A. Chase City.

page 107 } Q. You were at Wood's house then?

A. No, sir, we came through Chase City about six o'clock.

Q. How far is Chase City from where the accident happened?

A. I don't know, sir.

Q. Well, you have traveled that road before, haven't you?

A. Yes, sir.

Q. Is it as much as 75 miles?

A. I never measured the miles, sir.

Q. You don't have any accurate knowledge at all about that distance?

A. I would be afraid to say.

Q. Had you stopped along the way to visit anybody or have dinner or anything of that sort?

A. No, sir, we hadn't.

Q. And you were supposed to see your girl friend; is that correct? Or was that Clarence Smith?

A. It was Clarence coming to see his sister. I was coming back to Richmond to go to work that Friday.

Q. And Clarence had to see his sister who went to school at Union?

A. Yes, sir.

Mr. Richard Williams: I have no further ques-
page 108 } tions.

By Mr. Garrett:

Q. Do I understand that when you first saw this second vehicle it was then in your lane?

A. Yes, sir, it was coming over into our lane.

Q. Do you contend that it was passing this other vehicle at that time?

A. Yes, sir.

Q. Was it up beside it?

A. I would be afraid to say how far it was beside it, sir.

Q. Was it near it?

A. Yes, sir, it was near the first vehicle.

Q. What would you say, 5, 10 feet?

Cleveland Wood.

A. I would be afraid to say, sir.
Q. What do you mean by near?
A. You want something definite?
Q. Yes.
A. I am in no position to say, sir, because meeting a truck when the truck pulled out from behind another vehicle, or either vehicle pulled out from behind another vehicle, and the lights are on bright, it is hard to tell the distance, sir.

page 109 } Q. Do I understand that you could not tell whether the second vehicle was a tractor or a car.
A. I couldn't.

Q. Isn't it true that a truck's headlights are somewhat narrower than a car's headlights—or just the opposite, a truck headlights are somewhat wider than a car's headlights. Isn't that true?
A. I don't know, sir.
Q. Do you know which vehicle struck the car that you were in? Was it the vehicle being passed or doing the passing?
A. I can't say, sir.
Q. Are you positive you were not driving this car?
A. Yes, sir, I am.
Q. When did you first discover that you had been charged with driving it?
A. It wasn't really until I went back home on Sunday evening following the accident and I looked in my wallet for my driver's permit and I noticed then that they had been removed. And I told my father about it. That is when he called the State Trooper Bristol and asked him about it.
Q. Do you know who removed your wallet?
A. No, sir, I don't.

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Q. What about the whiskey in the car? Do you tell us that you didn't even know that the whiskey was in the car?
A. No, sir, I didn't know the bottle was in there.
Q. Did you ever see this car afterwards?
A. Yes, sir, I did.
Q. Was the whiskey bottle in it then?
A. I didn't notice to see if there was one in it, sir.
Q. You say that you didn't then drink; do you now drink?

Cleveland Wood.

A. On some occasions, sir, I do.

Q. But as I understand it, you can't give us any distances as to how far the other vehicles were from you when they first came in sight or how close one was to the other, or any of those distance?

A. That would be hard to do, sir, and I wouldn't want to say something that is wrong because I really don't know.

page 111 } Q. Could the second vehicle approaching you have 200 feet behind the first one?

A. It could have been that far behind the first one?

Q. Yes.

A. I don't think so, sir.

Q. Could it have been 100 feet behind it?

A. I don't know, sir.

Q. Do you think it may have been that far?

A. I would be afraid to say, sir, because actually I don't know how far it was behind it.

Q. Would you describe the manner in which Hayes or Pamplin, whatever his name is, applied his brakes? Did he slam them on, as we say? Is that the way you would describe it?

A. I would say he didn't exactly slam on, he applied his brakes and pulled to the right.

Q. So then I take it that they did not skid at first?

A. Well, he applied them hard enough to hold, yes.

Q. To skid?

A. Yes.

Mr. Garrett: I believe that is all.

page 112 } RE-DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. Did you have occasion to go back and look at Kenneth Pamplin's car following this collision?

A. Yes, sir, I did.

Q. Did you observe the place where it was in collision or struck by the truck?

A. Yes, sir, I did.

Q. What did you tell us that you saw there? Did you see anything there?

A. I could see the marks of the left wheels where they started to skid on the hard surface and could see the gravels on the soft shoulder on the right side—

Marvin Kenneth Pamplin.

* * * * *

page 113 } MARVIN KENNETH PAMPLIN,
was recalled and in behalf of the plaintiff, testified further as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. Kenneth, tell us, did you have any antifreeze in the radiator of your car?

A. Yes, I did.

Q. What kind of antifreeze did you have?

A. It wasn't permanent antifreeze, it was this ordinary antifreeze.

Q. Do you know what that is?

A. It is some kind of al— it is a alcohol, but I don't know the name of it, what it was.

Q. Was it in there at the time of this collision?

A. Yes, it was. I put it in there two or three weeks before that.

Q. Did you get to examine your car later?

A. No, I didn't. I just went back past it when I was down.

* * * * *

CROSS EXAMINATION.

By Mr. Richard Williams:

Q. Did you have your antifreeze in the radiator
page 114 } where people usually keep it or in a glass bottle inside of your car?

A. I had it in the radiator.

Mr. Richard Williams: No further questions.

By Mr. Garrett:

Q. What kind of antifreeze was it?

A. I forget the name of it, but you can get this permanent antifreeze and it won't boil, but this was just alcohol that would boil.

Q. You know that it was alcohol. Can't you tell us the type of antifreeze it was?

A. I have forgotten what type of antifreeze it was.

Q. You forget that?

A. It was bought from Shell.
Q. This was your mother's car. I believe you said?
A. Yes, it was.

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MILTON E. CAMP,
was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:
Q. You are Mr. Milton E. Camp?
A. That's right.
Q. Mr. Camp, you reside on just Route 360?
A. That's right.
Q. I believe the scene of this collision is in the vicinity of where you reside; is that correct?
page 120 } A. That is correct.
Q. I hand you a photograph which is Plaintiff Exhibit No. 1 and ask you if that does not show your mail box?
A. That is my mail box, got my name on it.
Q. And Plaintiff Exhibit No. 3, does that show something there that you recognize?
A. Well, it looks like where the collision took place.
Q. Is that driveway there one that you recognize? Can you identify that? That would be the south side of the highway.
A. Yes, that is my old wooden shed up in here. I have torn it down.
Q. Is that your driveway?
A. That looks like mine.
Q. And the newspaper box there?
A. Yes.
Q. Are those things and that road the same now, unchanged now, as they were at the time of this collision?
A. How was that now?
Q. Are they the same now, the road and the mail box and those things?
A. No. No, they have been moved.

Milton E. Camp.

Q. Has your mail box on the north side of the
page 121 } highway been moved?

A. No, it is still the same place, but the paper box has.

Q. And the driveway, is that about the same now, or what?

A. No, it is up the hill a little further since the double lane.

Q. At the time of this collision, were you living there?

A. That's right.

Q. Approximately how far back from the road was your home at that time?

A. Let me see. The State took 76 feet and I have about 50 foot lawn, so it was better than 100 feet. I would say 125 feet, probably, or a little further.

Q. Did you hear or know anything about this crash when it happened?

A. I heard it, that's right.

Q. Tell just what you heard, and what you did.

A. Well, I was setting in the living room watching television and I heard the crash, so I got up and went to the door and all I saw was—

Q. What did you see?

A. I saw an accident out in front of the house and steam or smoke or oil or something coming from the
page 122 } cars.

Q. What vehicles were involved in this collision?

A. Well, it was a truck and an automobile.

Q. Could you identify the truck?

A. Well, I think—I am not sure, I believe it belonged to Brooks Motor Company.

Q. I hand you Plaintiff Exhibit No. 4 and ask you if you recognize that.

A. Well, it being night, I wouldn't say this is the same truck, but I mean it was a similar truck. Not being on the spot—

Q. Did you observe another vehicle pulling up at that crash, any other vehicles there?

A. Well, if I recall I remember one stopping there. Due to lack of time, I kind of forget. But I believe it was one stopping.

Q. What was that last, stopped or stopping?

A. Well, pulling up behind the accident when I arrived at the door.

Q. When you arrived at the door?

A. That's right.

Milton E. Camp.

Q. Could you identify that? Was it a truck in any way?
A. I couldn't say that I could.,
Q. Could you identify it by state? Do you recall now the state license of that truck?
page 123 } A. No.
Q. Do you remember that you did then?
A. I don't remember doing it. It was dark at night, no light.
Q. Did you talk with any of the drivers or did you hear them talk?
A. Well, I am not going to say that I did. I don't remember, recall, talking with any particular driver except the one involved in the accident. I did go with him to my home to use the phone and report the accident.

• • • • •

Q. Did you hear any conversation of the driver of the second truck with reference to the collision or how it occurred?
A. Like I said, it has been a long time and I don't remember the conversation.
Q. You don't remember?
A. No, I don't.

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CROSS EXAMINATION.

By Mr. Garrett:
Q. Mr. Camp, do I understand that you were watching the television?
A. That's true.
Q. And you heard the crash. Where were you with reference to your front door? Were you in the living room?
A. That is right.
Q. Is that near to the front door?
A. That's right.
Q. And you got up and you went over to the front door; I guess it was closed, being November?
A. That is true.
Q. And you had to open your door and then did you walk

out before you looked out, or how? When did you first see what was going on out there?

A. Well, I don't quite remember, but we do have a big glass in the front door. It is possible that I did look through that.

Q. How much time did it take to realize that something had happened and get up and get out to where you could see what you did see?

A. Well, a matter of seconds.

page 125 } Q. Two or three seconds?

A. I would say that.

Mr. Thomas Williams: He didn't say that.

Mr. Garrett: Mr. Williams, I have the witness on cross-examination.

The Court: Go ahead, Mr. Garrett.

By Mr. Garrett:

Q. In other words, the time it took you to get from the chair to the—

A. To the door you mean?

Q. —to the door, it would take some little time. As I understand it, as you got either in or out of the door to where you could see what was going on out there, just then the second truck was pulling up behind to stop?

A. Well, it was stopping just about that time I would say.

Q. How far behind the first truck did it stop?

A. I don't recall.

Q. You went out to the car?

A. I went out.

Q. Did you look in the car?

A. No, I did not.

Q. Did you see the car later?

A. No.

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page 127 } FRANCIS C. PROCTOR,

was sworn in behalf of the plaintiff and as an adverse witness, testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. You are Mr. Francis C. Proctor?

A. Yes.

Francis C. Proctor.

Q. Of Lake Lure, North Carolina; is that correct?
A. Yes.
Q. Mr. Proctor, in November 1955, November 24, Thanksgiving Day, you were operating your tractor with the trailer of Penn-Dixie Lines southwardly on Route 360, were you not?
A. Yes.
Q. As you passed or were passing Swift Creek, you were behind or in the vicinity of the New Dixie Lines truck; is that correct?
A. I was behind him.
Q. Were you employed by Penn-Dixie Lines?
A. I was leased to Penn-Dixie Lines.
Q. And you leased yourself as driver and you were driving for them then?
A. Yes.
Q. You leased your equipment and then drove for them?
A. Yes.
page 128 } Q. And you were hauling their trailer?
A. Yes.
Q. Loaded with merchandise to be carried for them?
A. That's right.
Q. Where were you going, Mr. Proctor?
A. That load was going into Florida, Tampa—I mean, Orlando.
Q. Do you recall what you were carrying?
A. As well as I remember it was fruit juice.
Q. Do you remember telling me it was tobacco stems that you were carrying?
A. No, sir, I don't.
Q. Do you remember talking to me out in North Carolina?
A. Yes.
Q. And at that time it was that I asked you and learned for whom you were hauling at that time?
A. That is correct.
Q. You observed this collision occur, did you not?
A. Yes.
Q. Were there any other vehicles in the vicinity at the time of the collision besides yourself, the New Dixie Lines truck, and the car that Kenneth Pamplin was driving that the people were hurt in?
A. There was a truck behind me some good lit-
page 129 } tle distance.
Q. That was the nearest thing to you?
A. Yes. I would say he was approximately 1,000 or 1,200 feet behind me.

Francis C. Proctor.

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CROSS EXAMINATION.

By Mr. Richard Williams:

Q. The New Dixie Lines truck was in the westbound or south westbound lane; is that correct?

A. Yes.

Q. And was it totally in its lane when it finally hit this car in front of it?

A. Yes.

Q. And you never saw that truck of the New Dixie swerve out of its lane to the left?

A. No, it never left the lane.

Q. It cut some to the right I believe you said?

A. Yes.

Q. Did you ever leave your lane of traffic?

A. No, I never left it.

Q. How far would you estimate that you were behind the New Dixie truck when it struck the Pamplin-Hayes vehicle?

A. Approximately 300 feet.

page 130 } Q. Did you have to slam on your brakes and skid to a halt to avoid being involved in the accident yourself?

A. No, I did not skid a tire and I did not come in contact with any vehicle.

Q. Could you tell whether the New Dixie truck had its lights on high beam or low beam when you followed him up the road?

A. He had it on the low beams.

Q. How about your lights? Were they on high beams or low beams?

A. They were on low beam.

Q. You were close up behind the New Dixie truck to where you dimmed your lights out of courtesy; is that correct?

A. That's right.

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Francis C. Proctor.

RE-DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. Mr. Proctor, you recall when we had our conversation in North Carolina that you declined to discuss
page 133 } with me anything about the happening of the accident? Do you recall that?

A. Yes.

Q. Do you recall telling me that your vehicle was there in the vicinity but there were no other vehicles other than the two, yours, the tractor, and the car? Do you recall that?

A. Not that particular wording, no.

Q. Well, you might have overlooked or forgotten that there had been another tractor way back behind you, but except for that they were the only vehicles?

A. Yes.

Q. Those three?

A. Yes.

Q. Do you recall telling me that another party or representative of a party had advised you not to discuss this with anyone else?

A. Well, I had already discussed the matter with one party and—

Q. And they advised you not to discuss it with anyone else?

A. That is the only reason. I saw no reason to discuss it with anyone else.

Q. Don't you recall telling me that you had been advised by that party or party's representative not to dis-
page 134 } cuss it with someone else?

A. No.

Q. You deny saying that to me?

A. Yes.

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CROSS EXAMINATION.

By Mr. Garrett:

Q. What did Mr. Williams tell you when you told him that?

A. He said he would sue me.

Q. And that is what happened, isn't it?

A. Yes.

Mr. Garrett: Come on down, Mr. Proctor.

Francis C. Proctor.

RE-DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. Just one minute. As a matter of fact, you didn't give your name to the police officer at the scene of the collision, did you?

A. No, sir, I didn't.

Q. Did you hear him ask for people that saw it or knew something about it?

A. No, sir, he did not ask me.

Q. Did not ask you personally?

page 135 } A. No.

Q. Did you hear him ask generally around there?

A. No, sir, I didn't hear him ask anyone.

Q. In your conversation there, I informed you at the outset that it was very likely that I had information that your truck was in the vicinity—

Mr. Garrett: Your Honor, Mr. Williams is testifying. He is not examining this witness, he is trying to testify as to what he did.

The Court: He is asking the witness if he remembers that statement. I see no objection.

Mr. Garrett: Exception.

By Mr. Gordon Williams:

Q. —information that you had been in the vicinity and that you were involved and I might have to sue you; isn't that correct? Didn't I tell you that before we actually went into anything?

A. You said that you would sue me.

Q. That's right. That was before I asked you anything particularly about the happening, I told you that?

A. I don't remember whether it was before or after.

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page 136 } RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. Was your discussion with Mr. Williams very pleasant?

A. I wouldn't say so, no, sir.

Q. What were you doing at the time?

Francis C. Proctor.

A. I was asleep when Mr. Williams came to see me and he woke me up and—
Q. Had you had much sleep?
A. No, sir, not much sleep.
Q. What happened then?
A. Well, we went down to the restaurant and had breakfast.

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By Mr. Garrett:
scene? Q. What occasion did you have to talk with the trooper at the scene?
A. I had no occasion to talk to him at all.
Q. Why do you say that, Mr. Proctor?
A. Well, I wasn't involved in the accident at all. I was merely pulled up after it happened and I got out and tried to give what assistance I could.

Mr. Garrett: All right, sir. I believe that is all.

RE-DIRECT EXAMINATION.

By Mr. Gordon Williams:
Q. Do you recall making a statement at the
page 138 } scene to someone in the presence of Mr. Milton E.
Camp that you pulled out to pass and this car came over the rise suddenly and came across in front of the other truck?
A. No, I don't.
Q. Do you deny that you made that statement?
A. Yes, sir.

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RE-CROSS EXAMINATION.

By Mr. Richard Williams:
Q. As I understand it, Mr. Proctor, you were traveling, you said, about 300 feet behind the New Dixie tractor-trailer and the New Dixie tractor-trailer was in its proper lane going west on 360?

A. That's right.

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GILES A. SMITH,
was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:
Q. You are Mr. Giles Smith?
A. That's right.
Q What is your full name, Mr. Smith?
A. Giles Alexander Smith.
Q. You are Clarence's father; is that correct?
A. That's right.
Q. How old is Clarence? What is his age now?
A Twenty-four.
page 141 } Q. How old was he when he was hurt?
Q. Twenty-two.
Q. Did you go to the scene of this collision following the collision?
A. I saw the car. The collision happened on Thursday and I saw the car on Saturday.
Q. Did you see the imprint of the truck in the car?
A. I did, where the bumper struck the car the name of the company were embedded in the metal.
Q. What is your occupation now?
A. I am a contractor.
Q. Where do you carry on your business at present?
A. Newark, New Jersey.
Q. Where were you carrying on your business at that time?
A. I was home then.
Q. Where is your home?
A. It is in Charlotte County, Red Oaks, Virginia.
Q. Do you own some property there?
A. 167 acres.
Q. That is a farm?
A. That is right.
Q. Do you pursue farming only in Virginia or do you pur-

Giles A. Smith.

sue any other form of occupation?

page 142 } A. I pursue farming only in Virginia. I am not contracting in New Jersey.

Q. Have you ever followed that contracting in Virginia too?

A. I have.

Q. Where was that?

A. That was in Charlotte and Mecklenburg County.

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Q. Does Clarence do any drinking or has he done any drinking?

A. No, he hasn't.

page 145 } Q. Have you observed Clarence, had opportunity to observe him closely, since this collision?

A. Well, I have. I have been home around once a month ever since the accident.

Q. Is there any difference now than before this collision?

A. It is. He can't concentrate. Another thing, when he starts to talking about anything he starts to stammering, he doesn't remember, he can't hold a conversation.

Q. When you looked into this, did you engage other counsel following this collision?

A. I did. I engaged Martin A. Martin.

Q. Was there anyone else besides him?

A. There wasn't anybody else.

Q. When he was engaged did you learn the identity or did he learn the identity of the second set of headlights?

A. No, I don't think he did. It was said, I told him—

Mr. Garrett: I object, Your Honor. This is hearsay.

The Court: Sustained.

By Mr. Gordon Williams:

Q. Did you prior to engaging us know the identity—

A. I did not.

Q. —of any other vehicle?

page 146 } A. I did not.

* * * * *

Mary Magdaline Smith.

Q. Did you have any information as to the identity of any other vehicle prior to engaging us as counsel?
A. I did not.
Q. Have you since learned?
A. I learned through you.

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MARY MAGDALINE SMITH,
was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:
Q. You are Mary Madaline Smith?
A. Magdaline.
Q. Mary Magdaline?
A. Yes.
Q. You are Clarence's sister?
A. Yes.
Q. What is your age, Mary?
A. Twenty-one.
Q. You have lived on the farm there with the others?
A. Yes, I do.
page 151 } Q. Do you know how much schooling Clarence had?
A. He went to the eleventh grade in high school.
Q. When did he finish high school?
A. He finished—he stopped in the eleventh grade.
Q. Was your brother an average sort of person?
A. Yes.
Q. What was the condition of his health prior to the collision?
A. He was in perfect health. He had never been to a doctor except for child diseases, about two.
Q. Mary, what is your address now? Where are you living now?
A. 6482 North Eighth Street.
Q. You are in Richmond?
A. Yes, I am.

Q. Were you living in Richmond at the time of this collision?

A. Yes, I was.

Q. What was your occupation, or what were you doing then?

A. At the time of the accident I was a freshman at Virginia Union University here in Richmond.

Q. Have you continued your studies there since then?

A. Yes, I have.

Q. Q. You are now in what year?

page 152 } A. Junior.

Q. Had you visited your home previous to this collision?

A. Yes, the weekend prior to the accident I had been home.

Q. Were you alone or did you go home alone?

A. A girl friend accompanied me on the weekend.

Q. Who was she?

A. Her name was Gladys Waller.

Q. While you were home, did you and she go out and see other folks?

A. Yes.

Q. Would you tell who you were with?

A. Cleveland Wood, Kenny Pamplin, Arlene Kean, and my brother Clarence.

Q. Was that sort of a dating arrangement?

A. Yes, it was.

Q. Who was dating who? Could you tell?

A. I was dating Cleveland Wood, my girl friend Gladys Waller was dating Kenny Pamplin, and Clarence was dating Arlene Kean.

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page 155 }

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GARNETT NEWTON,

being called out of order in behalf of the defendants, was sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. Epps:

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

Robert O. Spence.

A. Garnett Newton.
Q. Where do you live?
A. Thomasville, RD 1, Pennsylvania.
Q. That is near what city?
A. York County, and it is within the 3 miles of the York City limits.
page 156 } Q. What is your relationship to Mr. Hennessy, the Trustee in Bankruptcy for Penn-Dixie Lines, Incorporated?
A. I am appearing here for Mr. Hennessy as his representative.
Q. State if you know how long the occurrence that is the subject of this suit that you were advised that you were advised in it.
A. I believe in December of '57 we had a registered letter from the attorneys. That was our first knowledge of any suit.
Q. Is that your first knowledge of any claim too?
A. Absolutely.
Q. Or of any occurrence?
A. Yes, sir.

Mr. Epps: That is all.

CROSS EXAMINATION.

By Mr. Gordon Williams:
Q. Mr. Newton, this petition in bankruptcy is a voluntary petition, is it not?
A. Yes, it is.
Q. And filed under Chapter X?
A. That's right.
Q. And it is for reorganization purposes, not for insolvency?
page 157 } A. No, reorganization.

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ROBERT O. SPENCE,
being called out of order in behalf of the defendant New Dixie Lines, Incorporated, was sworn and testified as follows:

Robert O. Spence.

DIRECT EXAMINATION.

By Mr. Richard Williams:

Q. What is your name?

A. Robert O. Spence.

Q. What do you do, Mr. Spence?

A. Driving for New Dixie Lines

Q. How long have you been driving for them?

A. Three years.

Q. Where are you living now?

page 158 } A. Charlotte, North Carolina.

Q. At my request you came up here as a witness for this case; is that correct?

A. Yes, sir.

Q. Were you on Route 360 on November 24, 1955 at about the time the accident on which we are all here today occurred?

A. Yes, sir, I was.

Q. Where were you going?

A. I was going to Charlotte, North Carolina.

Q. Were you in your truck?

A. Yes, sir.

Q. Were you following the vehicles that were involved in the accident?

A. Yes, sir.

Q. Where were you located in the highway in relationship to the vehicles?

A. I was the second truck behind Mr. Green.

Q. Who was the truck in front of you?

A. Penn-Dixie truck.

Q. Would that be the one operated by Mr. Proctor?

A. Yes, sir.

Q. And the other one, Mr. Green is the gentleman sitting here that was actually involved in the accident?

A. Yes, sir.

page 159 } Q. How far in back of the New Dixie truck were you?

A. Between 350 and 400 feet.

Q. How far in back of the Penn-Dixie truck were you?

A. About 200 feet.

Q. What did you see about the accident?

A. I saw the lights of the car, reflection of the lights, come up over the hill and I heard the crash. I had the window and stuff down on my truck and when the car swung around in the light, I could see the taillight in the road.

Q. What lane was Mr. Green in?

Robert O. Spence.

A. Righthand lane.
Q. What lane was the Penn-Dixie truck in?
A Directly behind Mr. Green in the righthand lane.
Q. What lane were you in?
A. I was in the righthand lane.
Q. Did you pull up behind the vehicles after the accident occurred?
A. After they stopped, yes, sir.
Q. Did you get out?
A. Yes, sir.
Q Did you try to render assistance?
A. Well, as soon as I got out of my truck I went back behind my truck and dropped the red flares out.
page 160 } Q. Could you tell whether the lights on the Penn-Dixie truck and the New Dixie truck in front of you were on high or low beam from your position?
A. I couldn't tell, sir.
Q. What speed were you traveling at?
A. Approximately 35 miles an hour.
Q. Were you going uphill?
A. Yes, sir.

Mr Richard Williams: Answer the other gentlemen's questions, if they have any.
Mr. Garrett: Do I go? Who is next, Judge? I am a second-name defendant.
Mr. Thomas Williams: We are the named plaintiff. I guess we are first.
The Court: Suppose you cross-examine him first.

CROSS EXAMINATION.

By Mr. Thomas Williams:
Q. Mr. Spence, you said you were 350 or 400 feet behind which?
A. The truck involved in the accident, sir.
Q. That is behind the New Dixie Lines?
A. Yes, sir.
Q. Was the Penn-Dixie truck—where was it then?
A. It was between our two trucks.
page 161 } Q. How do you figure 350 or 400 feet? Where were you with reference to the bridge?
A. I don't know exactly how far the bridge is from the crest of the hill.
Q. You don't?

Robert O. Spence.

A. No.
Q. Don't you travel that road?
A. A good deal, yes.
Q. Were you on the bridge?
A. No, sir.
Q. Coming to the bridge or had you passed the bridge?
A. Passed the bridge.
Q. Do you know how far past the bridge?
A. I couldn't rightfully say, no, sir.
Q. Was it a quarter of a mile from the bridge or less?
A. Well, like I say, I don't know how far the bridge is from the crest of the hill.
Q. You don't know the exact distance that the Penn-Dixie was ahead of you?
A. I said approximately 400 feet—200 feet.
Q. Approximately 200 feet?
A. Yes, sir.
page 162 } Q. That would be ahead of you?
A. Yes, sir.
Q. You were pulling a hill, were you not?
A. Slow grade hill, yes, sir.
Q. And you had a load on?
A. A light load, yes, sir.
Q. Was it a tractor-trailer you had?
A. Yes, sir.
Q. Do they carry light loads?
A. Sometimes.
Q. What size load would you say it was?
A. Approximately a gross of 35,000.
Q. Approximately gross 35,000?
A. Yes, sir.
Q. That is how many tons?
A. Seventeen and one-half ton.
Q. What would be a heavy load?
A. Well, the gross weight of Virginia would be 56,000 pounds.
Q. That is 28 tons?
A. Yes, sir.
Q. Did you have anybody in the truck with you?
A. No, sir.
Q. Did you stop at the scene and give your name to anyone?
page 163 } A. I don't remember, sir, whether I did or not.
Q. You don't know whether you stopped at the scene?

William R. Gardner.

A. I stopped at the scene, but I don't know whether I give my name to anybody or not.

Mr. Thomas Williams: That is all.

By Mr. Garrett:

Q. Mr. Spence, you were going 35 miles an hour; were the other vehicles going about the same speed? Were you gaining on them or losing them?

A. I wasn't gaining on them, no. All of us were going approximately the same speed. It is a long drawn-out hill where it don't knock you down too much when you pull a long hill like that.

Q. As I understand it, when you saw this automobile approaching from the opposite direction you saw the lights?

A. Yes, sir.

Q. Both the New Dixie and the Penn-Dixie Lines' vehicles were in their proper lane?

A. Yes, sir.

Q. Did either of them pull out of their proper lane up until the time of the collision?

A. No, sir.

Q. And you pulled in behind and stopped also?

A. Yes, sir.

page 164 } Q. You could not tell which way they had their lights, up or down?

A. No, sir, I couldn't.

Q. Did you see the path of the car as it approached, how it went before it collided?

A. Well, I mean you could see the lights come up over the crest of the hill like you are coming that way and meeting it, and looked like the lights swerved to the left, it would be our right side of the road, and I could hear the crash.

Q. Could you tell us how fast the other car was coming?

A. No, sir, I didn't see the other car, just the lights, and it hit and turned around in the road.

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page 166 }

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WILLIAM R. GARDNER,

was sworn in behalf of the plaintiff and testified as follows:

William R. Gardner.

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. You are Mr. William R. Gardner, certified life underwriter?

A. Charter life.

Q. Charter life underwriter. And you are with what company?

A. John Hancock.

Q. You are an agent for that company?

A. I am a general agent for them.

Q. In your business do you have the use of a

page 167 } mortality table?

A. Yes.

Q. Are these tables used in the industry that you are in generally throughout the country?

A. That is right.

Q. Do you have those tables with you now?

A. Yes. I have a publication here that is used and recognized.

* * * * *

page 168 } By The Court:

Q. What is the basis of your information, your experience, what you have read or just how did you come by it?

A. Since 1941 insurance companies have followed a table known as the Commission's 1941 Standard Ordinary Table which shows the expectation of life, number of people who die at a certain age, and so on. That is a recognized standard table used throughout the insurance industry in determining insurance rates.

Q. That was where you got the information?

A. Yes.

Q. As to life expectancy?

A. Yes.

* * * * *

By Mr. Gordon Williams:

Q. Would you refer to your book now and state the life expectancy for a man twenty-two years of age?

A. This table is not divided as to male and female risks, but at age twenty-two the expectation of life is 44.77 years.

Dr. Charles E. Troland.

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page 169 }

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DR. CHARLES E. TROLAND,
was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. You are Dr. Charles E. Troland

page 170 } A. That's right.

Q. You are a licensed physician and surgeon in the City of Richmond and State of Virginia, Doctor?

A. Yes, sir.

* * * * *

page 172 }

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Q. Coming to the case here today were you called to attend Clarence Smith, the plaintiff in this case?

A. Yes.

Q. In 1955. Would you state where and when you saw him?

A. It was at St. Philip Hospital on November 24, 1955.

Q. Doctor, before I go further, I believe the

page 173 } defendants have subpoenaed the hospital records and they are available here, the actual hospital record. If at any time you care to refer to them I believe the Court will have them available for you. What were your findings as to his condition?

A. The patient was deeply unconscious when he was seen by me. He was also having convulsions, almost uncontrollable convulsions. He had many lacerations, wounds around his face and head. In addition, he had fractures which were cared for by the orthopedic service. I think his left leg was the site of main injury so far as fractures were concerned. So far as we were concerned on our service, he was deeply unconscious and was having numerous convulsive seizures. We were able to control his convulsions with medication, but he remained comatose and we therefore felt that he might have a clot. On December 1 we made burr openings, an open-

Dr. Charles E. Troland.

ing on each side of his head, to determine whether or not there was a clot. He did not have a clot, but the brain was obviously contused or bruised. A short time after that he did begin to awaken some. During a long part of his stay in the hospital he had to be fed by a nasal tube, which is a tube going through the nose down into the stomach, to give him adequate nourishment. His stay in the hospital was
page 174 } prolonged mainly because of his orthopedic injuries, but he did have a very serious brain injury.

Q. How long was he unconscious, Doctor, or comatose, as you say?

A. I can't tell you exactly, but it was many days. He came in on the 24th. We didn't make burr openings until December 1, and he was still comatose then and for at least a week afterwards.

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page 175 }

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Q. Would you tell what your findings were on those occasions and conditions?

A. He had a foot drop on the left side, which I could not tell whether it was related directly to his first injury, but if not, which related to the surgery which had to be done to his leg. By foot drop, I mean he could not pull his left foot up. He did have some hyperactivity of the left knee jerk.

The essential finding, the one that seemed more
page 176 } important, was that he was definitely slowed up mentally. He was moderately confused and when given different commands he would carry out one or two of them and then seem to stumble over others. It was my feeling that he was considerably slowed up mentally.

Q. Doctor, is this a permanent condition in your opinion?

A. I would think so.

Q. Doctor, how long did he stay in the hospital?

A. He came in on November 24 and left on March 5.

* * * * *

Q. Doctor, do you think his brain injury will
page 177 } affect his ability in the future to earn a living?

A. I would expect it to, yes.

Dr. James Asa Shield.

Q. And this injury or this condition of his left foot, would you say that that is a permanent condition?
A. Probably yes, I think it is.
Q. Is there anything surgically that could be done to improve his brain condition that you know of, Doctor?
A. No.

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page 185 }

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DR. JAMES ASA SHIELD,
was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:
Q. You are Dr. James Asa Shield?
A. Yes, sir.
Q. Doctor, you are a licensed physician in the City of Richmond and State of Virginia?
A. Yes, sir.

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page 188 }

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Q. Doctor, coming to the plaintiff in this case, Clarence E. Smith, were you requested to examine him?
A. Yes.
Q. That was by me?
A. Yes, I think so, sir.
Q. When was that, Doctor, that you examined him?
A. The first time I saw him was May 6, 1956.
Q. Doctor, did you see him just one day or a series of days?
A. That time we saw him a series of days.
Q. Would you just relate what your examination involved and revealed by that study?
A. We saw the patient in the office and talked
page 189 } to his family, his sister, and his father, and talked to the patient, talked to a Mr. William Roberts,

Dr. James Asa Shield.

one of his teachers, teacher of biology and science course in high school. We talked to the patient, got his history from him the best we could and examined him, had certain laboratory studies made, psychological tests electroencephalogram, neurological examination, and then we saw him again in February and saw him again just a couple of days ago.

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page 197 }

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Then my opinion: "It is my opinion that this patient is totally disabled and from the history and report of Dr. Daner and Dr. Troland and history from the patient I would say that neurological disability follows his cerebral concussion and this neurological disability has given him a personality disability in which he is not sure of himself, not
page 198 } able to think well, and really not able to carry responsibility. I think that he should have someone appointed as a committee because he is really not able to use normal judgment due to his defective memory, the slowing up of his thinking, and his uncertainness."

* * * * *

Q. Then over the year has there been any change in his condition since you first saw him? Has he improved up to this time?

A. From my point of view there has been no improvement. From a neurological or psychiatric point of view, I don't see any improvement. The last part of my note of June 3, I just said: "This patient continues to be totally disabled due to his difficulty in getting about and using himself physically, due to his pains, cramps and discomforts, and due to his inability to think, to have normal alertness and clearness, and to his inability to organize his thinking or his actions."

Q. Doctor, is this a permanent condition in your
page 199 } opinion?

A. I think the answer is yes.

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page 210 } DR. WILLIAM E. DANER,
was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. You are Dr. William E. Daner?

A. That is correct.

Q. A licensed physician and surgeon in the City of Richmond and State of Virginia?

A. That is correct.

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page 212 }

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Q. What were your findings, Doctor?

A. This patient had been severely injured in an automobile accident of some type. When admitted he was in right deep shock. He apparently had head injury. He also had fractures of both thigh bones and both leg bones below the knee. The one on the left was a compound fracture with a large wound.

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page 221 }

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Mr. Thomas Williams: If Your Honor please, we have some evidence that we would like to have Your Honor pass on in chambers before we offer it.

The Court: I see no occasion to do that. Will you gentlemen of the jury step out in the corridor for a moment? The jury is going out in any case.

(The jury retired from the courtroom.)

Mr. Gordon Williams: Your Honor, there are several things. First, on the question that the Court passed on yesterday we have some authorities as to the use of pleadings by a party where the positions taken have been inconsistent.

Our purpose in offering the pleadings yesterday was partly to get where we could obtain the name of Francis C. Proctor, but also to show the inconsistent position shown by the New Dixie Lines in having pleadings previously that another party was at fault and now coming in to show in evi-
page 222 } dence that that party is not at fault. There is ample authority. Michie's Jurisprudence, that is Virginia and West Virginia, Vol. 14, page 517: "Admissions in pleadings are proper evidence where it is an affidavit under oath by the party." This pleading is an affidavit by the president of the New Dixie Lines Corporation asserting that Francis C. Proctor was one of the parties responsible. We do not assert that is evidence against Penn-Dixie or Francis C. Proctor.

The Court: I do not recall that. Where was it filed?

Mr. Gordon Williams: It is filed in the pleadings of yesterday verified by J. D. Brothers, who was summoned here.

The Court: You just said it was sworn to.

Mr. Thomas Williams: It was.

The Court: I did not understand why it was verified. Pleadings are not usually verified.

Mr. Gordon Williams: It was an answer to interrogatories, answered under oath and signed.

The Court: I see.

Mr. Gordon Williams: It was an answer to interrogatories, Your Honor, and sworn to by J. D. Brothers, president, who we summoned here and who is unable to be here because of a heart condition.

page 223 }

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Mr. Gordon Williams: I would ask that we be permitted to recall the deputy clerk, Mr. Kidd, for the purpose of presenting to the jury the evidence that we requested yesterday from the prior suit filed against the New Dixie Lines to show that affidavit filed by Mr. J. D. Brothers, what it was filed for, and why he answered it as he did.

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page 225 }

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Francis C. Proctor.

The Court: As to the evidence which was excluded on yesterday, the Court adheres to its ruling. If you want to put this offer of additional testimony in now in the absence of the jury this would be a very appropriate time to do it.

Mr. Gordon Williams: Thank you, Judge. May we take an exception to that and note an exception in the record?

The Court: Yes, sir.

* * * * *

FRANCIS C. PROCTOR,

was recalled in behalf of the plaintiff and out of the presence of the jury testified further as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. Mr. Proctor, you remember my visit to you on August 9, 1957? Do you remember that?

A. Yes, sir.

Q. Do you recall what we actually said there fairly well?

A. Some portions of it.

Q. Does this sound right: "I was leased to page 226 } Penn-Dixie Motor Lines of York, Pennsylvania"?

A. That's right.

Q. "Markel covered New Dixie Lines and I gave a statement to them. They asked me not to discuss the accident with anyone. I was hauling tobacco filler from York, Pennsylvania, to Quincy, Florida. There were no other cars or trucks near at the time the accident happened. I brought my truck to a stop behind the wreck as I had complete control all of the time. Markel's representative in Asheville had told me the suit would be tried in June and later said it was continued until later in August." Do you remember telling me those things?

A. Portions of that, yes.

Q. Did you give me this card as the person of *Market* who instructed you not to talk to anyone, discuss this with anyone?

A. No, sir.

Q. You didn't give me that card?

A. No, sir. I have never seen this card that I can recall.

Q. Did you have his name? You don't recall seeing this name?

Francis C. Proctor.

A. Not on that card, no, sir.

Q. Do you deny that you ever had any card from any representative?

page 227 } A. I deny that I have ever had that card.

Q. Do you deny that you had a card from James E. Camp of Markel?

A. Yes.

Q. You deny that?

A. At the time that I talked to you, yes, sir.

Q. When did you get it?

A. Well, I have never had a card from him at all, either before, when, or after I talked to you.

Q. Did Mr. Camp talk to you and tell you not to discuss this with anyone?

A. He possibly could, I don't recall that he did.

Q. Then you don't deny that he did instruct you in that manner?

A. Well, I don't remember that he did.

Q. Isn't it a fact that you gave Mr. Camp a statement of what happened?

A. Not directly to Mr. Camp, no.

Q. Who did you give it to?

A. It was a gentleman from Asheville, North Carolina. I don't recall his name.

Q. Who was he connected with, the gentleman from Asheville?

A. A representative from—I think it was Gay

page 228 } and Taylor.

Q. Who are they?

A. They are representatives of Markel's Service, Incorporated.

Q. Is that who you meant that you gave a statement indirectly to Mr. Camp?

A. Well, now I don't know who he gave the statement to.

Q. You just said that you didn't give a statement directly to Mr. Camp, but you did indirectly. What do you mean? Will you explain that?

A. I gave it to a representative of Markel.

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JAMES E. CAMP,

was sworn in behalf of the plaintiff and out of the presence of the jury testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. Mr. Camp, is this your card? Excuse me, you are James E. Camp?

A. That is correct.

Q. With Markel Service?

A. That is correct. Yes,—well, that is one of my cards, yes.

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Mr. Gordon Williams: Yes, we call him as an adverse witness.

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page 231 } By My Gordon Williams:

Q. Did you give this card to Mr. Francis C. Proctor when you obtained a statement from him?

A. I wouldn't say I gave it to him, no. I only saw Mr. Proctor one time and I don't remember giving him a card.

Q. Did you get a statement from him then?

A. No, sir, I did not.

Q. When was it that you saw him?

A. I believe it was right after you filed suit against Mr. Proctor. He called me when he came through Richmond and told me that suit had been filed and wanted to talk to me.

Q. That is the only time you had ever seen or talked with him?

A. That is the only time with the exception of yesterday and today.

Q. Did you investigate this collision?

A. I did.

Q. And you did on behalf of New Dixie Lines, Incorporated?

A. I did.

James E. Camp.

Q. Your employer was representing New Dixie Lines in their collision; is that correct?

A. What was that again?

page 232 } Q. Your employer was representing—

A. That is correct.

Q. So that you were acting for New Dixie Lines?

A. Yes, sir.

Q. Isn't it a fact that when you gave Mr. Proctor this card you told him not to talk to anybody about this case?

A. No, it was not.

Q. Not to discuss it?

A. No, I did not.

Q. Isn't it a fact now that your concern represents both of these companies?

A. That, I don't have knowledge of. We could. I don't have that knowledge. That is a matter of the underwriting department, a separate department from what I am in.

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Mr. Gordon Williams: He has identified it as one of his cards.

The Court: I am going to identify it, Mr.

page 233 } Williams, and if I exclude the testimony it will be marked rejected and not submitted to the jury. I will give it No. 9.

(The card was received in evidence as Plaintiff Exhibit 9.)

By Mr. Gordon Williams:

Q. You deny having talked to him in your original investigation of this case?

A. Absolutely.

Q. With whom did you talk?

A. You mean at the scene of the accident?

Q. During the course of your investigation, to whom did you talk?

A. Let's see, I talked to Mr. Spence, I talked to Mr. Green, I believe his name is, New Dixie driver—Mr. Green, the police officer, and I of course talked to Mr. Proctor after you had filed suit.

Q. You didn't talk to anyone else?

A. I didn't talk to anyone else, no, sir.

Q. You didn't even go across the road to talk to Mr. Camp?

Frank D. Stinnett, Jr.,

A. Oh, I talked to Mr. Camp the night of the accident, yes. I talked to Mr. Camp, yes. I talked to him the night of the accident.

page 234 } Q. Didn't Mr. Camp tell you the night of the accident that he heard this driver of the second truck, who we know as Francis C. Proctor, state that he was driving along, pulled out to pass, and this car suddenly came over the hill and crashed into the other truck?

A. He did not. He did not.

Q. Did you hear that statement made by Proctor?

A. I did not.

Mr. Gordon Williams: That is all the evidence, Your Honor.

Mr. Richard Williams: Come down, Mr. Camp, unless you have some questions.

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The Court: Was that all of the conditional testimony you wish to offer?

Mr. Thomas Williams: Yes, sir.

The Court: The Court will sustain the objection and exclude the testimony. This exhibit will be marked rejected. It will go into the record to show what was offered to be proven. Your exception is noted.

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FRANK D. STINNETT, JR.,
was sworn in behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

By Mr. Gordon Williams:

Q. Would you state your name and address, please, sir?

Frank D. Stinnett, Jr.,

A. My name is Frank D. Stinnett, Jr.; my address is 414 West Franklin Street.

Q. Where do you work, Mr Stinnett?

A. I work in the Research Department of the Federal Reserve Bank of Richmond.

Q. How long have you been employed there?

A. Been there twelve years this month.

Q. Are you supplied by any department of the Federal Government with any information, statistics, relating to the value of the purchasing power of the dollar?

page 237 } A. Yes, sir, we are supplied with the consumer price index which measures the changes in the prices of goods and services that a typical family buys.

Q. Over what period do you have those figures? What base period do you have those figures for?

A. The base period is the 1947-1949 average equals 100. In other words, the purchasing power of the average of those three years is equal to 100 cents.

Q. For those figures do you have a breakdown previous to that time?

A. Yes, sir.

Q. Do you have figures for 1940, before that, and since then?

A. Yes, sir, we have figures from 1930 up to date through April. The latest figure we have is the one for April of this year.

Q. Have you made a table based on the figures that you have been supplied?

A. Yes, sir, I have. Converting the 1947-49 average to 1940 average. In other words, making the base 1940 and the purchasing power of the dollar in the year 1940 equal to 100 cents.

Q. I hand you a graph and ask if that shows in pictorial form accurately the figures which you have compiled?

page 238 } Mr. Garrett: Your Honor, we object to all of this as irrelevant. I do not know what bearing it has on the trial of the case of whether the defendants are liable or not.

Mr. Gordon Williams: It is quite relevant, Your Honor, for the jury in determining the value in assessing the damages of what should be awarded the plaintiff, the value of a dollar currently and basing it on what the value of the dollar has been in the past is the only way that they can de-

Frank D. Stinnett, Jr.,

termine what the value of the dollar would be in the future for this man.

Mr. Richard Williams: I join in Mr. Garrett's objection, Your Honor, as to relevancy.

The Court: Any authorities? Any precedents?

Mr. Gordon Williams: They are records of the Federal Department of Labor just as the records of the School Board of Charlotte County or any other record, if Your Honor please. This man is qualified as an expert for the comparison of those figures.

The Court: That wasn't just what I meant. Have you any cases which hold that testimony of this nature should or should not be admitted over objection?

page 239 } Mr. Thomas Williams: Your Honor, may I add this? You recall that the Supreme Court has said that the value of a dollar is not what it used to be and has set down certain things which would up the amount of the price today to meet the cut in the value of the dollar.

The Court: It never has been constant, has it? It has changed right along all through history, hasn't it?

Mr. Thomas Williams: It certainly has; that is true.

The Court: I do not recall any case on the point.

Mr. Thomas Williams: We just got this chart today.

The Court: It is blazing a new trail.

Mr. Thomas Williams: It could be.

The Court: I am going to sustain the objection.

Mr. Gordon Williams: Note an exception.

Mr. Thomas Williams: Would Your Honor mark the chart received as an exhibit?

The Court: It will be 10, rejected.

(The chart was marked Plaintiff Exhibit 10 Rejected.)

page 240 } By Mr. Gordon Williams:

Q. Mr. Stinnett, do you have the table of figures from which that chart was made?

A. Yes, I have. I have a carbon copy of the chart.

Q. You also have the figures on the cost of living?

A. Yes, I have those.

Q. The expense of living. I hand you this and ask you—

Mr. Gordon Williams: I wish to file that the same way, if Your Honor please. I assume that would be objected to and it would be the same ruling.

The Court: It would be No. 11 rejected.

Frank D. Stinnett, Jr.,

(The document was filed as Plaintiff Exhibit 11 Rejected.)

By Mr. Gordon Williams:
Q. Would you let us have a carbon copy of the table?
A. I am sorry, sir, it is in my seat.

Mr. Gordon Williams: If Your Honor please, may he be excused to get that so we may offer it?
The Court: Certainly.
Mr. Gordon Williams: We offer that just for
page 241 } purpose of showing—

By Mr. Gordon Williams:
Q. They are the actual figures that you compiled?
A. That is right.

The Court: That will be No. 12, rejected.

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The Court: The Court will sustain both motions to strike. Motion for summary judgment will then be in order.
Mr. Garrett: I so move, Your Honor.
Mr. Richard Williams: I so move, Your Honor.
The Court: The motions will be granted.
Mr. Thomas Williams: May we take excep-
page 247 } tions to the sustaining of the motions to strike and the action of the Court in granting a summary judgment?
The Court: Yes, sir. Let the record so show, Mr. Lee.

(The jury was returned to the courtroom.)

The Court: Gentlemen of the Jury, the Court has stricken out the evidence in the case as not making out a *prima facie* case of liability and has entered summary judgment for the defendant. There is therefore nothing further for you to consider.

(The jury was discharged.)

Mr. Thomas Williams: Do we have to note an exception to the action of the Court in discharging the jury too?

The Court: I should think that if that is an error it would be a harmless one in view of everything that the Court did before that. It is all right if you want the record to show it. The Court wants to cooperate with you in every way in perfecting the record.

Mr. Thomas Williams: Yes, sir. Well, that is what we want. We want to note an exception to the action of the Court.

(Whereupon the trial of the case was concluded at 2:40 p. m., June 5, 1958.)

* * * * *

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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