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Record No. 4992

In the Supreme Court of Appeals of Virginia at Richmond

RICHARD A. SANFORD

v.

MANLEY D. MOSIER

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

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4992

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 27th day of January, 1959.

RICHARD A. SANFORD, Plaintiff in Error,

against

MANLEY D. MOSIER, Defendant in Error.

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

Upon the petition of Richard A. Sanford a writ of error and *supersedeas* is awarded him to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 31st day of July, 1958, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Manley D. Mozier was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Law and Chancery Court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

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* * * * *

ORDER.

This day came the parties, in person and by counsel, and thereupon came a jury, to-wit; William N. Winn, Jr., Chester A. Tynes, T. W. Winston, Sidney B. Johnson, David M. Moses, Louzetta S. Forbes and Joseph F. McDonald, who, upon being duly sworn the truth to speak upon the issue joined and having heard the evidence of the plaintiff the Court struck the plaintiff's evidence, to which action of the Court the plaintiff, by counsel, duly excepted. Thereupon the defendant, by counsel, moved the Court for summary judgment, which motion after having been fully heard and maturely considered by the Court is sustained, to which action of the Court the plaintiff, by counsel, duly excepted.

Whereupon it is considered by the Court that the plaintiff take nothing for his false clamor and that the said defendant go hence without day and recover of the said plaintiff his costs about his defense herein expended. To all of which action of the Court the plaintiff, by counsel, duly excepted.

The jury was discharged from the further consideration of this case.

* * * * *

page 6 }

* * * * *

ASSIGNMENT OF ERRORS.

Plaintiff, Richard A. Sanford, assigns the following errors:

1. The Court erred in striking plaintiff's evidence.
2. The Court erred in adjudging the plaintiff guilty of contributory negligence as a matter of law.
3. The Court erred in refusing to submit to the jury the contributory negligence, if any, of the plaintiff for their determination.

Officer Marvin R. Potter.

4. The Court erred in entering summary judgment for the defendant.

page 7 } 5. The Court erred in admitting in evidence over the objection of plaintiff the plat, marked Exhibit 4.

6. The Court erred in overruling plaintiff's motion for a new trial.

7. The Court erred in refusing to set the judgment aside and award plaintiff a new trial.

RICHARD A. SANFORD,
By A. A. BANGEL
Of Counsel.

Filed 8-22-58.

H. L. STOVALL, D. C.

* * * * *

page 23 } OFFICER MARVIN R. POTTER,
called as a witness on behalf of the plaintiff, and having first been duly sworn, testified as follows:

Examined by Mr. S. J. Bangel:
Q. State your name, please.
A. Marvin R. Potter.

The Court: Mr. Potter, you will have to talk a little louder than that.

A. Marvin R. Potter.

By Mr. S. J. Bangel:
Q. What is your occupation?
A. Police Officer, South Norfolk.
Q. Mr. Potter, as a police officer for the City of South Norfolk, did you have occasion to investigate a collision in which Mr. Sanford was struck by a truck on the 23rd of November 1957?
A. Yes, sir.
Q. About what time was this accident?
A. Approximately 9:17.
Q. P.M.? In the evening?
A. Yes, sir.
Q. When you arrived, where was this collision?

Officer Marvin R. Potter.

A. It was on the corner just north of Border Road, on Campostella.

Q. It was at Border Road and Campostella Road?

page 24 } A. Yes, sir.

Mr. Greer: He didn't say that.

The Court: He said just north of Border Road and Campostella.

The Witness: Just north of Border Road, on Campostella.

By the Court:

Q. North of Border Road, on Campostella?

A. Yes, sir.

By Mr. S. J. Bangel:

Q. That was where you found the body, is that right?

A. Yes, sir.

Q. Suppose you tell me, if you will, this, sir: Campostella Road runs in what direction?

A. North and south.

Q. And Border Roard that you spoke of?

A. Runs east.

Q. Is there a street that crosses over? What is this street here (indicating)?

A. That is looking north, this is Liberty Street, this is Border Road, to the right.

Mr. S. J. Bangel: Suppose we look at this.

The Court: All right; Plaintiff's Exhibit 4.

(The picture referred to was marked Plaintiff's Exhibit 4.)

page 25 } By Mr. S. J. Bangel:

Q. Looking at this, what would that be? Looking in what direction?

A. This would be looking south. Campostella—Liberty is on the right and Border is on the left.

Mr. S. J. Bangel: I offer that in evidence, please.

The Court: Plaintiff's Exhibit 5.

(The picture referred to was marked Plaintiff's Exhibit 5.)

By Mr. S. J. Bangel:

Q. In which general direction would that be looking at?

Officer Marvin R. Potter.

A. That would be looking west, I believe, on Liberty Street.

(Mr. S. J. Bangel handed a picture to the Court.)

The Court: Plaintiff's Exhibit 6.

(The picture referred to was marked Plaintiff's Exhibit 6.)

By Mr. S. J. Bangel:
Q. In what general direction would that be looking, sir?
A. That would be looking approximately south, the railroad tracks—this here I believe would be Liberty Street and this, Campostella Road; and south in that direction.

Mr. S. J. Bangel: We ask that this be marked, if Your Honor please.
The Court: 7.

page 26 } (The picture referred to was marked Plaintiff's Exhibit 7.

By Mr. S. J. Bangel:
Q. If you will, Officer, tell us what you found as you arrived at the intersection at the scene of this collision?
A. We found a two-ton truck sitting on the right side of the road heading north on Campostella Road; approximately four paces behind the rear wheel was a body.
Q. Behind which rear wheel?
A. The right rear wheel of the truck. And we measured from the pole across the street, it was approximately, the body was approximately four paces north of the telephone pole.
Q. Is that telephone pole at the intersection?
A. It is on the left side coming north on Campostella Road.
Q. Well now, if you will, come down here, please, Officer. This would be looking in which direction on Campostella Road?
A. That is looking north.
Q. All right, sir.
A. This (indicating) is the pole we measured across from.
Q. Did you all see (addressing the jury)? If not, come a little closer.

By the Court:
Q. Put your hand on the pole again. I am not sure I saw it.

Officer Marvin R. Potter.

page 27 } A. (Complying) This is the pole here.

Mr Greer: I would suggest that the witness mark that for the record. There is no way of showing which pole since we have—

The Court: Give it to me. I will mark the pole indicated by the witness.

Mr. S. J. Bangel All right, sir.

The Court: I have written on here an arrow marking the pole and with "Pole indicated by witness Potter."

By Mr. S. J. Bangel:

Q. That is the pole at what corner of the intersection?

A. That was on Liberty Street side.

Q. Which would be the northwest corner of the intersection?

A. Yes, sir.

Q. This (indicating) being north and this (indicating) being west?

A. Yes, sir.

Q. So from this pole here that the Judge has marked—that is the one from which you measured the position of the body and the truck from the intersection?

A. Yes, sir.

Q. Point to where the body was and where the truck was. Let me see if you—suppose you get over here.

A. The truck was sitting approximately right in here.

Q. You have pointed to the north of the inter-
page 28 } section of Campostella Road and Border Road?

A. Yes, sir.

Q. And the body was lying—

A. The body was approximately four paces back of the right wheel and four paces north of this pole.

Q. You have indicated on the right edge of Campostella Road going north?

A. Yes, sir.

Q. And the body was four paces from the intersection to—

Mr. Greer: Just a minute.

By Mr. S. J. Bangel:

Q. Four paces from the pole, which is there at the intersection, four paces measured in this way?

A. Yes, sir.

Q. In other words, this pole was on this side of the street?

Officer Marvin R. Potter.

A. Yes, sir.
Q. But you carried across here, is that the idea?
A. Yes, sir.
Q. You measured four paces from there to the body?
A. Yes, sir.

By a Juror:
Q. What is four paces?
A. Approximately twelve feet.

page 29 } Mr. A. A. Bangel: Mark it there.

By Mr. S. J. Bangel:
Q. Four paces from the body to the end of the truck, is that right?
A. Yes, sir.
Q. Now, would you mark on there where the body was, with a little circle if you will?
A. That would be—let's see, the driveway here—that would be kind of hard to do. It would be approximately right there (indicating).
Q. Put it there, just a little circle.
A. (Witness complying.)

Mr. A. A. Bangel: I believe a red pencil will show up better.
Mr. S. J. Bangel: We will use a red pencil for the truck.

By Mr. S. J. Bangel:
Q. Now, will you take the blue pencil,—and the blue dot, for the record, is where the body was. Now, take the red pencil and mark where the truck was. Draw a truck right in there.
A. The truck was just forward of it.
Q. Four paces I believe you said?
A. It was also south of this little driveway which goes into Ross' grocery.
page 30 } Q. Put the truck where it was.
A. (Witness marking.)
Q. In other words—
A. It is kind of hard to do because these two are so close.
Q. Go ahead and draw on there.

Mr. A. A. Bangel: The jury can't see it.

A. The truck (witness drawing) just forward of there.

Officer Marvin R. Potter.

By Mr. S. J. Bangel:
Q. I see.
A. But it is also south of this driveway that comes right in there.

Mr. Greer: I am sorry, I couldn't hear you.
The Witness: I say it is also south of this little driveway what goes into Ross' grocery.
Mr. Greer: Thank you.

By Mr. S. J. Bangel:
Q. Let's see if we understand correctly. South of this corner here, up here is a driveway that goes through there?
A. Yes, sir.
Q. Blocked I believe by shrubbery?
A. Yes.
Q. Now, the body was down four paces from this pole or from right here?
A. Yes, sir.
page 31 } Q. That way. And then four additional paces, as to which I believe one of the jurors asked and you said about twelve feet?
A. Yes, sir.
Q. Four paces past the body the right rear wheel was, of the truck?
A. Yes, sir.
Q. How many paces was the body, how far was the body knocked from the corner?

Mr. Greer: I object.

By Mr. S. J. Bangel:
Q. Or was the body from the corner.

Mr. Greer: There is no testimony at all about that.
The Court: I am sorry, I couldn't hear you.
Mr. Greer: He asked how far the body was knocked.
The Court: I couldn't hear your objection.
Mr. Greer: I said I objected; there was no testimony of the body being knocked. This officer can say where he was.
The Court: I understood him, didn't hear you.

By Mr. S. J. Bangel:
Q. How far was the body from the corner, from the intersection, Mr. Sanford's body from the intersection?

Officer Marvin R. Potter.

A. I am afraid I can't answer that.

Q. About how far?

page 32 } A. (Witness pausing.)

Q. Maybe you don't understand my question. Let me see if I can make it clearer. We have here—

Mr. Greer: He has already testified three times it was four paces north of the telephone pole.

The Court: He testified the distance measured from the body to the telephone pole. That establishes the position of the body. Now you may establish the position of the intersection with relation to the pole. The body has been established.

Mr. S. J. Bangel: I appreciate that, Judge.

By Mr. S. J. Bangel:

Q. Officer, this pole that you have measured from is right there at the intersection, is that right?

A. Yes, sir.

Mr. S. J. Bangel: All right, sir.

By Mr. S. J. Bangel:

Q. In which direction was the truck headed, Officer?

A. North on Campostella Road.

Q. Where was the body found in reference to the east side of the road or facing the way the truck was going, the right-hand side of the truck?

A. That—his head I believe would approximately be a foot or foot and a half from the curb.

Q. That would be the eastern curb?

page 33 } A. That is on the Border Road side, yes, sir.

Q. Officer, did you help put Mr. Sanford in the ambulance?

A. Yes, sir.

Q. What was his condition? Was he injured?

A. Well, he seemed to be bleeding bad from the left leg I believe it was, and it seemed to be mangled up a little bit.

Q. Could you smell any alcohol on him?

A. I did not smell any, no, sir.

Q. What statement was made by the defendant, the driver of the truck, Mr. Mosier, as to whether or not he saw Mr. Sanford?

A. The driver of the truck made a statement to us that all he saw was a blur.

Officer Marvin R. Potter.

By a Juror:

Q. A blur?
A. Yes, sir.

By Mr. S. J. Bangel:
Q. Did he say anything as to whether or not he felt his wheels go over him?

Mr. Greer: I object; leading.
The Court: Sustained.

By Mr. S. J. Bangel:
Q. What if anything did he say with reference to page 34 } his wheels and the body, Mr. Sanford?
A. He said he felt his right front wheel hit, go over something.
Q. What part of the truck was damaged?
A. The right headlight.
Q. Right headlight?
A. Yes, sir.

Mr. S. J. Bangel: You may inquire.

CROSS EXAMINATION.

By Mr. Greer:
Q. Officer Potter, in answer to Mr. Bangel's question about this telephone pole at the intersection, I believe as he put it—of course you mean at the intersection as shown on this picture, is that correct?
A. I don't understand you, sir.
Q. The pole is not immediately on that intersection, is it?
A. No, sir. That street comes out at an angle.

Mr. Greer: Your Honor, would you mark this Defendant's Exhibit 1?
The Court: So marked.

(The picture referred to was marked Defendant's Exhibit 1.)

Officer Marvin R. Potter.

By Mr. Greer:

Q. Officer Potter, showing you a picture which
page 35 } has just been marked Defendant's Exhibit 1, that
is looking from the railroad tracks, would be looking east, is that correct?

A. Yes, sir.

Q. Across Campostella Road; and the road shown running crosswise of the picture would be north and south, that is Campostella Road?

A. Yes, sir.

Q. All right. Now, Officer, the telephone pole which you have marked on Plaintiff's Exhibit 4, that is the pole that is shown over here in the lefthand part of the picture, is it not?

A. Yes, sir.

Q. Would you just punch a hole right through that pole to indicate that is the pole you are speaking of?

The Court: Punch right through the pole.

By Mr. Greer:

Q. Just right through there.

A. (Witness complying.)

Q. If I may, I will circle it on the back and write the word "Pole." And that, of course, as is shown there, the pole is on the grassy part where this road, which would be Liberty Street, turns into Campostella?

A. Yes.

Q. Officer, what was the weather like on this particular
night?

page 36 } A. (Pausing) It wasn't raining at the time. Now,
I—I don't believe I can answer whether it was cloudy or clear.

Q. You do not remember whether it was cloudy or clear?

A. No, sir, I don't.

Q. Do you remember whether or not it had been raining previous to that time?

A. No, sir, I don't.

Q. Do you recall, Officer, what type of clothes the injured man was wearing at the time? Did he have on an overcoat or did you notice?

A. I don't believe I can answer that.

Q. All right, sir. Now, Officer Potter, you stated that you did not notice any odor of his drinking. Did you check for that?

Officer Marvin R. Potter.

A. He was asked, I believe had he had anything to drink and he said he had a beer.

Q. Said he had had a beer?

A. Yes, sir.

By the Court:

Q. Asked by whom?

A. Officer Smith.

By Mr. Greer:

Q. That is, the injured man?

A. Yes, sir.

Q. That is whom we are speaking of. Do you
page 37 } have your accident report with you?

A. No, sir, I don't have it with me.

Q. You do not. Did you make up the report or did Officer Smith?

A. Officer Smith made it up.

Q. He did make it up?

A. Yes, sir.

Q. And other than that question, you didn't check any further?

A. No, sir.

Q. In regard to that. Now, Officer Potter, you stated in answer to Mr. Bangel's question about the position of the body —you have already described where it was and I am not going into that again, but you stated in regard to where it was in the road that the head; that is, the injured man's head, was about a foot and a half from the east curb which, of course, as is shown here there is no curbing; you mean the east edge of the hard surface?

A. Well, approximately where the dirt and cement, blacktop meets.

Q. That is where the hard surface and blacktop goes into the dirt shoulder as shown?

A. Yes, sir.

Q. In what direction or how was he lying there? Was it north and south, east and west, or at an angle or just what

A. He was laying—his head slightly south of
page 38 } Campostella Road. I believe his feet were slightly forward.

Q. His feet were slightly forward; was he on an angle or was it straight?

A. If this is the street, he was just on a slight angle.

Officer Marvin R. Potter.

Q. Well then, about how far would you say his feet were then from the edge of the road?

The Court: The same edge that he measured?
Mr. Greer: Yes, the same edge.

By Mr. Greer:
Q. The eastern edge that you described.
A. He was about five, eight, approximately six and a half feet, I believe.
Q. I am not sure you understand my question. I want to make sure it is correct. I am speaking of where his feet were from the edge of the road. You say about six feet? That would mean—

The Court: He said five, eight to six and a half feet as I understand him to say.
The Witness: No, I was figuring his height.

By Mr. Greer:
Q. That is what I wanted to get straight. That is the reason I didn't understand, I wasn't sure if you understood my question.
A. I would say approximately six and a half feet
page 39 } from—six feet from the curb.
Q. In other words, his head was approximately a foot and a half, and he was lying—
A. On an angle.
Q. —with his feet northwardly on an angle so his feet were about six and a half from the edge?
A. Approximately, yes.
Q. I realize you didn't measure it; I am just asking approximately. Officer, do you know—I don't recall if you testified or not—how wide Campostella Road is?

The Court: I scaled it according to your map if you want the results of my scale.
Mr. A. A. Bangel: That is all right.
Mr. Greer: I have it on there. Just so there would not be any question—
Mr. A. A. Bangel: There will be no question as to that. I think we can all agree.

Juanita G. Dawson.

By the Court:
Q. All right, go ahead. How wide is it, Officer?
A. That blocks me. I don't know. I have got it in the report.

Mr. A. A. Bangel: He would be guessing, of course. If we have got it accurately, why can't we use the accurate information?

The Court: Well, that officer will be here.
page 40 } Mr. Greer: I think that is all, Officer.

RE-DIRECT EXAMINATION.

By Mr. S. J. Bangle:
Q. Officer, let me ask you just two more questions. Where was the truck in reference to the righthand side of the road?
A. Where was it? The truck?
Q. Yes, sir.
A. The truck was in the right lane. Where he had stopped at, his front wheels were slightly closer to the curb than his rear wheels.
Q. What part of the truck was damaged?,
A. The right headlight.

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

Examined by Mr. S. J. Bangel:
Q. State your name, please.
A. My name is Juanita Dawson.
Q. You are going to have to speak good and loud.

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

By Mr. S. J. Bangle:
Q. State your name, please.
page 41 } A. Juanita Dawson.
Q. Where do you live?
A. 2527 Campostella Road.
Q. Where is your home in reference to the intersection of Campostella Road and Liberty Street?
A. At the corner.
Q. I hand you Plaintiff's Exhibit 4 and ask you, can you point out your home?

Juanita G. Dawson.

A. Right here (pointing). It is by the telephone pole.
Q. Point—
A. (Witness indicating for the Court.)
Q. Point to your home.
A. (Witness indicating to the jury.) It is right here.
Q. Will you take this—

Mr. A. A. Bangel: Suppose I use an arrow to point to it.
Mr. Greer: All right. Why don't you put "Dawson" above it.
Mr. S. J. Bangel: "D-a-w-s-o-n" (writing).
The Witness: That is right.
Mr. S. J. Bangel: If Your Honor please, I have indicated—
The Court: What is the witness' name?
Mr. S. J. Bangel: Dawson. I have indicated by an arrow the home and have written the word "Dawson" above it.
The Court: Yes.

page 42 } By Mr. S. J. Bangel:
Q. Now, this will be looking north on Campostella Road, is that right?
A. That is right.
Q. Are you familiar with the points of the compass? Do you know which way would be north?
A. Yes.
Q. Which way would be north?
A. (Pointing.)
Q. Which way east?
A. This way (pointing).
Q. This way would be east and which way would be south?
A. (Pointing.)
Q. Which way would be west?
A. (Witness pointing.)
Q. That is right. Now, while you are down here—suppose you go on back up here.

The Court: What exhibit is that marked?
Mr. S. J. Bangel: Exhibit 4, Your Honor, Plaintiff's Exhibit 4.

By Mr. S. J. Bangel:
Q. Did you witness this collision with Mr. Sanford being struck by this truck?

Juanita G. Dawson.

A. Yes.
page 43 } Q. Where had you been?
A. Over to my girl friend's house.
Q. Where were you going?
A. Home.
Q. You were going to your home, you say?
A. That is right.
Q. Where is your girl friend's home?
A. Across the railroad.
Q. Across the railroad tracks?
A. That is right.
Q. Come down here, if you will, and see if you can point that out to the jury. This is looking north on Campostella. Hold that, if you will, with your left hand. Looking north on Campostella, this is your home here. Where are the railroad tracks?
Q. Here (indicating).
Q. Does this picture show anything? If it will help you I hand you Plaintiff's Exhibit 6.
A. This is my girl friend's house right here (indicating).
Q. You have pointed to this house here. Suppose I make an arrow above that with just "G" above it. And that is your girl friend's house, you say
A. Yes.
Q. Now, where is your home? Where would your home be on this picture?
page 44 } A. (Witness pointing.)
Q. Right here. In other words, this path runs beside your home here, right on back to your girl friend's house, is that right?
A. Yes.
Q. Where were you going at the time you saw this—
A. I was going home.
Q. Where had you been?
A. To my girl friend's house.
Q. Now, where were you when you saw—did you see Mr. Sanford?
A. Yes, I saw him
Q. The man sitting there (referring to the plaintiff in courtroom)?
A. I saw him.
Q. Where did you see him?
A. On the road, on Liberty Street.
Q. Can you point to where you saw him?
A. (Witness pointing.)

Juanita G. Dawson.

Q. Right along there. You have indicated to the north side. on the north side of Liberty Street.

Mr. Greer: I didn't see that.

By Mr. Bangel:
Q. Point to it again.
A. (Witness pointing.)

page 45 } Mr Greer: Hadn't you better have her mark that?

By Mr. S. J. Bangel:
Q. All right. Let's mark that, if you will. Put a little X. Put a line, just a little straight line.

The Court: Let the record show on what exhibit she is marking.
Mr. S. J. Bangel: She has marked Plaintiff's Exhibit 6 and has drawn a line showing the position—

By Mr. S. J. Bangel:
Q. Where you first saw Mr. Sanford, is that right?
A. Yes.
Q. Where were you?
A. On the railroad track.
Q. Speak so all these people can hear you. On the railroad tracks. What railroad tracks?
A. This railroad right here.
Q. Right here?
A. That is right.

The Court: I don't believe Miss Alfriend can hear. I can't.

A. I was on this railroad track.

By Mr. S. J. Bangel:
Q. That is fine. Now, take this and put an X on the railroad tracks that you spoke of, on Plaintiff's Exhibit 6.
A. (Witness complying.)
page 46 } Q. Draw a good sized X. That is all right. I am going to make it a little larger, a little bigger so you can see it. (Counsel doing so.) And that is X on Plaintiff's Exhibit 6; that is where you were walking when you saw Mr. Sanford over there?

Juanita G. Dawson.

A. That is right.
Q. Well now, did you see the truck that struck Mr. Sanford?
A. Yes, I saw it.
Q. Where was that truck?
A. It was coming north on Campostella Road.
Q. North on Campostella Road?
A. That is right.
Q. Don't drop your voice, now. These people want to hear it. North on Campostella Road. Well, that would be to your left or to your right, then?
A. To my right.
Q. To your right. All right. How far was that car from the intersection as Mr. Sanford was crossing?
A. About three or four hundred feet.
Q. About three or four hundred feet?
A. (The witness nodded.)
Q. That is when he started across?
A. (The witness nodded.)

Mr. Greer: She hasn't said anything about page 47 } starting to cross. I object to the leading question.

The Court: The question was: How far was the truck away when Mr. Sanford was crossing.

Mr. S. J. Bangel: I think "started across."

Mr. Greer: She had said she saw him on the north side of Liberty Street. There has been no testimony from this witness about any starting across.

By the Court:
Q. Did you see—

Mr. S. J. Bangel: Go ahead, Judge.

By the Court:
Q. You say you first saw Mr. Sanford, he was on the north side of Liberty Street?
A. That is right.
Q. Going in an eastward direction?
A. He was going across.

The Court: All right.
Mr. S. J. Bangel: That would be easterly.

By the Court:
Q. Going across what?

Juanita G. Dawson.

A. Campostella Road.

Q. All right. Did you see him after he started, after he got into Campostella Road?

A. Yes, sir.

Q. Did you see him when he first stepped into
page 48 } Campostella Road?

A. I did.

Q. All right. Where was the truck when Mr.Sanford first stepped into Campostella Road?

A. About a block.

Q. About a block what?

A. About a block away.

Q. About a block what?

A. About a block away.

Q. Away from Mr. Sanford?

A. Yes.

The Court: Go ahead.

By Mr. S. J. Bangel:

Q. Now, what happened when he started across? Where was he crossing in reference to the intersection?

A. He was crossing—where was—

Q. Crossing in reference to the intersection.

A. Right at the intersection.

Q. And what happened when he started crossing the intersection, with that truck a block away?

A. When he started across if he had stepped just one more step he would have been off, but the truck—

Q. You are going to have to speak louder.

A. If he had stepped just one more step across—

Mr. Greer: Just a minute. I object to the "if
page 49 } he had done." She should state what she saw.

Mr. A. A. Bangel She is describing the position he was at the time he was struck.

The Court: But she is making an assumption of what would have happened under a hypothetical fact. Tell us what you saw, not what would have happened.

By Mr. S. J. Bangel:

Q. Let me ask you this question: Did you see Mr. Sanford get struck by this truck?

A. I did.

Q. What part of the truck hit him?

Juanita G. Dawson.

A. The right—

By the Court:
Q. Right portion?
A. Right part of the front.
Q. Front of the truck? Back of the truck?
A. Front.

By Mr. S. J. Bangel:
Q. How far was Mr. Sanford from the eastern edge of Campostella Road? "Eastern edge of Campostella Road"; I mean the far edge of Campostella Road from where he was walking.
A. One step.
Q. One step?
A. (The witnes nodded.)
Q. Did the truck slow down or speed up or do anything—

page 50 } Mr. Greer: A leading question, Your Honor.
The Court: "Describe the action of the truck from the time you saw it until the accident."
Mr. S. J. Bangel: In reference to his speed.
The Court: Speed and any changes, if any, in the speed.

A. I don't know how fast he was.

The Court: I haven't the slightest idea what you said.
Mr. A. A. Bangel: She said no.
The Witness: No, I don't know.
The Court: Did you hear that,
Mr. S. J. Bangel: In other words, I think—
The Court: I can tell that that gentleman (indicating a juror) can't hear. I can't hear. I assume—
The Witness: I said no.

By Mr. S. J. Bangel:
Q. Let me ask you this question, see if you understand the question. Can you tell whether or not that truck that you saw changed its speed any whatsoever before striking Mr. Sanford?

Mr. Greer: A leading question.
The Court: I don't see wherein that is leading: "Did it change its speed from the time you saw it until it struck Mr. Sanford," does not suggest the answer to me.

Juanita G. Dawson.

page 51 } A. No.

By Mr. S. J. Bangel:
Q. The answer: did not; is that right?
A. That is right.
Q. After the truck struck Mr. Sanford, what happened? What did you see?
A. What happened after the—
Q. Tell what happened.
A. Oh, when the truck struck Mr. Sanford—

The Court: You can talk as loud as I am talking now, can't you? Do so.

A. When the truck struck Mr. Sanford, I ran into the house.

By Mr. S. J. Bangel:
Q. Why did you run into the house?
A. Because I was frightened.
Q. Did you hear anything?
A. Yes, before—Mr. Sanford was hollering somebody help him.
Q. And did you come back out of your house?
A. Yes, I come back out after it was a crowd out there.

By the Court:
Q. After what?
A. A crowd of people was around.

page 52 } By Mr. S. J. Bangel:
Q. After a crowd of people were around?
A. (The witness nodded.)
Q. Did you see Mr. Sanford?
A. Yes. He was lying in the road.
Q. Did you see the truck?
A. Yes.
Q. Where was Mr. Sanford lying in the road?
A. Behind the truck.
Q. Behind the truck?
A. (The witness nodded.)
Q. How far was he from the edge of the road? I am speaking about the eastern edge of the road or the righthand side of the road going north.
A. He wasn't too far behind the truck.

Juanita G. Dawson.

Q. Can you indicate the—take this, if you will, point to where Mr. Sanford's body was. I am showing Plaintiff's Exhibit 4.

A. It down right—yes.

Q. Right along in there? Come over here so these ladies and gentlemen can see it. Point to where the body of Mr. Sanford was when you—

A. It was lying—

Q. Right in there? Where was the truck?

A. The truck was up here, about—

page 53 } The Court: Is she—

A. (Continuing) This post here.

The Court: Is she speaking? I can't hear.

By Mr. S. J. Bangel:

Q. Tell the jury where the body—

A. I say his body was lying here (indicating).

Q. Where was the truck?

A. The truck was up—up in here (indicating).

Q. Up in there. All right. Did you see what part of the truck was damaged that struck Mr. Sanford?

A. The right front light.

Q. Was there any traffic coming the opposite direction, from north, that would be blocking the lane of this truck, or was that truck the only vehicle out there?

A. No, I didn't see any.

Q. None out there except the truck? Thank you.

By Mr. Greer:

Q. Now, you have—

By Mr. S. J. Bangel:

Q. You live out there, don't you? Is that area dark or what?

A. Sir?

Q. At nighttime out there that night.

By the Court:

Q. Any street lights there?

page 54 } A. No.

Juanita G. Dawson.

By Mr. S. J. Bangel:

Q. Describe the condition out there as far as lighting is concerned.

A. It was a light across the railroad track.

Q. Can you point that out on these pictures? Come down here. Would any of these pictures help you?

A. This light here (indicating).

Q. Oh yes. Will you mark that with a circle around it, please?

A. (Witness complying.)

The Court: Identify the exhibit.

Mr. S. J. Bangel: I will as soon as she marks it.

(Witness marking.)

By Mr. S. J. Bangel:

Q. Draw a bigger circle around it. Give me a red pencil. Take this, and that doesn't seem to—draw a good sized circle around.

A. (Complying.)

Mr. S. J. Bangel: If Your Honor please, she has drawn a red circle overtop of a pole which had lights on it at the time of the accident. That is on Plaintiff's Exhibit 5.

By Mr. S. J. Bangel:

Q. Were there any other lights out there from anything?

A. No, just the store light.

page 55 } Q. Store lights?

A. (The witness nodded.)

Q. Was the store open or closed?

A. It was closed.

Q. Did it have lights there?

A. It did.

Q. How was this man going as he crossed the street? Was he walking? Describe how he was going.

A. Oh, he was just walking, walking across the street like this (demonstrating).

Q. Just walking across. All right.

By the Court:

Q. He was walking about that speed that you were walking?

A. Yes, he was walking—(witness nodded).

Juanita G. Dawson.

By Mr. S. J. Bangel:
Q. Walking across. All right.

Mr. Greer: Show for the record a normal walk, walking across.

CROSS EXAMINATION.

By Mr. Greer:
Q. You have shown on Plaintiff's Exhibit 6 the house where you had been. What time had you gone over to that house?
A. I went before—what time I went over there?
page 56 } Q. Yes.
A. I don't know exactly the time.

By The Court:
Q. How long had you been there before you left?
A. About 15 or 20 minutes.

By Mr. Greer:
Q. About 15 or 20 minutes?
A. That is right.
Q. Where had you been before then? Had you gone from your home over there or from some place else?
A. From home?
Q. From home over there?
A. That is right.
Q. Had you been home from work for any length of time before you went over there?
A. No.
Q. Did you work that day?
A. I don't work.
Q. You don't work?
A. No.
Q. So about what time was it, would you say, then, when you left your girl friend's house?
A. About ten past nine.
Q. About ten past nine. What is your girl friend's name?
A. Betty.
page 57 } Q. Betty who?
A. Wilson.
Q. Betty Wilson. When you left her house, you came up on the railroad track here. Did you come up at a point which is

shown right in front of the house that you marked? In fact, I think you have an X there. Does that indicate where you were on the railroad track?

A. That is right.

Q. Now, was it at that time that you first saw Mr. Sanford?

A. Yes, it was the first time.

Q. That is when you first saw him?

A. That is right.

Q. When you were on the railroad track, and at that time you have marked on this same Plaintiff's Exhibit 6 that he was on the north side of Liberty Street before it comes into Campostella Road?

A. That is right.

Q. Did you continue looking at him?

A. I did.

Q. Did you stand there or did you continue walking?

A. I stood for awhile on the railroad.

Q. Why were you standing on the railroad for awhile?

A. Because I thought it was some—some of my

page 58 } neighbors coming by.

Q. You thought that he was one of your neighbors?

A. Yes.

Q. Was he facing toward you?

A. No.

Q. Which way was he walking?

A. He was walking, his back was turned.

Q. Back turned to you?

A. That is right.

Q. Was there any indication he was going to turn down towards where you were? That is, turn north?

A. No.

Q. Did you call out to him?

A. No, I didn't say anything.

Q. You stood there and watched him?

A. That is right.

Q. Did you stand there and watch him the whole time that he crossed this road until he was struck?

A. I did.

Q. Did you think it was still one of your neighbors during that whole time?

A. I didn't know.

Q. Why did you stand there?

A. I just stood there, that is all.

Juanita G. Dawson.

Q. You just stood there?
page 59 } A. A-hum.
Q. You were heading home, weren't you?
A. I was.
Q. And you just stood there and watched?
A. I did.
Q. Did you have a coat on, on this night? Did you have a coat on?
A. No.
Q. You didn't have a coat on. It was a right cold night in November, wasn't it?
A. I know it.
Q. I didn't hear it.
A. I know it was cold.

By the Court:
Q. I haven't heard yet, either. Say it again.
A. I say it was cold.

By Mr. Greer:
Q. It was cold, and so you just stood there on the railroad track during this whole time, weren't walking on home?
A. That is right.
Q. All right. Now, as you stood there, were you watching Mr. Sanford the whole time?
A. I was—I saw him. Yes, I was watching him.
Q. Did you look to the left any? That is, going up north on Campostella Road, while you were standing there?
page 60 } A. No.
Q. You looked down the road, south down the road?
A. I did.
Q. Now, when you first saw Mr. Sanford was he then walking? I believe you said he was, is that true?
A. That is right, he was walking.
Q. And he was walking how? Was he walking straight or was he making any sort of a turn on an angle or what?
A. He was making a turn, getting ready to go across the road.
Q. He was making a turn getting ready to go across the road? What kind of turn was he making?
A. A little to the north—I mean to the north turn.
Q. He turned to the north?
A. That is right.
Q. Is that right?

Juanita G. Dawson.

A. (The witness nodded.)

Q. And did he go any appreciable distance to the north? When he turned to the north, how far did he walk?

A. He didn't walk too far. He did not walk too far.

Q. Did he—was he out on Campostella Road by that time or not?

A. Yes.

Q. He was on Campostella Road, so when he got on Campostella Road he was turned slightly to the north?

page 61 } A. That is right.

Q. And walking across?

A. That is right.

Q. You can't shake your head because this lady has to get an answer one way or the other. So when you mean yes, don't just nod your head, say yes, if you will. So he turned slightly to the north and was walking across?

A. That is right.

Q. And he was walking across in the manner that you described a minute ago, which would be just a normal walk, not a slow walk?

A. That is right.

Q. Is that right?

A. That is right.

Q. Now, the light which you have shown is over on the west side of the railroad tracks, is that correct?

A. That is right.

Q. That is, it is all the way over across the tracks, away from Campostella Road?

A. That is right.

By the Court:

Q. Answer out. I can't hear you.

A. That is right.

By Mr. Greer:

Q. And the store was closed at the time, I believe

page 62 } you said?

A. It was.

Q. Where are the lights that were shining on the store?

A. It was inside the store.

Q. Inside the store? In other words, the light that they had just left on for the night?

A. That is right, in the window.

Q. And that is the only other light?

A. That is right.

Juanita G. Dawson.

Q. Now, you stated that you saw the truck coming?
A. That is right.
Q. And I believe you stated it was about a block away? Well now, this road—

Mr. S. J. Bangel: I have no objection. (Counsel indicating a picture.)
Mr. Greer: Would you mark this 2, please.

(The picture referred to was marked Defendant's Exhibit 2.)

By Mr. Greer:
Q. The road looking south—that would be the direction from which the truck was coming—that is not marked off in blocks, is it? That is an open field more or less on either side running down to a curve in the road?
A. That is right.
Q. Well now, what do you describe as a block, page 63 } what portion of that as being a block? In other words, when you say block, that doesn't mean much when there are no blocks out there. I just want you to—

The Court: You said the vehicle was about a block away, if you recall. That is what he is asking about now, where you mean.

By Mr. Greer:
Q. Where do you mean? Was he at the curve back there or closer on the straight stretch? Just where was he?
A. He was up there by the—

Mr. S. J. Bangel: Can you orient her on the picture? It is a long-range picture.

By Mr. Greer:
Q. Yes, this is the intersection down here. You have stated you were up on the railroad track back here. This would be looking south.

Mr. S. J. Bangel: Looking back from where the truck came.

Juanita G. Dawson.

By Mr. Greer:
Q. That is right, the truck would be heading towards you on this road.

Mr. S. J. Bangel: This would be the intersection. Mr. Sanford was crossing right up in here. I don't know if you can see it. It is rather—

page 64 } By the Court:
Q. You said a block. Can you give us the distance in yards or feet that you think the truck was away?

Mr. S. J. Bangel: Maybe one of these pictures will help you.

By Mr. Greer:
Q. You testified before, you said a block, you saw it a block, three or four hundred feet away you testified that one time?
A. (The witness nodded.)
Q. Is that the first time you saw the truck?
A. It was.
Q. And you estimate it being three or four hundred feet away?
A. I estimate, that is right.
Q. So that is what you mean by being approximately a block, is that true?
A. That is right.
Q. That is what I was trying to get straight. Now, when you saw that truck you were still standing on the railroad track, and how long had that been from the time you had noticed Mr. Sanford on the north side of Liberty Street?
A. It hadn't been—it wasn't too long.
Q. I believe you stated Mr. Sanford was then on Campostella when you noticed the truck, is that right?
page 65 } A. That is right.
Q. So he had gone from the position you saw him on Liberty Street, he had turned slightly north as you described and had started into Campostella when you saw the truck lights?
A. That is right.
Q. Is that right?
A. That is right.
Q. Did you see the truck by the lights?

Juanita G. Dawson.

A. Yes, I did.

Q. Now, how far onto Campostella Road was Mr. Sanford when you saw this truck three or four hundred feet away?

A. He was going across Campostella Road.

Q. How far had he gotten across is what I am asking.

A. About one step from—about one step from the sidewalk.

Q. He was about one step onto Campostella Road, which would be from the western edge, he was one step in when you first saw this truck?

A. That is right.

Q. Is that right?

A. That is right.

Q. And he was at that time walking, is that right?

A. He was.

Q. And the truck at that time was moving northwardly toward the intersection, toward him, was it not?

page 66 } A. That is right.

Q. And Mr. Sanford then proceeded to walk on across?

A. That is right.

Q. And was he still walking in the manner that you have described before?

A. He was.

Q. He was?

A. (The witness nodded.)

Q. He crossed the entire street in that way?

A. That is right.

Q. And while he was crossing in that way, the truck continued on without changing its speed?

A. That is right.

Q. And Mr. Sanford walked across there. When he got to the center of Campostella Road, about how far away was the truck from him then?

A. About a half a block.

Q. About half the distance then, is that right?

A. That is right.

Q. Which would be, by your estimation, 150 to 200 feet, is that right?

A. (The witness nodded.)

Q. That is when he was at the center, is that true?

A. That is right.

Q. All right. Then he proceeded on without stop-

page 67 } ping in the center of the road, did he not?

A. All I know, the truck had hit him.

Juanita G. Dawson.

By the Court:
Q. Did he stop or hesitate when he got to the center of Campostella Road?
A. Oh no. No.

By Mr. Greer:
Q. He did not?
A. No.
Q. And he was still walking at the speed you described and on the angle that you described before, is that right?
A. That is right.
Q. All right. And the truck then, of course, as you said, was 150, 200 feet away and he proceeded on across and when he got to within one step of the eastern edge is when he was struck?
A. That is right.
Q. From the time he went from the center of the road to that—when you say one step, how far would you say that was from the eastern edge? Would you describe a step as being one foot, two feet or what?
A. I don't know.

Mr. S. J. Bangel: She can show one step.
The witness: I just said one step.

page 68 } By Mr. Greer:
Q. I know, but I want to know if you can give us the estimate of the distance of one step. What do you consider one step as being? A distance of two feet, one and a half feet or what?

Mr. A. A. Bangel: Can't she use her hands?

A. That is about—(witness indicating).

By Mr. Greer:
Q. Hold them there.
A. (Witness complying.)

Mr. S. J. Bangel: 18 inches.
Honor?
Mr. Greer: 18 inches I would say; would you, Your Honor.

Juanita G. Dawson.

The Court: It is hard for me to tell. Turn around. (Witness showing to the Court.) Yes.
Mr. Greer: About 18 inches.

By Mr. Greer:
Q. And I ask you, from the time that he was from the center to that 18 inches from the edge, he was still walking and the truck was still coming?
A. That is right.
Q. Now, after this accident happened were you still standing up on the railroad tracks when the collision occurred?
A. I was going in the yard at the time. I was going in the yard.
page 69 } Q. Well, when did you start moving from the railroad tracks down to the yard?
A. When this truck was coming up by the intersection?
Q. When the truck was coming up by the intersection you started to move?
A. That is right.
Q. And you were going into the yard when the collision occurred?
A. That is right.
Q. Is that right?
A. That is right.
Q. And does the picture—

(Mr. Greer showed a picture to counsel and then handed it to the Court.)

Mr. Greer: Defendant's Exhibit 3.

(The picture referred to was marked Defendant's Exhibit 3.)

By Mr. Greer:
Q. Showing you Defendant's Exhibit 3, which shows your house over in the northwest corner and shows the back of the house, where in the yard had you gotten when the collision occurred?
A. Right here up here (indicating).
Q. By that little—what is that? That is a chicken coop or something like that?
page 70 } A. That is right.
Q. Would you just punch your pencil right

through there? Make a hole right there.
A. (Witness complying.)

Mr. Greer: I have asked where she was in the yard. I will put a circle behind that and will put "Dawson when collision occurred." (Counsel writing on exhibit.)

By Mr. Greer:
Q. Were you still watching this as you went from the railroad track down into the yard where the coop is?
A. What did you say?
Q. Were you still watching all this as you went from the railroad track down to the place in the yard that you have—
A. I was.
Q. And the collision occurred there and you ran into the house?
A. That is right.
Q. Did you run into the house immediately; just as soon as you heard and saw the collision, did you run right in the house?
A. I did.
Q. All right. And you came back out again after the crowd had gathered?
A. That is right.
Q. Did you tell the police officer you saw this accident?
A. Did I tell the police officer?
page 71 } Q. Yes.

By the Court:
Q. Did you tell the police officers?
A. Nobody asked me nothing.

By Mr. Greer:
Q. But you saw this accident?
A. I did.
Q. Did you see anybody else around there?
A. No.
Q. So you were the only one as far as you knew that saw the accident?
A. That is right.
Q. You did not tell the police officers?
A. No.
Q. You saw the police officers there, didn't you?
A. When I come out I saw them.

Juanita G. Dawson.

Mr. Greer: That is all.

RE-DIRECT EXAMINATION.

By Mr. S. J. Bangel:
Q. Your backyard runs right up to the railroad tracks, then, doesn't it?
A. That is right.
Q. If Mr. Sanford would have kept on across Campostella Road, where would he have gone?
page 72 } A. To Border Road.

Mr. Greer: Just a minute. It is a question of what he did, what she observed, not—
The Court: I sustain the objection.

By Mr. S. J. Bangel:
Q. Taking here Defendant's Exhibit 3 and this is Campostella Road going north, this is your home here?
A. That is right.
Q. This is Border Road here?
A. That is right.
Q. This is Liberty Street here?
A. That is right.
Q. Take your finger, show us where Mr. Sanford was crossing?
A. Which street?
Q. Yes, just show us about where he was crossing.
A. Here (indicating).
Q. Right across to there. Take your pencil and draw that across there for me.

The Court: I doubt if you can draw on that slick.—
Mr. S. J. Bangel: Maybe this lead—(witness taking pencil, drawing).
The Court: You can try a pencil.
Mr. S. J. Bangel: It is working, Your Honor. (Witness drawing) Excellent!

page 73 } By Mr. S. J. Bangel:
Q. You have drawn it across there like that. That is the red line on Defendant's Exhibit 3. Now, this line if you continued it across, how would that be in reference to

the edge of Border Road or the shoulder of Border Road? In other words, would it continue on into Border Road?

A. Yes.

Mr. S. J. Bangel: No further questions.

Mr. A. A. Bangel: If Your Honor please, this witness has a rather severe impediment in his speech and if the jury, any jurors can't understand him, I thought Your Honor might ask them to let it be known to the Court so he can repeat it, because he has a very—

The Court: We shall just have to be patient, do the best we can.

RICHARD A. SANFORD,

the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. A. A. Bangel:

Q. State your name.

A. Richard A. Sanford.

Q. How old are you?

A. 44.

page 74 } Mr. A. A. Bangel: If you gentlemen or ladies cannot understand him, I wish you would make it known, ask him to repeat it.

By Mr. A. A. Bangel:

Q. You are 44 years of age?

A. That is right.

Q. Where do you live?

A. South Norfolk.

Q. Can you say that more slowly?

A. 2127 Windy Road, South Norfolk.

Q. Windy Road, South Norfolk?

A. That's right.

Q. That is correct, is it?

A. That is right.

Q. And where were you employed before this accident?

A. Naval Air Station.

Q. Naval Air Station. I may have to repeat some of this for the benefit of the jury and the court reporter, and if I don't repeat it correctly, will you let it be known?

Richard A. Sanford.

A. All right.

Q. How long had you been working at the Naval Air Station?

A. 15 years, soon be 15 years.

Q. What kind of work did you do there?

A. Airplane mechanic.

Q. Had you been working as an airplane me-
page 75 } chanic for the 15 years that you were there?

A. Not all the time.

Q. How many years prior to this accident had you been so employed?

A. When I first went down I went down as a trainee.

Q. That was 15 years ago as a trainee. When did you graduate and become an airplane mechanic? How long before this accident?

A. I went down during wartime, went down during wartime.

Q. Well, for a year or more prior to this accident you had been an airplane mechanic?

A. Yes.

Q. And your weekly wage was for much?

A. Well, you mean now?

Q. No, at the time of the accident what was your wage? How much were you making an hour?

A. The man hit me.

By the Court:

Q. How much were you making, being paid for working when you were hurt?

A. $2.55 an hour.

Q. How much raise?

A. It was nine cents.

Q. Nine cents an hour since then.

Mr. Greer: At what time was his raise?

page 76 } By Mr. A. A. Bangel:

Q. This raise took place when?

A. I was in the hospital.

Q. And you were in the hospital how long?

A. Two months.

Q. So the raise was granted within two months from the day of the accident?

A. That is right.

Richard A. Sanford.

Mr. Greer: So there is no misunderstanding, which is the $2.55, before or after?

The Court: $2.55 when he was hurt. While he was in the hospital the wages were increased nine cents an hour.

The Witness: That right.

By Mr. A. A. Bangel:

Q. $2.64 an hour?

A. That right.

Q. The day on which this accident occurred, what time did you leave home?

A. About four or half-past four; about half-past four.

Q. With whom do you live?

A. My mother.

Q. Did your mother go with you on this trip?

A. No, ma'am—no, sir.

Q. Where did you go?

A. I went downtown to pay some bills.

page 77 } Q. Where did you go to pay the bills?

A. Downtown on Church Street.

Q. Church Street?

A. That right.

Q. Did you immediately go home after paying the bills?

A. No. I messed around downtown a little bit.

Q. What did you do?

A. I walk up and down the street, walk up and down the street.

Q. What were you doing walking up and down the street?

A. Looking in windows.

Q. Looking in windows?

A. That right.

Mr. Greer: I didn't catch that.

By Mr. A. A. Bangel:

Q. Looking in windows?

A. Yes, sir.

Q. Now, did you have anything to eat or drink before you went home?

A. Oh yes.

Q. What did you have?

A. Well, I had ham and eggs and one bottle of beer.

Q. About what time did you have your dinner?

A. About eight o'clock.

Richard A. Sanford.

Q. About eight o'clock you had one bottle of
page 78 } beer with your dinner?
A. That right.
Q. Now, did you drive a car into Norfolk?
A. No, sir.
Q. What method of transportation did you use to get into Norfolk?
A. On bus.
Q. When you left Norfolk, did you leave by the same means of travel?
A. That right.
Q. Where did you get on the bus?
A. Down over yonder Snyder's place.
Q. And that is Church Street, in Norfolk?
A. Right.
Q. And that bus took you where?
A. Took me to South Norfolk.
Q. South Norfolk?
A. That right.
Q. And when you arrived at South Norfolk, where did you get off the bus? Tell us where you got off the bus.
A. That gas station.
Q. And how far was that from where the accident happened?
A. I imagine about half a mile or more.
Q. How did you get from the place that you alighted from the bus to where this accident happened?
page 79 } A. Walked.
Q. You say you lived on Windy Road?
A. That right.
Q. Does the bus go to your home?
A. It do not.
Q. Did the bus take you as near to your home as you could ride on that bus before you got off?
A. Not Trail bus.
Q. I say did the bus take you, did you get off the bus at the nearest point to your home?
A. Over yonder South Norfolk, yes, sir.
Q. In order to get to your home what route did you take?
A. We had to come by Monroe's, South Norfolk.
Q. And on what street is that located? Is that Liberty Street?
A. I believe it is, I don't know. I believe it is.

Richard A. Sanford.

Q. How did you get to the corner where this accident happened?
A. Walked.
Q. Well now, on what street did you travel?
A. Overtop that railroad in South Norfolk, you know where the railroad crosses.
Q. You went overtop the railroad. What street is that on?
A. I don't know.

page 80 } Mr. S. J. Bangel: I imagine Liberty Street.
Mr. Greer: We can stipulate that it is Liberty Street.
The Witness: It is?

By Mr. A. A. Bangel:
Q. That is Liberty Street. You were walking which way on Liberty Street?
A. Going that way (indicating).
Q. Would that be going towards Windy Road?
A. That right.
Q. Before you got to Windy Road, it would be necessary for you to reach Campostella Road, wouldn't it?
A. That is right.
Q. Now, as you were traveling along Liberty Street, did you reach Campostella Road?
A. (The witness nodded.)
Q. When you got to that corner, what did you do?
A. I start railroad going on towards Campostella Road.

The Court: I think he has misunderstood the question. Didn't you ask him what happened when he got to Campostella Road?
Mr. A. A. Bangel: At the intersection of Liberty Street and Campostella Road.

By Mr. A. A. Bangel:
page 81 } Q. Liberty Street intersects with Campostella Road, and Campostella Road runs north and south, doesn't it?
A. That right.
Q. You are familiar with the directions?
A. Not too much.
Q. Well, Campostella Road runs north and south?

Richard A. Sanford.

A. That right.
Q. And Liberty Street practically runs east and west?
A. (The witness nodded.)
Q. And you were headed towards Campostella Road?
A. That right.
Q. On Liberty Street?
A. Yes.
Q. That would mean that you were traveling east on Liberty Street?
A. (The witness nodded.)
Q. Am I right?
A. Right.
Q. Now, when you reached Campostella Road, is there a sidewalk at that corner?
A. No, ain't.
Q. When you reached the corner of Campostella Road and Liberty Street, I understood you to say you intended to cross to the other side to get to Windy Road?
A. That right.
Q. Before crossing what did you do?
page 82 } A. I looked down highway.
Q. What did you see?
A. I seen a big truck.
Q. How far was that truck from that corner when you started to go across?
A. Three hundred feet I estimate.
Q. Was that to your right or your left?
A. To the right.
Q. So when you saw this big truck that far away from the corner, what did you do? Was there any other truck or trucks, anything around?
A. It were not.
Q. What did you do then when you saw the truck?
A. I crossed over the highway.
Q. Started across?
A. That right.
Q. If you continued the course, would you continue from one corner to the other corner? Were you going from one corner to the other corner?

Mr. Greer: If Your Honor please, I of course realize the difficulty and I have not objected to leading questions. Now we are getting into the merits of it.
The Court: Yes. I sustain your objection to that.

Richard A. Sanford.

By Mr. A. A. Bangel:
Q. You started across Campostella Road, did you?
A. That right.
page 83 } Q. After you had seen this truck up the road?
A. That right.
Q. How many times did you see this truck?
A. Two times.
Q. You saw it first when you were at the corner?
A. That right.
Q. When did you see it again?
A. (Unintelligible to reporter.)
Q. Repeat it. You say you saw it one time before you left the corner?
A. That right.
Q. Where were you going? From that corner where were you going?
A. Onto Windy Road.
Q. In order to get to Windy Road, was it necessary to cross Campostella Road?
A. That right.
Q. Now, Windy Road, is that east of Campostella?
A. Yes, highway.
Q. Therefore, across the road, then continued east until you got to Windy Road?
A. That right.
Q. So you were taking practically a straight course across the—

page 84 } Mr. Greer: I object to that question.
Mr. A. A. Bangel: I don't know that it makes any difference.

By Mr. A. A. Bangel:
Q. You were heading in an easterly direction toward Windy Road and it was necessary to continue across Campostella, is that right?
A. That right.
Q. What road did you go into?

By the Court:
Q. What road were you headed for when you crossed Campostella?
A. Border Road.

Richard A. Sanford.

By Mr. A. A. Bangel:
Q. And Border Road is the road on the east side—

The Court: Well—

By Mr. A. A. Bangel:
Q. —of Campostella Road, is that right?
A. Yes.
Q. Liberty Street is the street that intersects with Campostella on its west side? That is correct, isn't it?
A. Right.
Q. Now, you said that you saw this truck twice?
A. That right.
Q. Once when you—just before you started to
page 85 } go across, and when did you see it the second time?
A. I got about all the way but one foot across.
Q. You saw it again?
A. That right.
Q. Where was the truck then?
A. It was making up on me.
Q. What?
A. Next thing I know—

By the Court:
Q. "It was right up on me," is that what you said?
A. That right.

By Mr. A. A. Bangel:
Q. You were then one step, you say, from completing the crossing?
A. That right. Hit me just like that.
Q. Did you know what happened to you after you were hit?
A. (The witness shook his head.) Next thing I know, I was in the hospital.
Q. You said you had completed the crossing except one step. Are you speaking about a normal person's step?
A. That right.
Q. You were taken from there. Did you know that you were taken away from there?
A. I didn't know until I was in the hospital.
Q. Tell us what happened.
page 86 } A. When? When I got hit?
Q. Yes.
A. You mean downtown until I start home?

Richard A. Sanford.

Q. What?
A. Until I start home?
Q. You are telling us that you were hit when you were one step from completing the crossing?
A. A-hum.
Q. The truck was traveling in what direction? What way was the truck going?
A. North.
Q. Was there any vehicle traveling south on that road at that time?
A. No, sir.
Q. Was there any vehicle traveling west on the intersecting road?
A. No, sir.
Q. Was there any vehicle traveling east on the intersecting road?
A. No sir.
Q. Was that the only truck or vehicle moving in any direction on that—
A. The only one I seen.
Q. Now, tell us what happened? Where did you find yourself next?
page 87 } A. In hospital.

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page 91 }

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By Mr. Greer:
Q. Now, Mr. Sanford, if you don't understand me, why don't hesitate to say so.
A. All right.

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page 92 }

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By Mr. Greer:
Q. Now, Mr. Sanford, as I said before we adjourned for lunch, if you don't understand me, don't hesitate to say so and ask me to repeat any question.

Richard A. Sanford.

A. All right.

Q. As I understand from your testimony that you have given in answer to your lawyer, you had been over to Norfolk?

A. That right.

Q. To pay some bills?

A. That right.

Q. You went over about four o'clock or so. Did you take the same bus over as the one you came back?

A. No, I did not.

Q. Which bus did you take over?

A. I don't know now. I don't know just which one it was now.

The Court: He thinks you mean the same individual bus.

By Mr. Greer:

Q. No, what I meant, the same route. Did you get on at the —strike all that. Let me ask you this way: Is page 93 there any other bus that runs over to where you live, that comes any closer than the one that you took where you got off in South Norfolk?

A. Not—

Q. There is no bus that goes down Campostella Road to Glenwood Village?

A. Not I know of, no.

Q. Not that you know of?

A. That right.

Q. So that is the bus that you customarily take, the one that lets you off on Liberty Street about half a mile away?

A. South Norfolk.

Q. In South Norfolk?

A. Right.

Q. Now, Mr. Sanford, when you came in to pay your bills on this particular Saturday, did you get them all paid before five o'clock, before the places closed up, or what?

A. I think did, yes.

Q. You had finished all your business by about five o'clock, or so?

A. That right.

Q. So from five o'clock until when you had your dinner at about eight o'clock—I believe you said you did have dinner about eight, didn't you?

Richard A. Sanford.

A. That right.

page 94 } Q. From five o'clock to eight o'clock you did nothing but walk around town?

A. That right.

Q. Did you stop any place?

A. Up and down, looked in window.

Q. Just going up and down looking in windows?

A. That right.

Q. Window shopping, so to speak?

A. That right.

Q. Did you go into some place to have anything to drink during those three hours?

A. I did not.

Q. You did not?

A. (The witness shook his head.)

Q. Did you go into any place during those three hours to have anything to eat? This is before your dinner?

A. I did not.

Q. In other words, you did not—did you go to visit any friends?

A. I did not.

Q. So you did nothing but walk around in the area of Church Street over there, for what would be approximately three hours?

A. (Unintelligible to reporter.)

Mr. S. J. Bangel: Down the street?

page 95 } Mr. A. A. Bangel: Granby.

A. Granby Street.

By Mr. Greer:

Q. Where did you have your dinner? Do you remember?

A. I don't remember now.

Q. You don't remember now. You do remember you had one bottle of beer and some ham and eggs?

A. That is right.

Q. That one bottle of beer is all you had?

A. That all I had.

Q. About what time did you finish your dinner?

A. I don't know. It didn't take me too long. It didn't take me too long.

Q. Didn't take you too long?

Richard A. Sanford.

A. That right.

Q. Did you get on the bus immediately after you had your dinner?

A. I did not.

Q. What did you do after then?

A. Walked around town, back and forward.

Q. In other words, you walked around some more after dinner?

A. That right.

Q. And after dinner did you go into any place? Did you have any more beer, anything else?

page 96 } A. I did not.

Q. You did not?

A. That right.

Q. Now, you got on your bus down here in front of L. Snyder's I believe you said?

A. That right.

Q. And that took you over to the gas station there on Liberty Street, where you got—

A. South Norfolk.

Q. Now, did you leave that place immediately to start walking home or did you stay around there for any length of time?

A. No, I started walking.

Q. You started walking then?

A. That right.

Q. What kind of night was it, Mr. Sanford?

A. I had on my overcoat at the time. Cold that night.

Q. A little bit cold and you had on your overcoat?

A. That right.

Q. What kind of overcoat was it?

A. Gray overcoat.

Q. What had the weather been like that day? Hadn't it rained some that afternoon? Hadn't it been cold, right?

A. It had been little bit rain, not too much.

Q. Drizzling?

page 97 } A. That right.

Q. Rather than hard rain?

A. That right.

Q. But it had been raining off and on during the afternoon, hadn't it?

A. (The witness nodded.)

Q. Had it been raining while you were walking around town?

A. Not much.

Richard A. Sanford.

Q. Was it raining when you went from your bus, started from your bus on over to where you live?
A. It was not.
Q. Not raining then. It was still cloudy, though, was it not?
A. That right.
Q. Now, Mr. Sanford, you walked this approximately half a mile down Liberty Street to Campostella?
A. That right.
Q. So there will be no misunderstanding, you have stated you live on Windy Road?
A. That right.
Q. In order to get to Windy Road, I take it you intended to go on Border Road, which sort of goes behind Glenwood Village and comes into Windy Road, in there?

A. I went right straight across the highway, page 98 } right straight across the highway.

Q. What I am speaking of, there has been a question here of Windy Road being east of Campostella Road; but that is a distance away from Campostella Road, is it not?
A. That right. It ain't too far.
Q. Not too far but it doesn't connect with Campostella Road is what I am getting at.
A. A-hum (affirmatively).
Q. So you had a little distance to go from Campostella Road to Windy Road, to your home?
A. That right.
Q. About how far would you say it was, sir?
A. Let's see now. I don't have no idea. It wasn't too—it ain't too far.
Q. Not too far?
A. But I don't have no idea.
Q. All right, sir. Now, you are familiar with this area out there where this accident happened, are you not?
A. Most, I am.
Q. And you have been across there a number of times before? How long have you lived out there in that neighborhood?
A. Right near four years.
Q. And during that time you have been along Campostella Road and have been in that area, so you are familiar with it?
A. All right. That right.

page 99 } Mr. Greer: (After conferring with opposing counsel.) Your Honor, I have wanted to use this

plat with this witness. Mr. Armistead is to be here. But counsel for the plaintiff says they do not want it introduced until he is here.

The Court: If you will assure me that Mr. Armistead will be here and it will be identified by him as the plat of the area, I will allow you to anticipate it.

Mr. Greer: He will be here.

Mr. S. J. Bangel: There are several things omitted from the plat.

Mr. Greer: That is why Mr. Bangel requested that he be here. I said he would.

The Court: If there is anything omitted, he can put it on there.

Mr. S. J. Bangel: That is all right.

The Court: I will mark it Defendant's Exhibit 4 on the assurance of counsel that Mr. Armistead will identify it as a plat of the scene.

Mr. Greer: Yes.

(The plat referred to was marked Defendant's Exhibit 4.)

The Court: You wish to offer this? It will be Defendant's Exhibit 5, picture showing Campostella Road looking south toward the intersection of Border Road and Lib-
page 100 } erty Street.

(The picture referred to was marked Defendant's Exhibit 5.)

By Mr. Greer:

Q. Now, Mr. Sanford, I had just started to ask you before these were introduced—you stated you are familiar with this area out there?

A. A-huh (affirmatively).

Q. Now, showing you Defendant's Exhibit 5, which is a picture looking south on Campostella Road, and the intersection being down here, you can see that?

A. Right.

Q. —going across. There are no street lights along Campostella Road, are there?

A. No.

Q. And as shown in this picture here, likewise as far as the type of area down south of this intersection, that is an open field with the railroad tracks on one side and then an open field which runs back to Glenwood Village on the other side?

Richard A. Sanford.

A. (The witness nodded.)

Q. The open fields that I have just mentioned, the ones to the south of the intersection are shown on this Defendant's Exhibit 2, is that right?

A. Yes.

page 101 } Q. Now, as far as northwardly, as shown on Defendant's Exhibit 5, there is a store over here on the east side, and a dwelling, a couple of dwellings up this way?

A. Right.

Q. On the west side there is one dwelling house where the witness Juanita Dawson said she lived?

A. That right.

Q. Then for a distance on up there are no more dwelling houses, isn't that true? In other words, looking at this plat, that would show the situation on either side of the intersection, is that true, insofar as the roadway?

A. Yes.

Q. And along there, along this roadway, the distance here shown 300 feet, and 300 feet this way, there are no street lights along there, are there?

A. No.

Q. Now, Mr. Sanford, did you by any chance yourself notice this witness Juanita Dawson that was standing on the tracks?

A. I did not.

Q. You did not? When you came down Liberty Street, I believe you have testified you were on the north side?

A. (The witness nodded.)

Q. And you went across from there, across Campostella Road in the way you have described?

page 102 } A. I misunderstand.

Q. I say, from the north side of Liberty Street you started from there across Campostella Road?

A. That right.

Q. And I believe you stated that when you looked to your right you saw this truck some 300 feet to your right?

A. That right.

Q. Could you say where that was in relation to the curve of the road that goes around there? You remember if you look to your right, doesn't the road go straight for a way and then it curves?

A. Around, yes.

Q. Where was the truck in relation to that?

A. The first place I seen was 300 feet down the road.

Q. Now, did you also look to your left?

Richard A. Sanford.

A. I looked both ways.
Q. And could you see 300 feet down to your left? You could see that far?
A. That right.
Q. And for that distance or further did you see any cars coming toward you, from the—
A. Neither one, neither way.
Q. So there were no other vehicles on that road?
A. That right.

Mr. Greer: I think that is all, Your Honor.

page 103 } RE-DIRECT EXAMINATION.

By Mr. A. A. Bangel:
Q. Mr. Sanford, do you know how wide Campostella Road is?
A. I don't have no idea.
Q. Do you know how many lanes of travel are on that road, how many lanes of cars?
A. Two lanes. I mean one goes that way and one—
Q. So it is a total of two, two-lane highway. Do you know where this truck was when you reached the center of the street?

Mr. Greer: He has testified twice, 300 feet away.
The Court: He hasn't testified where it was when he reached the center of the street.

By Mr. A. A. Bangel:
Q. Where was it?

The Court: He testified he didn't see it except twice.
Mr. Greer: He saw it twice, that is all. No, I object to it. You have already asked the witness.

By Mr. A. A. Bagnel:
Q. Did you see this truck at all when you were in the center of the street?
A. I did.

Mr. Greer: If Your Honor please, I object.
page 104 } The Court: I sustain the objection. On direct examination he brought out that he had seen it twice, as I understood the testimony; once when he started

across the street—I don't mean the moment he started; he may have been a step or so in; and another time when he was approximately a step from having crossed it.

Mr. A. A. Bangel: Your Honor understands that this man has sort of a difficult time either explaining his answers or making counsel repeat each question.

Mr. Greer: If Your Honor please, that was gone into very thoroughly and the witness has testified to it.

The Court: What specifically do you want to ask him now, Mr. Bangel?

By Mr. A. A. Bangel:

Q. Do you know where this truck was when you reached the center of the street?

Mr. Greer: I object.

The Court: I will allow him if he wants to explain the testimony, to say whether or not he saw the truck when he reached the center; but if he knew where it was; answer that; it might be speculative. Let's see if he saw it.

By Mr. A. A. Bangel:

Q. All right. Did you see this truck when you were in the center of the street?

page 105 } A. I sure did.

Mr. Greer: If Your Honor please, I want it understood that my objection runs through this line of testimony. This is nothing on redirect in rebuttal. They have gone all over this in the direct testimony and now they are attempting to go into it again. I object to it.

The Court: Overruled. Go ahead.

By Mr. A. A. Bangel:

Q. Where was it?

A. 100 feet down the street.

Mr. A. A. Bangel: He said about a hundred feet down the street.

Mr. Greer: I didn't hear that.

Mr. A. A. Bangel: About a hundred feet down the street.

By Mr. A. A. Bangel:

Q. Was he then south of Border Road?

Richard A. Sanford.

The Court: I sustain the objection. (Mr. Greer had risen to object.) You may ask him where he was. You are suggesting—

By Mr. A. A. Bangel:
Q. Do you know where Border Road is?

The Court: Never mind. I sustain the objection. You may ask him where he was. You are suggesting the answer.

Mr. A. A. Bangel: Judge I am trying—all
page 106 } right.

The Court: You are leading the witness.
Mr. A. A. Bangel: All right, sir.

By Mr. A. A. Bangel:
Q. Well now, were there any streets or roads between you and the truck when you were in the center of the street?
A. Do what? I didn't hear you.
Q. Was there any street or road between you and the truck, intersecting street, when you were in the middle of Campostella Road?
A. There wasn't no street.
Q. What was it?
A. Road.
Q. What is the name of that road?
A. Campostella Road.
Q. I see.

The Court: He said there was no street.
Mr. A. A. Bangel: He said there was a road. Border Road is what—
The Court: No, he said Campostella.
Mr. S. J. Bangel: He said Campostella Road. He doesn't understand the question. It is a very difficult question for anybody to understand.

By Mr. A. A. Bangel:

Q. At any rate, do you know how far Border
page 107 } Road was from where you were crossing?

A. I don't have no idea.
Q. Do you understand the question?
A. No. Repeat that thing again, please.
Q. You were crossing Campostella—

Richard A. Sanford.

Mr. Greer: He said repeat the question.
The Court: Read the question to him.

(The record was read by the reporter as follows:)

"Q. At any rate, do you know how far Border Road was from where you were crossing?"

Mr. Greer: He said, "I don't know."
The Court: Well, he may answer that question.

By Mr. A. A. Bangel:
Q. Do you understand the question?
A. Yes.
Q. Where was it?
A. I don't know.
Q. What
A. I don't know.
Q. Do you know where Border Road is?

The Court: He said, "I don't know."

By Mr. A. A. Bangel:
Q. Do you know where Border Road is?
A. That right. I know it.
page 108 } Q. Well, where is Border Road?
A. Across that way. I mean—after you come overtop that railroad track.
Q. And that is Border Road?
A. That right.
Q. And does Border Road come to Campostella Road or not? Does it come to Campostella Road?
A. It does.

Mr. S. J. Bangel: Let him take his finger—

By Mr. A. A. Bangel:
Q. Are you familiar with this picture, marked Plaintiff's Exhibit 4?
A. A-hum (affirmatively).
Q. Which way are you looking into that picture?
A. That way (indicating).
Q. What way would that be? Towards town or away from town?

Richard A. Sanford.

Mr. S. J. Bangel: What do you mean by "town"? I don't know what you mean by that myself.

By Mr. A. A. Bangel:
Q. Would you be looking north or south in that picture?
A. North.
Q. All right. Now, put your finger where you started across.
A. (Witness pointing.)
page 109 } Q. Keep your finger there. You have indicated the northwest corner of Campostella Road and the intersecting road on the lefthand side of the street.

The Court: Lefthand side of the street looking—
Mr. A. A. Bangel: Looking north.

By Mr. A. A. Bangel:
Q. Looking at the picture, am I right—no, take your finger, start across; go across.
A. (Witness showing.)
Q. You crossed Campostella from the northwest corner to the northeast corner?
A. (The witness nodded.)

Mr. Greer: Just a minute. I object to counsel stating that because that is not exactly shown on that picture.
The Court: I sustain the objection.
Mr. A. A. Bangel: Judge—
Mr. S. J. Bangel: You may look at it. Describe it yourself, Your Honor.
The Court: He may do so.
Mr. Greer: Exactly. I object to counsel—
The Court: There is no necessity for describing.
Mr. A. A. Bangel: I want the record to show—
Mr. S. J. Bangel: You may describe it.
The Court: Put a mark there.

page 110 } By Mr. A. A. Bangel:
Q. All right. Take this and put yourself where you started from and where you went to. Take the pencil, go on across.
A. (Witness drawing line.)

Mr. A. A. Bangel: If Your Honor please, I shall mark that

line "Sanford," right into the line itself. I will write the word "Sanford."

(Mr. Bangel showed to the jury.)

RE-CROSS EXAMINATION.

By Mr. Greer:

Q. Mr. Sanford, you know where in relation to the telephone pole on that corner you were when you started across? Do you recall that there is a telephone pole on the northwest corner of Campostella Road and Border, or Campostella and Liberty Street?

A. A-hum (affirmatively).

Q. Where were you in relation to that telephone pole when you started across?

A. I was by it.

Q. You were right by it?

A. Right.

Q. So you started across from the telephone pole?

A. That right.

page 111 } Q. Before lunch, Mr. Sanford, you stated that you saw this car when you started across and it was about 300 feet away, to your right.

A. That right.

Q. The truck?

A. (The witness nodded.)

Q. That you next saw it when it was right up on you?

A. I misunderstood.

Q. You misunderstood my question?

A. A-hum (affirmatively).

Q. All right. I will ask again.

The Court: No. I think that is the answer to your question.

By Mr. Greer:

Q. You mean you misunderstood your lawyer's question this morning?

A. No, yours before we went to lunch.

Q. All right. I will ask it again.

A. All right.

Q. Before lunch, you stated, in answer to your lawyer's

question, that the first time you saw this truck was when it was 300 feet to your right?

A. That right.

Q. Do you remember that?

A. That right.

Q. Then you next said that the second and last

page 112 } time you saw it was when it was right on you?

A. I misunderstood you.

Q. You misunderstood?

A. That right.

Q. Whom did you misunderstand?

A. You.

Q. I didn't ask you the question before lunch, your lawyer did. Do you remember your lawyer asking you when you saw that truck? Do you remember that?

A. Yes.

Q. And do you remember answering him that you first saw it 300 feet away and that you didn't see it again until you were within one step of the side of the road?

A. A-hum (affirmatively).

Q. Do you remember saying that?

A. (The witness nodded.)

Q. Well now, which is true? Did you next see it then or did you next see it in the middle of the road that you are now telling us.

A. The middle of the road.

Q. So what you said this morning was not true?

A. Must not have been.

Q. I am sorry.

A. No.

Q. It was not?

page 113 } A. No.

Q. And it is now that you are telling us, after having had lunch, after an hour's recess, that you saw it again in the middle of the road instead of when you were only one step from the edge of the road?

A. (The witness nodded.)

Q. Is that right?

A. That right.

Q. Have you just remembered that during lunchtime?

A. What?

Q. Did you just remember that during lunchtime?

A. A-hum (affirmatively).

Q. You did?

Richard A. Sanford.

A. Yes.

Q. You didn't remember that this morning but you remembered it during lunch?

A. Right.

Q. That is right?

A. Yes.

Q. All right. Then, if that is the way it happened, Mr. Sanford, when you first saw it 300 feet away is when you were beginning to cross the street, is that right?

A. That right.

Q. Now, we want to get it clear this time?

A. A-hum.

page 114 } Q. When you first started across the street, it was 300 feet away?

A. Yes.

Q. You again looked—now you tell us you again looked when you were in the middle of the road and it was then 100 feet away?

A. Right.

Q. So from the time you traveled halfway across the road, this truck had traveled from 300 feet down, 200 feet toward you?

A. (The witness nodded.)

Q. Is that right?

A. Yes.

Q. And you did not see it again until you had traveled on across the second half of the road and were within one foot—one step of the edge of the road?

A. That right.

Q. That is when you next saw it?

A. Right.

Q. And it then hit you?

A. That right.

Q. As you expressed it earlier this morning, it was right on you, is that true?

A. That right.

Q. And I believe you stated you don't know

page 115 } how wide that road is?

A. I do not.

Q. Do you know how many steps you took across it?

A. I don't have no idea.

Q. You have no idea?

A. That right.

Richard A. Sanford.

The Court: Come on in, Mr. Armistead.
(Mr. Armistead entered the courtroom.)

By Mr. Greer:
Q. And you can't make an estimate, either from your knowing that section or by looking at any of these pictures, how wide the road is? You say you cannot make the estimate?
A. No, I don't know. I ain't got much education.
Q. Mr. Sanford, when you looked at that car when you were, as you say now, in the middle of the road, did you stop there or did you keep walking?
A. I stopped.
Q. You stopped?
A. (The witness nodded.)
Q. And did you come to a complete stop?
A. Almost.
Q. Well now, what do you mean by an "almost stop"?
A. I mean stopped and walk on little bit more. I didn't stop still.

(The last answer was read the request of Mr.
page 116 } Bangel.)

The Witness: That right.

By Mr. Greer:
Q. You did not stop still?
A. That right.
Q. Do you mean by that, then, that you hesitated in the middle of the road?
A. That right.
Q. You were not walking so fast that you couldn't stop, were you?
A. Not too fast.
Q. In other words, in hesitating you could have also stopped and stood there?
A. (The witness nodded.)
Q. Could you not?

The Court: He said he could have stopped.
The Witness: Yes.
The Court: What more can you say?

By Mr. Greer:

Q. But instead you kept on walking, is that right?

A. Yes.

Q. And were you walking at the same pace that you had walked from the side to the middle?

A. I think I was.

Q. You think you were?

page 117 } Mr. Greer: That is all.

OFFICER R. W. SMITH,

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

Examined by Mr. S. J. Bangel:

Q. State your name, please.

A. R. W. Smith.

Q. Your occupation?

A. Sergeant, Police, City of South Norfolk.

Q. Officer Smith, did you have occasion to investigate, along with Officer Potter, the collision in which Mr. Sanford was struck by a truck?

A. I was called to that scene, yes, sir.

Q. When you arrived there, what did you find?

A. When we first arrived there, Lt. Stryker, of the South Norfolk Police Department, and Detective Paspas were already on the scene. They had made a radio call for ambulance and uniform car to come out to the accident. When we arrived, they were standing in a group behind this stake bed truck and Mr. Sanford was lying in the road. I didn't know at the time it was Mr. Sanford but I found later, on investigation. Mr. Sanford was lying crossways in the road behind the right rear wheels of the truck, approximately four paces back from the rear axle.

page 118 } Q. How far was he lying from the intersection?

A. That is an irregular intersection there. From the Border Road side it is a good little ways, but from the reference point I used, the VEP pole, it would have been on the north side of Tatemstown Road at the intersection, it was approximately four paces to where he was laying; then four paces further to the rear axle of the truck.

Q. Let's get this intersection clear, in my mind and for the jury. You spoke of Tatem Road?

Officer R. W. Smith.

A. Tatemstown Road.

Q. Where is that?

A. That is this short street leading from the end of Liberty Street, crossing the Norfolk and Southern tracks and coming out into Route 168.

Q. All right, sir, For the purpose of this case everyone has referred to that as Liberty Street. It goes right into Liberty Street?

A. Yes, sir, it does, but the correct name of it is Tatemstown Road.

Q. All right, sir. So from this point, if you will, just for the purpose of being consistent with all the other witnesses, let's call this—

A. Liberty.

Q. —Liberty Street. Now, Liberty Street comes into Campostella Road—

page 119 } (At this point there was a brief interruption, after which the following occurred:)

By Mr. S. J. Bangel:

Q. Liberty Street, then, as we call it, comes into Campostella Road from the east—from the west; I am sorry?

A. That would be the west side of the road, yes, sir.

Q. This would be looking north (indicating)?

A. Approximately, yes, sir.

Q. And Border Road continues on across to the east?

A. Right.

Q. Now, the telephone pole that you spoke of, from which you made the measurements, is where? Point to it.

A. This pole here. It is in approximately the northwest corner of the intersection.

Q. And you took your measurement directly across the street to the—

A. No, sir. I paced it up the lefthand side of the road until I was on the left side of the road parallel to the body on the right side, and the wheel, the axles on the right side of the road.

Q. I see, sir. How many paces was the body from this pole here you measured?

A. That was four paces on north from that pole to where Mr. Sanford was laying.

Officer R. W. Smith.

Q. Where was his body lying?

page 120 } A. It was on the righthand side of the road. As I remember, his head was towards the center line and his feet towards the shoulder.

Q. Could you be mistaken about that?

A. I could be, yes, sir.

Mr. Greer: I object to his asking his own witness if he could be mistaken as to that.

Mr. A. A. Bangel: He said he thought it was.

Mr. Greer: I know.

Mr. S. J. Bangel: The witness has answered the question, the jury has heard it and I think it is perfectly proper.

The Court: I will allow it. Go ahead.

By Mr. S. J. Bangel:

Q. How far was his body from the edge of that road?

A. It would have been very close. His feet would—would have been very close to the edge of the road.

Q. His body was very close to the edge of the road?

A. Yes, sir. He was laying crossways, head to one side and feet to the other.

Q. When we speak of the edge of the road, we are speaking of the—

A. —edge of the paved surface.

Q. On which road?

A. On Route 168. At that time I believe it was

page 121 } called Route 170. The number has been changed since then.

Q. Is that Campostella Road?

A. That is Campostella Road.

Q. That would be on the eastern edge of it?

A. That is correct.

Q. Right over here?

A. That is correct.

Q. Where was the truck stopped?

A. The truck was stopped just north of where Mr. Sanford was lying, just four paces beyond him.

By the Court:

Q. You mean the rear of the truck was four paces—

A. The rear of the truck, the rear axle, was four paces. Now, the bed of the truck extended back farther than that.

Officer R. W. Smith.

By Mr. S. J. Bangel:

Q. Let me ask you this, sir. Where was Mr. Sanford's body in reference to the wheels of the truck?

A. The way he was laying—when we came up there, they already had been there. I just checked to make sure there was no bad bleeding, and I sent Officer Potter on to the north to cut traffic there, and I stayed in the intersection to keep traffic —keep anyone else from running into it, and that is the reason I am a little bit hazy on the way he was laying because I didn't stop very long after—there was someone there to take care of him. We went immediately pro-
page 122 } tecting the scene to keep someone else from running into it. But near as I remember, he was laying in a direct line with the right wheels of the truck.

Q. Right wheels of the truck. The truck, where had that stopped with reference to the edge of the road, the right-hand edge of the road?

A. The truck was fairly close to the edge of the road. It had not—the left side of the truck was clear of the center line. We had room, had we so desired, we—to run two vehicles beside the truck while we were directing traffic.

Q. That would be on the left side of the truck facing the front of the truck?

A. That is right. We could run two vehicles to the left of that truck.

Q. Now, the damage to the truck, do you remember where that was?

A. That was the right front headlight.

Q. Did you help put Mr. Sanford in the ambulance?

A. No, sir.

Q. Did you talk to Mr. Mosier and ask in reference to whether or not he saw Mr. Sanford?

A. Yes, sir. We—after Mr. Sanford was placed in the ambulance, we had the truck driver move the truck over into the parking lot of Ross grocery store and we got sufficient information to make the accident report there.
page 123 } Then from there—

Q. Did you talk to Mr. Mosier?

A. Yes.

Q. What statement did he make about seeing Mr. Sanford, as to whether or not he saw him?

A. Mr. Mosier stated to me—I don't remember whether it was there at the scene or on the way to the hospital—that the first thing that he saw, he was right in front of the headlights.

Officer R. W. Smith.

Q. Did he say anything to you about whether or not he felt his wheels do anything?

A. Yes, sir. He said that thought he felt the wheels pass over something; that he thought he felt the rear wheels pass over something.

Mr. S. J. Bangel: You may inquire.

CROSS EXAMINATION.

By Mr. Greear:

Q. Officer Smith, what kind of night was this insofar as weather conditions were concerned?

A. These are the notes I made on the scene at the time. (Witness referring to notes.) I have it marked here on this report that the road was wet. In my own memory I don't remember the weather conditions.

Q. You do not remember. The road was wet at that time?

A. That is what I placed in my notes at that time. I could not testify, though, that it was wet or dry at this

page 124 } time, my own memory.

Q. You stated that you used as a point of measurement this pole that you pointed out on that photograph and that the plaintiff was lying four paces north of that?

A. Yes, sir.

Q. How far north of that Border Road itself?

A. Due to the irregularity of that intersection I would just have to estimate on it.

Q. Would you estimate?

A. I would say from the north edge of Border Road would be approximately 30 to 35 feet.

Q. 30 to 35 feet?

A. Yes, sir.

Q. Officer Smith, would you state whether or not you noticed anything in regard to whether or not the plaintiff; that is, the injured man, had been drinking?

A. I did not attempt to smell his breath. He stated in the hospital that he had. At the hospital we had a blood sample withdrawn for the purpose of a blood alcohol test but I could not understand Mr. Sanford too well and not knowing whether it was his normal condition, whether he was in shock or what, and being unable to locate any relative, I couldn't with a clear conscience take a blood sample from a man in the condition he was in. I am not sure that he understood me

when I asked him about it. So I did not use the
page 125 } blood sample. It was turned over to the hospital
for their laboratory use.

Q. All right. But he did state to you he had been drinking?

A. Yes, he admitted, stating that he had been drinking beer.

By the Court:

Q. Admitted what?

A. Beer.

By Mr. Greer:

Q. You state you yourself did not attempt to smell it on his breath?

A. No, sir, I did not.

Q. Now, Officer Smith, about how long were you there at the scene investigating this accident; just approximately, I realize you—

A. Not over 20 minutes on the scene altogether. We left there and then went to the hospital.

Q. During this time, did anyone come up to give their names as witnesses to the accident?

A. No, sir. We were unable to locate anyone who stated they saw the accident.

Q. Of course, part of your investigation would be trying to locate—

A. We made inquiry on the scene.

Q. You made inquiry on the scene?
page 126 } A. Yes, sir.

Mr. Greer: I think that is all.

RE-DIRECT EXAMINATION.

By Mr. S. J. Bangel:

Q. You made inquiry when you first got there?

A. Yes, sir.

Q. If someone came out after you all had been there for awhile, the crowd had gathered around—

A. No, sir, there was very little crowd, very few. We kept the crowd moving, wouldn't let bystanders accumulate.

Q. Some people came out from houses in that area?

A. There were a few.

Officer R. W. Smith.

Q. Do you remember seeing some lady, colored girl, come out of one of the corner houses right there?
A. I wouldn't—
Q. You don't know?
A. No, sir.
Q. Let me ask you this, sir: I take it from your answer you did not smell any alcohol on Mr. Sanford's breath, is that right?

Mr. Greer: He stated he did not attempt to smell it.

By Mr. S. J. Bangel:
Q. Did you or did you not smell it?
A. I did not attempt to get close enough to smell any alcohol on his breath.
page 127 } Q. Therefore, you did not smell any the distance you were from him, is that right?
A. Not at the distance I talked to him, no, sir.

• • • • •

Mr. Greer: If Your Honor please, I have a motion.

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

Mr. Greer: If Your Honor please, the defendant moves to strike the evidence of the plaintiff on the ground, first, that there is no evidence of any negligence on the part of the defendant and, secondly, the plaintiff's own evidence convicts him of contributory negligence as a matter of law, which negligence was the proximate cause of the accident.

(After argument by counsel, the following occurred:)

The Court: I am of the opinion, one, that there has been no proof that it is a residential area; that from the exhibits as a whole, the indication is that it was not a residential area as defined by the statute; two, I am of the opinion that the plaintiff's own testimony shows he is guilty of negligence as a matter of law. When he got halfway across, the vehicle had gone two-thirds of the distance. He doesn't say he hastened his walk but indicates at least, or as a
page 128 } matter of fact testified, he didn't look at it again. I am going to have to—

Mr. S. J. Bangel: Would Your Honor permit us to show cases here in the courtroom on that?

The Court: I would like you to show me but I don't think you are going to change me. I have read the cases. I am familiar with the cases. I don't mean each one of them necessarily, but essentially the case is that you are not allowed to walk directly in the path of a moving vehicle even though you have the right of way at an intersection.

Mr. A. A. Bangel: Your Honor, let me make this observation. To begin with, the law is clearcut that where a person undertakes to cross at an intersection—and this is irrespective of whether they have the right of way; I am not discussing the right of way.

The Court: As far as I am concerned, he did not have the right of way.

Mr. A. A. Bangel: Assuming the right of way statute does not apply.

The Court: I am making another assumption; I am assuming that you gentlemen would have proven it was a residential area if it had been one, knowing you as I do.

Mr. A. A. Bangel: I am going to assume, if Your Honor please, or let's admit for the purpose of argument in this case that it was not a residential or business
page 129 } district, that at that time the right of way statute did not apply. We still maintain that even under those circumstances, in this case it is a factual question for the jury to determine whether or not the plaintiff exercised that degree of prudence that is required of a reasonably prudent man acting in like or similar circumstances. Here we have a case in which a man reaches the intersection, looks and sees a vehicle some 300 feet away. Now, that is a fair estimate.

The Court: I realize it is an estimate. When you take the two estimates together, he thought that truck had proceeded two-thirds of the distance that it had to travel to strike him when he had traveled one-half of the distance and he was then either in a position of safety or in a position where by taking one step backwards he would have been in safety. He could stop. He, in fact, did hesitate and then proceeded across without again looking.

Mr. A. A. Bangel: Your Honor, I don't want to belabor the point. I do want to say this. I think Your Honor will listen a moment. Probably Your Honor might permit this case to go to the jury. I say this for this reason. Your Honor agrees with me that distances are a mere estimate. We have a case in which the man was crossing the street on a road at nighttime. I think the evidence was it was after 9:00

o'clock, a little after 9:00 oclock at night. He was
page 130 } crossing a two-lane highway. Before starting
across he looked and he saw this vehicle which
he estimated to be approximately 300 feet away. He reached the center of that street and looked again and at that time this vehicle was 100 feet away. As Your Honor aptly said, he had estimated that that car had traveled two-thirds of the distance between the time he left the corner and until he reached the center of Campostella Road. That is a mere estimate. Now, we have between him and this truck two streets. That is clearcut, plain and undenied in this case. We have the street—

The Court: I know, but that is almost like suggesting that he had a right to assume he might turn to the right or left. He didn't have as much right to do that as one does to assume that a streetcar is going to stop when there are people standing on the corner; and the Court of Appeals has held that one has no right to make such an assumption.

Mr. A. A. Bangel: What I have in mind is this: When the man reached the center of that street he saw this motor vehicle which was then approximately 100 feet away. Between him and this motor vehicle were both Liberty Street and Border Road. He had a right to assume, and he had a right to continue on that assumption until something made
it appear otherwise. This man was keeping a
page 131 } proper lookout and the vehicle might slow down
when it reached the intersection, might turn to
the right or to the left. To say to a man that he has to stay in the center of that street halfway across, with a vehicle 100 feet away, and wait to see whether that man will make a righthand or lefthand turn, wait to see whether that man will slow down, wait to see whether that man will go past—I say it is asking something of a man which is not ordinary; we all know a reasonably prudent person would continue across.

The Court: Your client did not testify that this vehicle had indicated that it had slowed down or had indicated its intention to stop or turn. On the contrary, the only evidence we have on the path of the vehicle is that it did not decrease its speed or change or vary its direction from the time it was first observed by Dawson and/or the plaintiff until the time of the accident.

Mr. A. A. Bangel: I know Your Honor is familiar with the case in 190 Virginia which says that the law does not require a person to know that he is absolutely safe before taking a course of action, he is only required to exercise ordinary care. Your Honor will not let the jury pass on it

and then, after the jury passes on it if Your Honor is of the opinion that this man is guilty of negligence as a matter of law and—

page 132 } The Court: Frankly, I thought it was a case where I was going to have to set aside the verdict if granted by the jury when I was under the impression that the right of way statute applied to all intersecting city streets.

Mr. Greer: If your Honor please, the defendant further moves for a summary judgement.

Mr. S. J. Bangel: If Your Honor please, Your Honor speaks of it as a fact that he went halfway across the intersection. He traveled here right across; he had to travel a further distance. He got three-quarters of the way across, actually, when he got to the middle of the road.

The Court: He had gone halfway across.

Mr. S. J. Bangel: Therefore he had gone three-quarters of the way. He started here, across to here.

Mr. Greer: That was cleared up with no question. He was asked "When did you get onto Campostella?" He was one step on when he saw it.

Mr. S. J. Bangel: Your Honor would have to be holding that as a matter of law a reasonably prudent person would not attempt to cross ten feet of road when a vehicle was apparently within the speed limit, from all appearances, nothing to warn him differently, was at least 100 feet away.

page 133 } The Court: I agree with you that is what I have to hold, plus the fact that that vehicle had gone two-thirds of the distance, was maintaining its speed and had gone two-thirds of the distance while he was crossing either half the road or very little more than half of the road.

Mr. S. J. Bangel: When the evidence shows in this case that the plaintiff himself says that the vehicle was approximately 300 feet away, that when he was in the middle of the road it was approximately 100 feet away. Distance are mere estimates and our Court has said so.

The Court: I agree with you that they are mere estimates, but when he himself estimated that the vehicle had gone two-thirds of the distance while he was going half the distance, I hold that reasonable care, when one estimates that, whether one is right or wrong, would make one stop and step back or stop and remain standing and allow a vehicle to continue in its path and miss you.

Mr. S. J. Bangel: In view of the witness' testimony that it was about half a block away when he was in the middle of the road?

The Court: He said that the vehicle had gone two-thirds

of the distance when he was in the middle of the road. Clearly he didn't say that it gave any signal to stop, or turn, and he didn't say that it varied its speed. The only evidence we have is that it had not varied its speed. Then I say on his own estimate it was negligence for him to page 134 } continue across. When a vehicle runs two-thirds of the distance while a person is walking across the road halfway, I think anybody would step back. Certainly, I would say reasonable care requires one to do so.

Mr. S. J. Bangel: The witness didn't say it had traveled two-thirds, he said this—correct me if I am wrong—the vehicle was approximately 300 feet away when he started across; that when he got halfway it was approximately 100 feet away.

The Court: The witness did not use the word "two-thirds"; the witness said 300 feet and 100 feet, but anybody can figure that is two-thirds.

Mr. Greer: And he was asked that twice.

The Court: You are absolutely right. I had "two-thirds" in my mind; so did everybody else in the courtroom. I am sorry, gentlemen, I dislike striking the evidence but in this case I think it is my duty.

Mr. A. A. Bangel: We except to Your Honor's ruling that the—

The Court: I don't see any reason for letting the jury go. Under the rules—

Mr. Greer: That is why I moved for summary judgment.

Mr. S. J. Bangel: There is only one more witness to testify in this case. That is the defendant himself. Would page 135 } Your Honor permit the case to go to the jury so that if Your Honor is wrong the verdict can be reinstated?

The Court: Gentlemen, I normally do that but in this case I don't see how I could instruct the jury; and every time I have ever tried to instruct the jury, I get into such a mess trying to let it go to the jury and not be struck. I don't see how I could instruct the jury in this case. No; I am sorry. Bring the jury in, please.

Mr. A. A. Bangel: Your Honor, we are excepting to Your Honor—

The Court: I understand you are excepting to it.

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

The Court: Ladies and gentlemen, the action I am going to take may sound as though I should have allowed you to leave earlier today but I wanted to explain to you why I am

now taking the case away from you. Where there is any issue of fact involved, under Virginia jurisprudence the jury and the jury alone are to determine what that fact is. But where it appears that the facts are not in dispute, then it is up to the judge to determine and in this case I am accepting without question the plaintiff's own statement of how the accident occurred, but I am also holding that as a matter of law in the case of any pedestrian, where he does not have the right of way—this intersection was not within a busi-
page 136 } ness district and not in a residential district so he did not have the right of way—the rights of the vehicle and the rights of the plaintiff are mutual and reciprocal. I am holding as a matter of law that anyone who walks half the distance across a street and then looks to his right and sees that a vehicle has traversed two-thirds of the distance across towards him, should either stop or step back; he shouldn't walk directly upon the vehicle. Even if we assume that the driver was negligent—I don't say he was negligent because he hasn't had an opportunity to be heard, but even if we assume that he was negligent, also the plaintiff was negligent in continuing to walk directly in front of a vehicle that had gone two-thirds of the distance from where he had seen it while he was going half the distance without hurrying up or without keeping a lookout. He said he didn't look at it from the time he was halfway across and looked at it. So I am entering up judgment for the defendant. You ladies and gentlemen will be excused from further consideration of the case, to which action of the Court plaintiff by counsel objects and excepts. Now, you may state whatever you please.

Mr. A. A. Bangel: If Your Honor please, we object and except to Your Honor's taking the case from the jury. We object and except to Your Honor's holding that
page 137 } the plaintiff is guilty of contributory negligence as a matter of law. We object and except to Your Honor's entering up judgment on the ground that it is difficult to have the jury return a verdict. We object and except to Your Honor's taking the case from the jury and entering summary judgment. We maintain, if Your Honor please, that under the law the Court is without power to enter summary judgment and take the case away from the jury. The Court, in striking the evidence, should allow the jury to return to the jury room and consider the matter and return a verdict without any evidence before it rather than the Court's entering up final judgment for the defendant.

Now, if your Honor please, we move your Honor to set aside the judgment and award the plaintiff a new trial.

The Court: Overruled.

Mr. A. A. Bangel: To which action, if Your Honor please, we except.

Mr. S. J. Bangel: If Your Honor please, this exhibit is not in the record, as I understand it. (Indicating a plat.)

Mr. A. A. Bangel: It was only to go in if it was identified by the witness.

Mr. S. J. Bangel: He never identified it.

page 138 } The Court: Has Mr. Armistead gotten away? Get him to identify it now.

(It was ascertained that Mr. Armistead had left.)

The Court: Leave it in there. You make that motion.

Mr. A. A. Bangel: We are asking Your Honor to reject this plat marked "Intersection of Campostella Road and Border Road" on the ground that it has not been identified and it was understood that it would be identified before it would be admitted in evidence.

The Court: Overruled.

Mr. A. A. Bangel: To which action of the Court we except.

* * * * *

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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