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Record No. 4994

In the Supreme Court of Appeals of Virginia at Richmond

HENRY HAROLD WILLIAMS

v.

E. T. GRESHAM COMPANY, INCORPORATED

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. 4994

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 29th day of January, 1959.

HENRY HAROLD WILLIAMS, Plaintiff in Error,

against

E. T. GRESHAM COMPANY, INCORPORATED, Defendant in Error.

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

Upon the petition of Henry Harold Williams a writ of error is awarded him to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 8th day of August, 1958, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and E. T. Gresham Company, Inc., was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Court of Law and Chancery in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

page 18 } INSTRUCTION NO. 1.

The Court instructs the jury that a corporation may act only through its agents or employees, and that a corporation is liable for the negligence of its agents and/or employees, while acting within the scope of their employment, if such negligence is shown by a preponderance of the evidence to be the proximate cause of injury to a third party.

And if the jury believe that the driving of piles was not a part of the trade, business or occupation of the Chesapeake Bay Ferry District and that the Chesapeake Bay Ferry District contracted with the defendant to perform such work, and if you believe that the defendant was negligent in failing to provide reasonably safe equipment for pile driving, and that such negligence was the proximate cause of the plaintiff's injuries, then you shall return a verdict for the plaintiff.

Granted 8/8/58.

J. S. S., JR.

page 19 } INSTRUCTION NO. 2.

The Court instructs the jury that when an owner engaged in a particular trade, business or occupation, contracts with another party to perform certain repairs to its premises which are used to facilitate such trade, business or occupation, that this does not, in itself, make this work a part of such owner's trade, business or occupation.

Granted 8/8/58.

J. S. S., JR.

page 20 } INSTRUCTION NO. 4.

The Court instructs the jury that if you find that the driving of piles was not a part of the trade, business or occupation of the Chesapeake Bay Ferry District, and if you find that the open end hook used to attach the follow block to the hammer was an unsafe device and that a reasonable man in the exercise of ordinary and prudent care would have used a different and safer method of attaching the follow block to the hammer,

then you shall find that the use of the open end hook constituted negligence, and if such negligence proximately caused the injury to the plaintiff, then you shall return a verdict for the plaintiff.

Granted 8/8/58.

J. S. S., JR.

page 21 } PLAINTIFF'S INSTRUCTION NO. 9.

The Court instructs the jury that if you find in favor of the plaintiff, in estimating the amount of damages he should be awarded, you may consider the following:

1. The permanent nature of the physical injuries suffered by the plaintiff;
2. The physical pain and suffering and mental anguish endured by the plaintiff as a result of the injuries proximately caused by the accident, as well as the physical pain, suffering and mental anguish which the plaintiff may endure in the future;
3. The embarrassment suffered by the plaintiff as a result of the deformity to his hand;
4. The inability of the plaintiff to pursue properly his normal trade or business as a result of the degree of impairment to his hand, including the diminution of his future earning capacity;
5. The loss of wages suffered by the plaintiff to date.
6. The amount expended or incurred for medical expenses as a result of his injury;

However, the total amount of damages awarded shall not exceed the amount sued for in the motion for judgment.

Granted 8/8/58.

J. S. S., JR.

page 22 } INSTRUCTION A.

The Court instructs the jury that the burden of proof in this case is on the plaintiff, H. H. Williams, and before the jury would be warranted in finding a verdict for any sum in favor of the plaintiff, the plaintiff must prove to you by a preponderance of the evidence that E. T. Gresham Company, Inc. was guilty of negligence and that such negligence on its

part was the sole proximate cause of the injury to the plaintiff.

Granted 8/8/58.

J. S. S., JR.

page 23 } INSTRUCTION B.

The Court instructs the jury that the mere happening of this accident, with the resulting injuries to the plaintiff, raises no presumption of negligence on the part of the defendant, E. T. Gresham Company, Inc., or any of its employees and places no responsibility upon them for the accident.

Granted 8/8/58.

J. S. S., JR.

page 24 } INSTRUCTION C.

The Court instructs the jury that negligence is the failure to exercise the degree of care which a reasonable person would exercise under the same or similar circumstances.

Granted 8/8/58.

J. S. S., JR.

page 25 } INSTRUCTION D.

The Court instructs the jury that if you believe from the evidence in this case that the accident and any injuries which the plaintiff may have sustained were not caused by the negligence of the E. T. Gresham Company, Inc. but was the result of an unavoidable accident occurring without negligence on anyone's part, then you must find your verdict for the defendant, E. T. Gresham Company, Inc.

Granted 8/8/58.

J. S. S., JR.

page 26 } INSTRUCTION F.

The Court instructs the jury that the E. T. Gresham Company, Inc. was not the insurer of the plaintiff's safety and

was not required to use the best or safest method of rigging its equipment. If in the exercise of ordinary care it provided equipment for doing the work as was reasonably safe and adequate in view of the nature of the work to be done, it discharged its sole duty to the plaintiff and this is so even though the jury may believe that a safer method of rigging might have been adopted.

Granted 8/8/58.

J. S. S., JR.

page 27 } INSTRUCTION G.

The Court instructs the jury that in determining whether the defendant, E. T. Gresham Co., Inc., exercised ordinary care in the manner in which it provided for the attachment of the follow-block to the hammer, you may take into account the customary, accepted and usual manner in which similar equipment is rigged by others engaged in the field of pile driving and furnishing equipment therefor.

Granted 8/8/58.

J. S. S., JR.

page 28 } INSTRUCTION I.

The Court instructs the jury that if you believe from the evidence in this case that E. T. Gresham Co., Inc. rented its equipment and personnel to the Chesapeake Bay Ferry District for the use of the Ferry District in and about its general maintenance work at the Little Creek Terminal; that such maintenance work was part of the trade, business or occupation of the Ferry District and that the equipment was so being utilized by the Chesapeake Bay Ferry District and its employees at the time the plaintiff sustained his injury, then you must find your verdict for the defendant, E. T. Gresham Co., Inc.

Granted 8/8/58.

J. S. S., JR.

page 29 } INSTRUCTION J.

The Court instructs the jury that in performing the work

at the Chesapeake Bay Ferry District, it was the duty of the plaintiff, H. H. Williams, to at all times exercise reasonable care under the circumstances to provide for his own safety and well-being and to avoid injury to himself and if he did not do so, then he was guilty of negligence.

The Court further instructs you that if you believe from a preponderance of the evidence in this case that the plaintiff was guilty of negligence in respect to the matters set forth above, and that such negligence on his part proximately caused or contributed to cause the accident and the resulting injuries, then you must find your verdict for the defendant, E. T. Gresham Company, Inc., and this is true although you may further believe that the defendant was guilty of some negligence which proximately caused or contributed to cause the accident.

Granted 8/8/58.

J. S. S., JR.

page 30 } INSTRUCTION K.

The Court instructs the jury that if you believe from the evidence in this case that one of the members of the maintenance crew of the Chesapeake Bay Ferry District was negligent in the manner in which he attached the follow block to the hammer of the pile-driving rig, and that such negligence on the part of such employee was the sole proximate cause of the accident and the resulting injury to the plaintiff, then you must find your verdict for the defendant, E. T. Gresham Company, Inc.

Granted 8/8/58.

J. S. S., JR.

page 31 } INSTRUCTION N.

The Court instructs the jury that if you believe from a preponderance of the evidence in this case that H. H. Williams was familiar with the operation of a pile-driving rig such as was furnished to the Chesapeake Bay Ferry District by the defendant and if you further believe that Williams saw or in the exercise of ordinary care should have seen the faulty condition, if any, in the pile-driving rig and that he continued to work in and around the rig without calling the faulty condition to the attention of the operator, and that the subsequent

accident resulting in the injury to H. H. Williams was occasioned by the condition of the pile-driving rig thus revealed, then in that event, the plaintiff, H. H. Williams, was guilty of contributory negligence and if you believe that such negligence on his part proximately caused or contributed to cause his injury, then your verdict should be for the defendant, E. T. Gresham Co., Inc.

Granted 8/8/58.

J. S. S., JR.

page 32 } INSTRUCTION O.

The Court instructs the jury that your verdict must not be based upon surmise, suspicion or conjecture as to what the facts in this case may be and that it is your duty to try this case without being influenced by sympathy from the mere fact that the plaintiff was injured or by a desire to see him compensated for the injury, for the jury, as much as the Court, is under the solemn obligation of oath to decide the case solely upon the law and the evidence which has been presented at the trial.

Granted 8/8/58.

J. S. S., JR.

page 33 } INSTRUCTION NO. 3.

The Court instructs the jury that when an owner engaged in a particular trade, business or occupation, contracts with another party whereby such other party is to perform certain work for such owner, the fact that this work may bear some relation to the work of the owner, does not, in itself, make such work a part of the trade, business or occupation of such owner.

Refused 8/8/58.

J. S. S., JR.

page 34 } INSTRUCTION NO. 5.

The Court instructs the jury that a person who knowingly furnishes an article which, by reason of defective construction or otherwise, is imminently dangerous to life or property,

without notice or warning of the defect or danger, is liable to third persons who suffer damages therefrom and, if you believe from the evidence that the attachment of the follow block to the hammer by means of an open end hook rendered such equipment defective and imminently dangerous, and if you believe that such defect proximately caused the injury to the plaintiff, then you shall find the defendant guilty of negligence and return a verdict for the plaintiff.

Refused 8/8/58.

J. S. S., JR.

page 35 } INSTRUCTION NO. 6.

The Court instructs the jury that if you find that the driving of piles was not a part of the trade, business or occupation of the Chesapeake Bay Ferry District, and that the Chesapeake Bay Ferry District, contracted with the defendant to perform such work, and that the employees of the Chesapeake Bay Ferry District were merely cooperating with the defendant's crane crew in performing this work, and that the negligence of the defendant was the proximate cause of injury to the plaintiff, you shall return a verdict for the plaintiff.

Refused 8/8/58.

J. S. S., JR.

page 36 } INSTRUCTION NO. 7.

The Court instructs the jury that if you find that the driving of piles was not a part of the trade, business or occupation of the Chesapeake Bay Ferry District and if you believe that the cause of the accident is undetermined and that the instrumentality which caused the injury to the plaintiff was under the exclusive control of the defendant, and that this accident was such as would not ordinarily occur if reasonable care was used by the defendant, and that the defendant alone had the means of discovering how or why it happened, then the jury may infer that the accident was due to some negligence of the defendant.

Refused 8/8/58.

J. S. S., JR.

page 37 } PLAINTIFF'S INSTRUCTION NO. 8.

The Court instructs the jury that it is perfectly proper to pay an expert witness an appropriate fee for testifying as an expert.

Refused 8/8/58.

J. S. S., JR.

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In the Court of Law and Chancery of the City of Norfolk on the 8th day of August, 1958.

* * * * *

ORDER.

This day came again the parties, the plaintiff in person and by counsel and came as well the defendant by its president, E. T. Gresham and by counsel and thereupon pursuant to adjournment came again the jury, to-wit, Virginia E. Ashley, Swanson N. Beecham, Warren C. Forbes, Willis C. Goslin, Janice M. Hardee, Joseph F. McDonald and John H. Williams, who now having heard all the evidence and argument of counsel returned a verdict in the following words, "We the jury find for the defendant." Thereupon the Court polled the jury as to their verdict to which poll each of the said jurors replied that the verdict herein recorded was his or her verdict. Thereupon the plaintiff, by counsel, moved the Court to set aside the verdict of the jury, upon the grounds that the said verdict is contrary to the law and the evidence, which motion after having been fully heard and maturely considered by the Court, is overruled, to which action of the Court, plaintiff, by counsel duly excepts.

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 its costs about its defense herein expended.

To all of which the plaintiff, by counsel, duly excepts.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Plaintiff Henry Harold Williams herewith files his Notice of Appeal from the final judgment entered on August 8, 1958, in favor of the defendant, E. T. Gresham Co., Inc.

ASSIGNMENTS OF ERROR.

1. The Court erred in overruling the motion of plaintiff to set aside the verdict of the jury as contrary to the law and evidence in this case.

2. The Court erred in refusing to grant Instruction No. 3 offered by the plaintiff which reads as follows: "The Court instructs the jury that when an owner engaged in a particular trade, business or occupation, contracts with another party whereby such other party is to perform certain work for such owner, the fact that this work may bear some relation to the work of the owner, does not, in itself, make such work a part of the trade, business or occupation of such owner."

3. The Court erred in refusing to grant Instruction No. 5 offered by the plaintiff, which reads as follows: "The Court instructs the jury that a person who knowingly furnishes an article which, by reason of defective construction or otherwise, is imminently dangerous to life or property, with-
page 44 } out notice or warning of the defect or danger, is liable to third persons who suffer damages therefrom and, if you believe from the evidence that the attachment of the follow block to the hammer by means of an open end hook rendered such equipment defective and imminently dangerous, and if you believe that such defect proximately caused the injury to the plaintiff, then you shall find the defendant guilty of negligence and return a verdict for the plaintiff."

4. The Court erred in refusing to grant Instruction No. 6 offered by the plaintiff which reads as follows: "The Court instructs the jury that if you find that the driving of piles was not a part of the trade, business or occupation of the Chesapeake Bay Ferry District, and that the Chesapeake Bay Ferry District, contracted with the defendant to perform such work, and that the employees of the Chesapeake Bay Ferry District were merely cooperating with the defendant's crane crew in performing this work, and that the negligence

of the defendant was the proximate cause of injury to the plaintiff, you shall return a verdict for the plaintiff."

5. The Court erred in refusing to grant Instruction No. 7 offered by the plaintiff which reads as follows: "The Court instructs the jury that if you find that the driving of piles was not a part of the trade, business or occupation of the Chesapeake Bay Ferry District and if you believe that the cause of the accident is undetermined and that the instrumentality which caused the injury to the plaintiff was under the exclusive control of the defendant, and that this accident was such as would not ordinarily occur if reasonable care was used by the defendant, and that the defendant alone had the means of discovering how or why it happened, then the jury may infer that the accident was due to some negligence of the defendant."

6. The Court erred in refusing to grant Instruction No. 8 offered by the plaintiff which reads as follows: "The Court instructs the jury that it is perfectly proper to pay
page 45 } an expert witness an appropriate fee for testifying as an expert."

7. The Court erred in granting Instruction D which reads as follows: "The Court instructs the jury that if you believe from the evidence in this case that the accident and any injuries which the plaintiff may have sustained were not caused by the negligence of the E. T. Gresham Company, Inc. but was the result of an unavoidable accident occurring without negligence on anyone's part, then you must find your verdict for the defendant, E. T. Gresham Company, Inc."

8. The Court erred in granting Instruction F which reads as follows: "The Court instructs the jury that the E. T. Gresham Company, Inc. was not the insurer of the plaintiff's safety and was not required to use the best or safest method of rigging its equipment. If in the exercise of ordinary care it provided equipment for doing the work as was reasonably safe and adequate in view of the nature of the work to be done, it discharged its sole duty to the plaintiff and this is so even though the jury may believe that a safer method of rigging might have been adopted."

9. The Court erred in granting Instruction G which reads as follows: "The Court instructs the jury that in determining whether the defendant, E. T. Gresham Co., Inc. exercised ordinary care in the manner in which it provided for the attachment of the follow-block to the hammer, you may take into account the customary, accepted and usual manner in which similar equipment is rigged by others engaged in the field of pile driving and furnishing equipment therefor."

10. The Court erred in granting Instruction I which reads as follows: "The Court instructs the jury that if you believe from the evidence in this case that E. T. Gresham Co., Inc. rented its equipment and personnel to the Chesapeake Bay Ferry District for the use of the Ferry District in and about its general maintenance work at the Little Creek
page 46 } Terminal; that such maintenance work was part of the trade, business or occupation of the Ferry District and that the equipment was so being utilized by the Chesapeake Bay Ferry District and its employees at the time the plaintiff sustained his injury, then you must find your verdict for the defendant, E. T. Gresham Co., Inc."

11. The Court erred in granting Instruction K which reads as follows: "The Court instructs the jury that if you believe from the evidence in this case that one of the members of the maintenance crew of the Chesapeake Bay Ferry District was negligent in the manner in which he attached the follow block to the hammer of the pile-driving rig and that such negligence on the part of such employee was the sole proximate cause of the accident and the resulting injury to the plaintiff, then you must find your verdict for the defendant, E. T. Gresham Company, Inc."

12. The Court erred in granting Instruction N which reads as follows: "The Court instructs the jury that if you believe from the evidence in this case that H. H. Williams was familiar with the operation of a pile-driving rig such as was furnished to the Chesapeake Bay Ferry District by the defendant and if you further believe that Williams saw or in the exercise of ordinary care should have seen the faulty condition, if any, in the pile-driving rig and that he continued to work in and around the rig without calling the faulty condition to the attention of the operator, and that the subsequent accident resulting in the injury to H. H. Williams was occasioned by the condition of the pile-driving rig thus revealed, then in that event, the plaintiff, H. H. Williams, was guilty of contributory negligence and if you believe that such negligence on his part proximately caused or contributed to cause his injury, then your verdict should be for the defendant, E. T. Gresham Co., Inc."

13. The Court erred in granting Instruction O which reads as follows: "The Court instructs the jury that your verdict must not be based upon surmise, suspicion or conjecture as to what the facts in this case may be and that
page 47 } it is your duty to try this case without being influenced by sympathy from the mere fact that the plaintiff was injured or by a desire to see him compensated for the injury, for the jury, as much as the Court, is under the

solemn obligation of oath to decide the case solely upon the law and the evidence which has been presented at the trial."

14. The Court erred in refusing to allow counsel for plaintiff to examine the witness David B. Bjork as to the advantages or disadvantages from a safety point of view of the use of a shackle over a hook in connecting the follow block to the hammer.

15. The Court erred in refusing to allow counsel for plaintiff to examine David B. Bjork as to his opinion whether the accident could have occurred if a shackle had been used instead of a hook to connect the follow block to the hammer in the pile-driving operation.

HENRY HAROLD WILLIAMS
By JOSEPH A. GAWRYS
Of Counsel.

Filed 10-2-58.

L. M. CALVERT, D. C.

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ASSIGNMENTS OF CROSS-ERROR.

Now comes the defendant, E. T. Gresham Company, Inc., by counsel, and pursuant to the Rules of the Supreme Court of Appeals of Virginia assigns as cross-error the following:

1. The Court erred in denying the motion by counsel for the defendant to strike plaintiff's evidence at the conclusion of plaintiff's evidence upon the following grounds:

a. That there was no evidence of primary negligence on the part of the defendant, E. T. Gresham Company, Inc.

b. That the plaintiff's cause of action, if any, was barred by the provisions of the Workmen's Compensation Act of the State of Virginia.

c. That the plaintiff was guilty of contributory negligence as a matter of law.

d. That the evidence showed as a matter of law that the employees of the defendant, only through whom negligence could be imputed to the defendant, were "loaned employees"

of the Chesapeake Bay Ferry District at the time plaintiff sustained his injury; that such employees were fellow servants of the plaintiff at the time of the accident and that the plaintiff was, therefore, barred from maintaining his alleged action.

page 50 } 2. The Court erred in denying the motion by counsel for the defendant to strike plaintiff's evidence at the conclusion of all the evidence upon the following grounds:

a. That there was no evidence of primary negligence on the part of the defendant, E. T. Gresham Company, Inc.

b. That the plaintiff's cause of action, if any, was barred by the provisions of the Workmen's Compensation Act of the State of Virginia.

c. That the plaintiff was guilty of contributory negligence as a matter of law.

d. That the evidence showed as a matter of law that the employees of the defendant, only through whom negligence could be imputed to the defendant, were "loaned employees" of the Chesapeake Bay Ferry District at the time plaintiff sustained his injury; that such employees were fellow servants of the plaintiff at the time of the accident and that the plaintiff was, therefore, barred from maintaining his alleged action.

E. T. GRESHAM COMPANY,
INC.
By BERRYMAN GREEN
Its Attorney.

Filed 10-13-58.

H. L. STOVALL, D. C.

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ORDER.

There having arisen a disagreement as to the correctness of the reported transcript of the testimony taken at the trial of the matter which transcript has been made part of the

contents of the record of this cause; and the Court on October 13, 1958, after hearing testimony of the reporter who had transcribed such testimony and of the co-counsel for the defendant, having sustained the position taken by counsel for the defendant by striking out the words "because of" on page 96, line 12 of said transcript and substituting therefor the words "to cause;" and the counsel for the plaintiff having duly objected and excepted to such ruling; and the testimony on October 13, 1958, having been duly reported by a court reporter, it is hereby

ORDERED, ADJUDGED and DECREED that the exception of the plaintiff, by counsel, to such ruling and the transcript of the testimony heard on October 13, 1958, be and the same hereby are made a part of the contents of the record of this cause.

Enter 10/15/58.

J. S. S., JR.

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HENRY HAROLD WILLIAMS,
plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Meredith:

Q. Please state your full name and where you live.

A. Henry Harold Williams. I live at Cape Charles, Virginia.

Q. How old are you?

A. I was born September 29, 1919. That would make me—

Q. That would make you about 39 years old?

A. Yes, sir.

Q. What is your trade?

A. Carpenter.

page 15 } Q. How long have you been a carpenter?

A. Since I was around twenty years old, I guess.

Henry Harold Williams.

Q. Where are you employed? Where are you employed now?

A. Chesapeake Bay Ferry District.

Q. How long have you been there, in their employment?

A. Around eleven or twelve years.

Q. Actually, there hasn't been a Chesapeake Bay Ferry District that long, but you were with the company that ran the ferries before?

A. Yes, sir.

Q. And that was called the Virginia Ferry Corporation?

A. Yes, sir.

Q. What kind of work do you do for the Chesapeake Bay Ferry District?

A. I work where we repair all the doors, windows and so forth.

Q. You work ashore?

A. Yes, sir; in the shop.

Q. What is your rate with them? What are you classified as?

A. Carpenter, first-class.

Q. Going back to the date of April 23, 1957, were you employed by the Chesapeake Bay Ferry District at that time?

A. Yes, sir.

Q. You had an accident on that date, is that right?

A. Yes, sir.

Q. What were you doing at the time of the accident? Tell me in your own words.

page 16 } A. We were driving piles, and I was up on the cluster of piles and I was trying to get the bottom or foot of the pile in place.

Q. Was there a contractor on the job?

A. Sir?

Q. Was there a contractor on the job? Whose crane was it?

A. Mr. Gresham's; E. T. Gresham's.

Q. How about the crane crew, where did they come from?

A. Mr. Gresham's.

Q. What did the crane crew consist of?

A. Operator and oiler.

Q. What equipment had Mr. Gresham furnished for this pile driving operation?

A. Furnished the leads, the hammer and the crane and all of it. Follow-block.

Henry Harold Williams.

Q. Did Mr. Gresham furnish all of the equipment which was being used; that is, did he furnish the leads?
A. Yes, sir.
Q. And the crane?
A. Yes, sir.
Q. And the hammer?
A. Yes, sir.
Q. And the follow-block?
A. Yes, sir.
Q. And the hook that was used to direct the follow-block to the hammer?
page 17 } A. Yes, sir.

The Court: When you refer to E. S. Gresham, are you referring to the Defendant corporation?
Mr. Meredith: I think that can be stipulated that when we refer to Mr. Gresham, we are referring to E. T. Gresham Corporation.
Mr. Green: Yes.

Mr. Meredith:
Q. I hand you a photograph and ask you whether you can tell me the scene that is depicted in that photograph? In other words, where is that photograph taken, if you know?
A. Taken at Little Creek.
Q. Is that the general area in which you were working on the day in question?
A. Yes, sir.
Q. This pile cluster involved in here, is that the one that you were working on at the time?
A. It is, yes, sir.
Q. All right.

Mr. Meredith: I offer this photograph in evidence as "Plaintiff's Exhibit 1" with the explanation that the picture was taken on August 28, 1957, and the conditions that are shown here in this picture, that is, the ends of the pilings that are seen in the picture may or may not have been there at that particular time. The picture is not offered to show the exact condition that existed at that time but merely to show the area where the work was being performed and
page 18 } the piling cluster that was being worked on at that time.
The Court: "Plaintiff's Exhibit No. 1."
Mr. Green: We have no objection to the photograph with

the explanation it was taken four or five months after the accident happened.

Mr. Meredith:

Q. I hand you a photograph and I tell you that this photograph was taken on the same day as the other one, that is, August 28, 1957. It was taken down at Little Creek and I ask you whether the leads, the object on the right in that photograph is similar to the leads that were in use on the particular occasion that you were hurt?

A. Yes, sir.

* * * * *

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* * * * *

Mr. Meredith:

Q. Look at the photograph carefully and tell me whether the equipment was being used at the time that you got hurt, the equipment furnished by E. T. Gresham Company, was it of a similar nature to that shown in the photograph?

A. Yes, sir.

Q. The equipment shown in the photograph are these objects, the leads, hammer, and the follow-block?

A. Yes, sir.

Mr. Green: Your Honor, my objection still carries. I don't think it has been shown, well, this picture has been taken some after the accident and I don't think anything has shown that this was the equipment.

The Court: The witness says it was similar to it, if not the same. You can cross examine, of course. Objection overruled.

Mr. Green: Exception.

Mr. Meredith: I ask that this photograph be marked as "Plaintiff's Exhibit 2."

The Court: "Plaintiff's Exhibit 2."

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Henry Harold Williams.

Mr. Meredith:

Q. Mr. Williams, I hand to you a photograph which was taken of the E. T. Gresham rig No. 14. It was taken on August 28, 1957. In other words, several months after this accident occurred and I ask you whether that is the rig that was in use at that time that you got hurt? By the "rig," now, I mean only the crane shown in the picture. The crane shown in the picture is located in a different place than it was on this occasion?

A. To the best of my knowledge it is.

Mr. Meredith: Thank you. Your Honor, I would like to pass these photographs to the jury. (Jury looks at photographs.)

page 25 } Mr. Meredith:

Q. I hand you another photograph which has been marked "Plaintiff's Exhibit 4" and which purports to show the boom of a crane. Is that similar to the one that was in use on this occasion or the same one, if you can tell?

A. I can't tell if it is the same one but it is similar to the same one.

Q. I hand to you a photograph of a hook which has been marked "Plaintiff's Exhibit 6" and I ask you whether that hook is the same or identical to the one that was used on this occasion to connect the follow-block to the hammer?

A. It is the same type of open hook; yes, sir.

Q. I hand you a further picture which has been marked "Plaintiff's Exhibit 5" which shows the top of the boom shown in the previous picture and ask you whether that appears to be the one or the identical one that was used on this occasion?

A. Yes, sir.

Q. Mr. Williams, will you tell us exactly what you were doing just before you were hurt?

A. I was on the cluster of piles and I was trying to place the foot of the pile in position to be driven.

Q. Were you on top of the cluster of the piles?

A. Yes, sir, I was on my knees.

Q. On your knees?

A. Yes, sir.

page 26 } Q. Explain again what you were trying to do with the piles.

A. The foot of the pile goes down in the water and I was trying to get it in place so we could drive it where we wanted it.

Henry Harold Williams.

Q. Was this pile going down in the center portion of the cluster or one of the outside piles?

A. It wasn't the center one or the outside one. It was closer to the outside because I was up on the cluster reaching over like this.

Q. It would be known as one of the inside pilings?

A. Yes, sir.

Q. And had an old piling been removed from the place you were going to put this one in?

A. Yes, sir.

Q. And you were trying to get the bottom of the pile in place so that it could be driven, is that correct?

A. Yes, sir.

Q. What was holding the pile?

A. Well, it was under water. I couldn't tell. It could have been a piece of—

Q. I don't mean that end of the pile. What was suspending the pile; the weight of the pile?

A. Cable.

Q. From what?

A. From the crane.

Q. What else was hanging or suspended from the crane at this time?

A. The hammer, follow-block, lead.

page 27 } Q. There are three cables that come out of the top of the boom of that crane, is that correct?

A. Yes, sir.

Q. One of those cables was attached to what?

A. One was attached to the piling.

Q. And the next one was attached to what?

A. The hammer and one to the lead.

Q. Was the hammer in the lead at the time?

A. Yes, sir.

Q. Does the hammer have grooves inside of it so it can slide up and down in the lead?

A. Yes, sir.

Q. Does the follow-block also have grooves in the side?

A. Yes, sir.

Q. So it can slide up and down in the lead?

A. Yes, sir.

Q. When a new piling is being put in preparatory to driving such as on this occasion, how was the follow-block attached to the hammer? Do you know?

A. When they were getting *read* to pick up the pile—

Henry Harold Williams.

Q. Just before you were hurt; when all this was hanging over your head?

A. It was attached by a cable with an open hook.

Q. In other words, the open hook was the connecting link between the follow-block and the hammer?

page 28 } A. Yes, sir.

Q. Was the piling hanging alongside of the follow-block, or how was it hanging?

A. To the best of my knowledge, the pile was just outside of the hammer, follow-block.

Q. Would it be touching the lead?

A. It would be touching the hammer or the follow-block but I don't think it was touching the lead.

Mr. Green: I tried to go along with the leading questions in the interest of saving time but I think Mr. Meredith should—

The Court: Sustain the objection. Ask the question over and also, I suggest to the witness that you be as specific as you can in describing the conditions you saw.

Mr. Meredith:

Q. You stated that you were on the top of the cluster of piling?

A. Yes, sir.

Q. And that you had your hands around the piling?

A. Yes, sir.

Q. Trying to pull the bottom of the piling in a certain way?

A. Yes, sir.

Q. Which way were you trying to pull it?

A. Towards me.

Q. Which way were you looking at the time?

A. I was looking down.

Q. At the base of the piling?

page 29 } A. Yes, sir.

Q. Was the crane operator in the crane at the time?

A. Yes, sir.

Q. Where was the oiler, if you know?

A. I don't know.

Q. What happened then?

A. Well, I couldn't pull the bottom to me. It was either a piece of broken-off pile on the bottom or something. I couldn't

Henry Harold Williams.

pull it to me. I asked the operator to raise the pile up a little bit and I felt the pile start up and that is the last thing happened before my hand was hit.

Q. What was your hand hit with?

A. The follow-block.

Q. Did you see it coming?

A. No, sir.

Q. What happened to you when your hand got hit by the follow-block?

A. I came down the ladder off the cluster of piles and went over to the shop where they carried me to the hospital.

Q. What was the condition of your hand at that time?

A. This place right in here was slightly over between thumb and forefinger and the thumb was turned back; this met in here.

Q. You are indicating the meat on the forefinger of your right hand?

A. The meat was all bloody. It was meat, skin, and everything else.

Q. What about the bone?

A. The bone was sticking out beyond the meat. On this finger, the second finger, most of the meat and

page 30 } skin and everything was torn clean off but the bone was still sticking out there.

Q. How about the thumb?

A. The thumb was slit between the thumb and forefinger and broken in here, back up towards the wrist like that.

Q. Did you go to the hospital?

A. Yes, sir.

Q. What hospital did you go to?

A. DePaul.

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Q. Going back to the morning that you got injured, approximately what time of day was it?

A. I went to work at quarter to 8:00. I was there around 8:00 o'clock. I would say it was around 8:15 or 8:20 in the morning.

Q. After you got on the scene, had the Gresham men arrived?

Henry Harold Williams.

A. Yes, sir.

Q. What was the condition of the rig?

page 34 } A. Well, that went to work fifteen minutes before we did always. They went to work at 7:30, and I didn't get across the Bay until 7:30 and our regular working hours was 7:45 so they would get the crane started and if they had time, they would get the boom and the hammer and things all ready to go to work.

Q. When you worked out there that morning between 8:00 and 8:15, where were the leads?

A. The best I can remember, but I can't say for sure, they had leads standing up like this, but they were still touching the ground so it wouldn't be stringing around.

Q. Were the hammer and follow block in the leads?

A. Yes, sir.

Q. Had the hammer or the follow-block been attached to the hook, if you know, at that time?

A. It was attached because it wouldn't have been hanging to it.

Q. Who had furnished the follow block?

A. Mr. Gresham.

Q. Who had furnished the hammer?

A. Mr. Gresham.

Q. Who had furnished the leads?

A. Mr. Gresham.

Q. Who had furnished the hook by which the follow block was attached to the hammer?

A. Mr. Gresham.

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CROSS EXAMINATION.

Examined by Mr. Howard:

Q. How long have you been with the Chesapeake Bay Ferry District and the company that operated before; how many years?

A. About eleven or twelve years. Don't know exactly.

Q. Are you a member of the Maintenance Department there?

A. I work under Mr. Barber.

Henry Harold Williams.

Q. Mr. Barber is supervisor of maintenance for Chesapeake Bay Ferry District, is he not?

A. I think that is his rate.

Q. On April 23rd of last year, were you sent by Mr. Barber along with another crew to go over and work with the crane on the pile driving?

page 37 } A. There was myself and some colored fellows. Mr. Barber told us to go work with the crane.

Q. Who were the other fellows that went over with you?

A. There was a fellow by the name of Sam Powell. Hickman. There was a Doggett boy, and then there was a white boy. Can't think of his name.

Q. What would the last boy you named do? What was his job while working with the crane?

A. No actual special job for any of us. We all just worked together. I mean, one time he might be heading piles or he might be doing something else.

Q. Let's talk about heading piles. What does that mean for the members of the jury to head the pile?

A. To fix the butt end of the pile small enough so that the follow block would fit over it.

Q. And that follow block fits over the end of the pile?

A. Yes, sir.

Q. And you had members of the crew, members of the Chesapeake Bay Ferry District, chipping off the top of the piles so the follow block would fit in there?

A. Mr. Barber sent them to do it. I didn't have them to do it.

Q. Mr. Barber sent them to work with the crane?

A. Yes, sir.

Q. He sent you to work with the crane?

A. Yes, sir.

page 38 } Q. Did Mr. Barber tell you that you were more or less the boss on the job there with the employees?

A. No, sir.

Q. Who was the boss?

A. Mr. Barber and Captain Joyner.

Q. Did Mr. Barber come out and see how the work was progressing?

A. He had other jobs and he was there part time and on other jobs part time.

Q. Mr. Barber is supervisor of maintenance?

A. Yes, sir.

Q. And Mr. Barber would spend some time on this job site

Henry Harold Williams.

around where the crane was and where the pile driving was going on?

A. He would walk out sometimes and look around and go back to the shop or wherever he had the other men working.

Q. How many men were chipping the heads off of these poles that were to go in the ground, do you know? How many members of the crew were doing that?

A. Part of the time there was more than there was than others. Part of the time they were moving piles and maybe two of them shifting, I mean, chipping piles and part of the time three of them were chipping piles.

Q. Were they doing the chipping on the ground or barge, or where?

A. On the ground; on the shore.

Q. Were those piles located near the crane?

A. Yes, sir.

page 39 } Q. How were the piles then placed in position to be driven into the water?

A. To start off with, the crane operator placed the piles where he could reach them.

Q. When they got ready to place a pile into position, a cable would be wrapped around the piling, is that right?

A. A cable or a piece of chain attached to the cable. Anyway, it was fastened to the pile.

Q. You wrapped that cable around the piles to be placed into position?

A. No certain one. Whoever was there.

Q. Would one of your fellow employees there do that?

A. Part of the time and one or two times they all unhooked them for us.

Q. Who did it most of the time, wrapped those cables around the piling to be picked up by the crane? Didn't the employees of Chesapeake do that?

A. Part of the time we did and part of the time they did it.

Q. In other words, you all worked right together on this project?

A. Yes, sir.

Chesapeake employees and the operator of the crane and oiler of the crane, they all intermingled working on the project?

A. Well, we all worked together.

Q. You are not a crane operator, are you, Mr. Williams?

A. Never operated one?

Henry Harold Williams.

page 40 } *A.* No, sir.

Q. Had you ever worked around a pile driving job before?

A. Yes, sir. I worked around some.

Q. You understand some of the mechanics of the leads and the hammer and the follow block?

A. I know what the leads and hammer and follow block are, if that's what you mean.

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CROSS EXAMINATION (cont'd.).

Examined by Mr. Howard:

Q. How long had you been in the Maintenance Department at Chesapeake Bay Ferry District? I believe you said you had been employed for twelve or thirteen years. How long were you in the Maintenance Department?

A. The whole time I was working for them.

Q. Part of your duties with the Maintenance Department was to maintain the docks and the cluster of piles and things right at Little Creek, is that right?

A. Unless it was something they couldn't do like driving piles. They hired somebody.

page 47 } Q. When you hired somebody, when you had somebody in to drive piles, whoever it was, you all went over and worked with them as you did on this occasion?

A. Yes, sir.

Q. On this occasion, you had three, four, or five of you working right over there with the crane operator and you chipped the heads off of these poles which was done by the employees working with you and working for Chesapeake?

A. Yes, sir.

Q. And then when the poles were to be raised, to be placed in position on the cluster, a cable or strap was wrapped around these poles?

A. Yes, sir.

Q. And that was done by the employees of Chesapeake?

A. Part of the time.

Q. And part of the time by the oiler?

A. Yes, sir.

Henry Harold Williams.

Q. Did you also do some of the wrapping around the poles, wrapping so that the crane would or could pick it up and place the pole in position?

A. You mean like wrapping you were talking about; wrap the cable around? Wrap the cable around and pick it up?

Q. Yes.

A. Yes, sir; part of the time I would do it.

Q. Did you or some of the employees of Chesapeake at one time or another go up on the rig itself, climb up on the leads?

A. Yes, sir.

page 48 } Q. For what purpose did you go up there?

A. Whoever went up there went up there to unhook this follow-block once it was placed on top of the pile.

Q. And that was Chesapeake employee who did that?

A. At that time, yes, sir.

Mr. Meredith: Have you finished?

A. At the time that the pile that we were working on, there was a man up the leads then that belonged to the ferry company.

Mr. Howard:

Q. That belonged to the ferry company?

A. Yes, sir.

Q. When was that? Was that at the time of the accident?

A. Yes.

Q. Who was that man?

A. It was a white fellow. Can't think of his name.

Q. You can't think of his name?

A. I can't think of his name but he was the only other white fellow out there with me.

Q. And at that time, you were standing down on the cluster of piles?

A. Sir?

Q. At that time you were standing or kneeling on the cluster of piles?

A. Yes, sir.

Q. Did you have a ladder or anything like that up against the cluster of piles?

A. Yes, sir.

page 49 } Q. Was anybody else on that cluster with you?

A. No, sir.

Henry Harold Williams.

Q. Your purpose in being on that cluster of piles was to give signals to the crane operator as to the placing of this pile, this pole, in position; isn't that right?

A. I was up there to try to place the foot of the pole and working with the operator.

Q. And you had given him signals to raise the pole up?

A. Yes, sir.

Q. You had given him signals to lower it down?

A. Yes, sir.

Q. And the crane operator would act as you signaled to him?

A. Yes, sir.

Q. How did you give him those signals; by your hand or word of mouth, or how?

A. I think I turned my head like that and told him to raise the pile a little bit.

Q. At the time of this accident, you had your arms grasped around the pole?

A. No. I had hold of the pole like that. (Witness motions with arms.)

Q. How big around was the pole in diameter?

A. I don't know; all different sizes of them.

Q. Did you have your hand onto this pole just immediately before the accident?

A. When I was trying to pull the pole in, I had
page 50 } hold of it.

Q. What was the purpose of putting the pole in?

A. To get it in close to the bottom.

Q. You wanted to position the pole so that it could be driven?

A. Yes, sir.

Q. While you were doing that, did you give signals to the crane operator as to what to do?

A. Asked him to raise up on the piles.

Q. He followed your instructions?

A. When he raised up on the pile, that is when the follow-block unhooked.

Q. You had worked on these pilings a couple of days, had you not?

A. We drove one day before I got hurt.

Q. Had you finished any cluster of piles?

A. No, sir. We was working on the same one.

Q. Had you wrapped any of those piles at all?

A. No, sir. They were already wrapped. Old cluster.

Henry Harold Williams.

Q. You just put this down in the center?

A. Not exactly the center; center area, but not exactly in the center.

Q. Mr. Williams, had you been there on other occasions when piles were driven and you all would ask Mr. Gresham to send the crane down to help you with it?

A. You mean, sir, did I work with Mr. Gresham's crane before?

Q. Yes.

A. Yes, sir.

page 51 } Q. You worked there after they had finished the cluster of piles, had you not, where all the piles had been driven in one cluster?

A. Ask that over, please, sir.

Q. You had been there on occasions when a full cluster of piles had been driven and afterwards it would be completely wrapped around with a cable, had you not?

A. No, sir; not where we were working this time.

Q. Had you, in the past?

A. Not on the Little Creek side, no, sir.

Q. On the Kiptopeke side?

A. On the Kiptopeke side, sir.

Q. After a cluster of piles had been fixed in the water then what is done to the piling?

A. Put a wrapping around them.

Q. That would be wrapping furnished by Chesapeake Ferry, would it not?

A. The cable?

Q. Yes, the cable that would wrap around the cluster.

A. I don't know who furnished it. Guess the ferry company would furnish it.

Q. Who would do that wrapping around the cluster?

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Mr. Howard:

page 52 } Q. Who would work on that cluster to wrap around; wouldn't it be the employees of Chesapeake Ferry?

A. They would be putting the wire around it but the operator would still have to pull it tight before you could fasten it.

Q. It would have to be pulled tight by the employees of the Maintenance Department of Chesapeake, the wrapping the cable?

Henry Harold Williams.

A. That is what I just said. When we put the cable around it, the chain would pull it tight.

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Mr. Howard:

Q. How many piles were to be driven there, do
page 53 } you know?

A. I think that Captain George said he wanted from ten to twelve piles.

Q. The piles that were to be driven into the water, they were bought and purchased by Chesapeake, were they not? Mr. Gresham did not bring any piling along down there with his crane?

A. No.

Q. How much did Mr. Barber get out there on the job?

A. I don't know. Whenever he had time, I guess.

Q. Did Captain Daniels ever get out on the job?

A. He came out there one time; the day before I was hurt.

Q. This job was under the supervision of your boss, Mr. Barber or Captain Daniels?

A. Ask that over, sir. Didn't understand you.

Q. This pile driving job was under the supervision of your boss, Mr. Barber or Captain Daniels, was it not?

A. The pile driver was sent down there to do the job but the operator when you told him what to do, he knew what to do. He didn't have a supervisor there as I know of.

Q. Then you were on the job and the crane operator did what you told him to do, is that right?

A. If I asked him to raise up on a pile, he raised up on it.

Q. How about the wrapping of the cables around these piles to be put in the water? The employees of Chesapeake did a great deal of that, did they not?

A. They did part of it but not all of that.

page 54 } Q. Mr. Williams, it was work of Chesapeake that was being done? They owned the dock end and the cluster of piles and it was their business that was being done at this time?

A. They owned the cluster of piles that I was working on.

Q. Then—

Mr. Meredith: We are going to put an official of the Ferry Company on and I suggest counsel reserve the question of ownership.

Henry Harold Williams.

The Court: If the witness can answer it, I can't prevent counsel. If the witness knows the answer, all right.

Mr. Howard: Your Honor, may I ask the question over again?

Q. Mr. Williams, it was work and the business of Chesapeake Bay Ferry District which was being done when you were injured, isn't that true, sir?

A. The piling, so far as I know, belonged to the ferry company.

Q. And it was their work and business being done by Chesapeake Bay Ferry District crane?

A. Yes, sir.

Mr. Meredith: I object.

The Court: Sustained. He said as far as he knew it was their property, where the work was being done.

Mr. Howard:

Q. Mr. Williams, I think you answered earlier for me that you had, while employed there by Chesapeake, had been in on other pile driving that had been done there and repair of clusters?

A. I had worked with Mr. Gresham's rig before.

page 55 }

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Mr. Howard:

Q. Mr. Williams, wasn't the maintaining of the cluster there a part of the normal business of the Maintenance Department of Chesapeake Ferry?

A. Most of the pile driving work was done by
page 56 } contract.

Q. I want you to answer my question. Wasn't it part of the business of the maintenance, of the Maintenance Department to maintain these clusters of pilings around the dock whether it be done in cooperation with others, but your department did it, too; is that not right?

A. (Witness doesn't answer.)

Q. Over the years while you were employed by Chesapeake, you were in the Maintenance Department?

A. Yes, sir.

Q. While a member of the Maintenance Department there, part of your duties and the duties of the Maintenance De-

Henry Harold Williams.

partment was to maintain these clusters of piles? Is that true?

A. Not always; no, sir. The ferry company, if there was very much work, very much piling work to be done, the contractors, somebody was hired to do it, whatever there is to be done.

Q. When it was done like that, in the Maintenance Department, you fellows would not work right together with the crane and the operator as you did on this job?

A. No, sir.

Q. Mr. Barber told you to go out on this job, didn't he?

A. Yes, sir.

Q. And work with that crane?

A. Yes, sir.

Q. And he must have told these other employees to go out there and do the same thing?

A. Yes, sir.

page 57 } Q. Were you the senior in rank out there on that job?

A. Was I what?

Q. Were you the longest man employed on the job? Had you been working more years with the company than the rest of them?

A. I believe I was the oldest one there.

Q. Didn't Mr. Barber tell you while you were on the job and while he, Mr. Barber, wasn't there to direct the other employees?

A. No, sir.

Q. Well, the other employees then followed the instructions and the whole operation followed the instructions of Mr. Barber then?

A. Anything that we could do out there, well, if Mr. Barber told them to head piles, we would head piles. If he told us to do something else, we would all work together and do it.

Q. Mr. Williams, while you were on this cluster of piles, you were not looking up at any time, were you, when you were holding onto the pole to be placed in the ground?

A. I don't remember whether I looked up or not from that particular pile.

Q. If you were holding the pole with both hands, you would have had to give your signals to the operator by mouth; you would have to yell at him?

A. Yes, sir. Not yell. You would just talk to him.

Q. Say "Up" or "Down." When you were on the pile,

there was always another man on that cluster of piles with you?

A. No, sir.

page 58 } Q. There was not?

A. No, sir.

Q. At that time then were the other employees chipping the heads off these piles preparatory to this being driven into the water?

A. As far as I know, they were. I was up there doing that. I don't know what they were doing.

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Mr. Howard:

Q. Mr. Williams, you lived on the Kiptopeke side?

A. Eastern Shore, yes, sir.

Q. And you came over to work each morning on this pile job. Each morning you caught the boat to come over?

A. No, sir; not every morning.

Q. While the job was in process did you come over?

A. I came over to do whatever Mr. Barber told me to do.

Q. On the particular morning and while the pile-driving job was going on, did you come over to Cape Charles in the morning?

A. Yes, sir.

Q. On this particular morning, before lunch, you

page 62 } said when you got there, the crane would be already rigged, standing up, and ready for work? That's true, is it not, sir?

A. I don't remember what I said. I think it was.

Q. Mr. Williams, isn't it true that in the morning, Mr. Gresham's employees had the crane and rig ready to go to work but they would not start work until, actually, they would not start work on the piling until you got there along with the other employees; you got there to tell them what to do? Isn't that true now, Mr. Williams?

A. No, sir, they didn't start to work until we got there but they wasn't waiting for me to tell them what to do. They knew what we were going to do.

Q. They waited until the Chesapeake employees got there to work along with them?

Henry Harold Williams.

A. Yes, sir.

Q. You actually hooked on some of these piles with the cable before they had the end chipped off to fit under the pile block, did you not?

A. I don't know whether I hooked them or some of the other boys hooked them. They were all hooked and moved over to where the crane could pick them up and move when we started driving.

Q. When you say "some of the other boys," who do you mean?

A. It could have been our boys or Mr. Gresham's boys. Don't know who hooked them.

Q. They worked together on that?

A. Yes, sir.

Q. Usually they started about 8:00 o'clock in the
page 63 } morning working over there. When I say the
crane, I mean you and the employees of Chesapeake started about 8:00 o'clock in the morning?

A. Sometimes Mr. Gresham's men started at 7:30. We started at quarter to 8:00.

Q. I say, Chesapeake employees when you started driving piles would be quarter to 8:00?

A. That is when the Chesapeake Bay Ferry employees started working. That was their regular time to start to work.

Q. What time did you all knock off at the end of the day?

A. The Ferry Company's regular time to knock off was 4:15.

Q. Would Mr. Gresham's men knock off when you all did?

A. If they were through driving the pile and didn't have time to drive another one and we would finish heading the pile until our times were up. If they wasn't driving piles all the time we went back to some other job and finished out our day.

Q. Isn't it true that Chesapeake usually had one of their men up the rig; up on the leads?

A. Somebody was up on the leads all the time; when I was there at all times, when the follow-block was supposed to be hooked up.

Q. That was a Chesapeake man who was up there, isn't that true?

A. That's right.

Q. Was a man named "Hickman" on the job?

Henry Harold Williams.

A. Yes, sir.
Q. What was he doing?
A. You mean at the time of the accident or all
page 64 } day or what?
Q. All day and during the time that the crane was there driving piles, what was Hickman's job?
A. He had no special job. The morning that the accident happened, he was heading piles, chipping piles, as you call it.
Q. How far up from the cluster of piles was Hickman chipping?
A. I would say about as far as from here to the door.
Q. Could you see him from where you were?
A. I could have if I had been looking that way.
Q. Where was the oiler at the time of the accident, do you know?
A. No, sir.
Q. You don't know where he was standing?
A. No, sir.
Q. Mr. Williams, isn't it true that you had the authority and did tell Hickman and some of the other men on the job what to do; what pile to chip next?
A. I was just a plain carpenter, working like they were; laborers. If a job come up and the pile had to be chipped, they went to chip it. If Mr. Barber told them to chip piles, they started chipping piles. If something else had to be done, they just did whatever had to be done.
Q. If you didn't tell them then Mr. Barber told them as well as telling you what to do?
A. Mr. Barber was my boss just like he was their boss.
Q. As your attorney said, you have been paid all along by Chesapeake, have you not?
A. You mean did I draw my salary while I was
page 65 } hurt? Yes, sir.
Q. All right. Thank you.

RE-DIRECT EXAMINATION.

Examined by Mr. Meredith:
Q. You stated in your cross examination that there was a man up on the leads, is that correct?
A. Yes, sir.
Q. And that he was a Ferry Company man?
A. Yes, sir.

Henry Harold Williams.

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Mr. Meredith:

Q. Have you a rough idea of how much the follow-block weighs?

A. To my knowledge, around 500 lbs.

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page 66 } Mr. Meredith:

Q. Just before you were injured, how was the follow-block attached to the hammer?

A. By a piece of wire cable and an open hook.

Q. The cable ran from where to where?

A. It ran from one side of the follow-block through the hammer and hooked on the other side of the follow-block.

Q. When the hammer is raised with the follow-block attached in that manner, couldn't somebody reach over and unhook it?

A. No, sir.

Mr. Green: Grossly leading. We object.

The Court: Ask how it could be unhooked.

Mr. Meredith:

Q. How could it be unhooked while it was hanging in the air?

A. It couldn't be unhooked while it was hanging.

Q. Why?

A. Because of the weight of it no man could lift that much and do it. The whole weight of the follow-block is pulling on the cable.

Q. Did you have anything to do with the placement of the crane; the position of the crane in driving these piles?

A. No, sir.

Q. Who did that?

A. The operator.

Q. Of what?

A. The crane.

page 67 } Q. Did you have anything to do with the rigging of the follow-block when the equipment was brought down to Little Creek?

A. No, sir.

Q. Who was that done by, if you know?

A. The oiler.

Henry Harold Williams.

Q. The oiler was the Gresham man, is that correct?
A. Yes, sir.

* * * * *

Mr. Meredith:
Q Who made the decision as to how the hammer would be hooked up to the follow-block, if you know what I mean.
A. The oiler.
Q. The oiler was the Gresham man?
A. Yes, sir.
Q. To your knowledge, has the Chesapeake Bay Ferry Distract ever operated a crane to drive piles?
A. No, sir.

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RE-CROSS EXAMINATION.

Examined by Mr. Howard:
Q. Chesapeake Bay employees were the ones that went up the leads and hooked the follow-block, rather, unhooked the follow-block from the hammer, isn't that true?
A. Part of the time and part of the time they all went up there.
Q. Isn't it true that Chesapeake Bay Ferry District employees hooked the follow-block to the hammer when it was being raised?
A. You mean the first time it was hooked?
Q. During the whole procedure there?
A. You don't unhook it everytime you drive a pile.
Q. When it was unhooked and had to be rehooked, didn't the Chesapeake Bay Ferry employees do that?
A. Not always, no, sir.
Q. But they did sometimes, didn't they?
A. Yes.

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DAVID B. BJORK,

a witness called in behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Meredith:

Q. Please state your name and address.

A. David L. Bjork, 964 Brentwood Drive, Norfolk.

Q. Where are you employed?

A. Carpenter Construction Company.

Q. What capacity?

page 70 } A. Crane operator.

Q. Going back to the date of April 23, 1957, which was the date that Williams, better known as "Heavy" Williams, had an accident down at Little Creek. Where were you employed at that time?

A. E. T. Gresham Company.

Q. Where were you working?

A. I don't know if I understand your question.

Q. What rig were you attached to?

A. No. 14 crane.

Q. Was that your regular crane?

A. Yes, sir.

Q. Does Mr. Gresham assign you to one crane or another and you stay with that crane?

A. Yes, sir.

Q. Where was crane No. 14 on that date?

A. Chesapeake Bay Ferry.

Q. What was crane No. 14 doing?

A. Driving piling.

Q. What other Gresham men were down there?

A. Eddie Chappell, crane operator.

Q. What was your job?

A. Oiler.

Q. As an oiler, were you also learning the business, learning to be a crane operator?

A. Yes, sir.

page 71 } Q. The equipment that was being used down there on this occasion to drive the piles; I will be more specific: The crane itself and the leads and the follow-block and the hammer, who had furnished that equipment?

A. E. T. Gresham Company.

Q. Did the equipment come down all assembled or did it have to be assembled? When was it assembled before the accident?

David B. Bjork.

A. Friday night. No, sir. Monday morning before that.

Q. Who assembled it?

A. I did. The crane operator and I did and one colored man, I think. I am not positive of that.

Q. What sort of attachment existed for coupling the follow-block to the hammer when you are preparing to drive the new pile in? In other words, what facilities were available there after it was assembled?

A. A cable sling and a hook.

Q. Would you describe how the follow-block would be hooked to the hammer when you are going from one pile to another, getting ready to drive a new pile?

A. There was a sling that ran right through the follow-block, carried that over the top of the hammer and hooked it over the follow-block on the opposite side with a hook.

Q. So this sling would begin on the follow-block, go through the hammer and come back and attach to a hook on the follow-block, is that correct?

A. That's right.

page 72 } Q. Directing your attention to the accident which Williams had, where were you at the time of that accident?

A. I was standing to the left of the crane just about opposite the crane operator, standing on the bridge. It's in one of the pictures.

Q. I show you "Plaintiff's Exhibit 1" and ask you whether this is the bridge that you refer to?

A. Yes, sir.

Q. That is the ramp-like structure that leads up towards the vessel as shown in the picture?

A. Yes, sir.

* * * * *

Q. Would you tell us just what equipment was suspended from the crane at the time of Williams' accident?

A. The leads, hammer, follow-block, and the pile.

Q. Did that occupy the three cables that come out of the top of the boom?

A. That's right.

Q. Would you tell us into which of each of those three cables were attached these things; leads, hammer, follow-block, pile.

A. The leads were connected to the holding line and the hammer to the closing line, and the pile to what we call the

David B. Bjork.

junior line or the third line.

page 73 } Q. You say the leads were connected to the holding line, is that correct?

A. That's right.

Q. And that the hammer was connected to the closing line?

A. That's right.

Q. How do you use that term? What do you mean "closing" line?

A. Well, we have a clam shell bucket; we use that line to close the bucket. The other is to hold the line.

Q. The name doesn't mean much when you are driving piles?

A. They're called 1, 2, and 3.

Q. And the third one was to drive the piles?

A. Yes, sir.

Q. All dangling from the same point?

A. Yes.

Q. Were they touching each other? Piling and the leads apparatus.

A. Fairly well.

Q. Where was Williams at this time?

A. Climbing up the ladder just directly behind the cluster of piles.

Q. Did somebody give a signal to the crane operator to do something?

A. Yes, sir.

Q. Who gave the signal?

A. I believe it was a white man named "Rex" who stood on the cluster just behind the leads.

Q. Then what happened?

A. When he gave the signal to pick up, Andy

page 74 } picked up on the pile. Then, apparently—

Mr. Green: Object to that "apparently."

The Court: It's what you saw.

A. There are three possible points that could have touched that follow-block and knocked the log, you see.

Mr. Howard: We object to that three possible points of what could have happened.

The Court: He didn't say that. He said "three possible ways." I am not going to repeat it. I overrule your objection.

Mr. Howard: Exception.
The Court: Explain.

A. It could have been the top of the pile or the shoulder of the pile a foot below it or the chain around the pile three or four feet below that. Any one of those three could have knocked it loose.

Mr. Meredith:
Q. Knocked what loose?
A. The follow-block.

Mr. Green: Your Honor, we would like to show our continuing objection to the entire line of testimony on the basis that the only thing we are interested in here is actually what happened.
The Court: Overruled. We except.

Mr. Meredith:
Q. Were you looking at the crane and the leads and so forth?
A. To the best of my knowledge, I was watching "Heavy" and the leads were right above him so I had that in
page 75 } my vision.
Q. You saw the pile move upwards?
A. Yes, sir.
Q. What came down?
A. The follow-block.
Q. Did you later investigate to see what had happened?
A. Yes, sir.
Q. What did you decide happened?

Mr. Green: We object to that, Your Honor.
The Court: What grounds?
Mr. Green: As to what he decided happened?
Mr. Meredith: I will rephrase the question.

Q. What happened?

The Court: Tell us what you saw after you investigated.

A. I saw "Heavy" turn away from the ladder with a crushed hand and a bump on his head. I knew he was hurt. That's all.

David B. Bjork.

Mr. Meredith:

Q. With reference to the follow-block, what happened?

A. The follow-block fell on the ground and bounced on the top of the pile on the back of the cluster and fell to the ground.

Q. Did you examine the cable attached to the follow-block after the accident?

A. I don't recall.

Q. Do you know whether or not the hook came undone?

Mr. Green: That is grossly leading.

The Court: Sustain the objection as to the form
page 76 } of the question; but if you rephrase it, why, of course, that would be proper. As to the leading part of it—

Mr. Meredith: I understand.

Q. Do you know what caused the follow-block to become disengaged from the hammer?

Mr. Howard: Your Honor, this man has given three possibilities in his reply or testimony as to what could have happened; possibilities, Your Honor, and now counsel is asking him what caused it. I say he cannot answer that question partciularly on what the Court has just let in about the possibilities.

Mr. Meredith: The possibilities related to what caused something to happen. I want to know what the something was that happened.

The Court: Overruled.

Mr. Green: If this witness knows of his own knowledge; if he can testify that he saw what caused that.

The Court: Will the jury step out, please? (Jury leaves court room.) The witness testified that as a result of the action of the crane operator, one of these possible things resulting from his action—

Mr. Meredith: The action was raising the pile.

The Court: Yes, which the Plaintiff alleges was negligence; because of this argument, because of his alleged negligence, one of three things could have caused the injury to the Plaintiff. Is that your position? If that is true, what differ-
ence does it make which one of the three it was.
page 77 } if any one of those three could have done it and any one of the three or all of the three could have been caused by alleged negligence.

David B. Bjork.

Mr. Green: I daresay we could get a man to come here and testify there were fifty possible things that could cause that thing to fall; unavoidable accident or act of God; any conceivable thing. Any evidence on this score is merely conjecture on the part of this witness. That is a matter for the jury to pass on as to what caused the thing to fall. This witness can testify as to what he saw and what he knows of his own knowledge.

The Court: Unless he tells the jury what the result of what he saw was or in all probability would be, the jury wouldn't have any idea what caused it.

Mr. Green: Your Honor permitted testimony to the effect that this man said there were three possibilities as to what could have happened. We objected to that and we still maintain that that testimony—

The Court: I didn't want to say that in the presence of the jury. The reason I said if the Defendant was guilty of a negligent act which caused a certain result, which could have been contributed to by any one of these conditions, any one of which was caused by any negligent act, it wouldn't make any difference to what act.

Mr. Green: This man says three possibilities. I daresay there are witnesses who could say fifty.

The Court: Put your objection in the record and I will not change my ruling. That is final.

page 78 } Mr. Green: Mr. Meredith then asked him what caused the accident. This man can testify, if he knows, what caused the accident, if he saw it and he knows; but he has said there are three possibilities.

The Court: What is the question?

Mr. Meredith: Your Honor, what I want to know is—

The Court: Ask the question. I will rule on whether he can answer it or not.

Mr. Meredith:

Q. What was the immediate cause of the follow-block falling on this occasion?

Mr. Howard: Hold your answer.

The Court: The jury is out. Answer it. I will rule on whether or not it can be answered before the jury. What is your answer?

A. My answer is that there were three possible parts.

Mr. Meredith: I don't think he understands my question.

David B. Bjork.

Mr. Howard: He understands it.

A. Any one of these parts in the line would trip the thing loose.

Mr. Meredith:
Q. What thing?
A. Follow-block. If the pile hit as the follow-block lifted it, there was a possibility it would come loose.
Q. What would come loose?
A. The follow-block, the hook.
Q. That's what I wanted to bring out.

page 79 } The Court: What is your objection?
Mr. Green: Your Honor, that is strictly the basis of surmise; that this witness is not testifying as to facts that he saw and what he is now testifying to is possibility based on another possibility, which is not evidence, Your Honor.

* * * * *

page 80 } CROSS EXAMINATION.

Examined by Mr. Green:
Q. How long have you been an oiler?
A. About three years.
Q. How long have you been a crane operator?
A. About a year.
Q. You have been operating a crane steadily for a year?
A. Yes, sir.
Q. Have you been driving piles?
A. Not lately.
Q. When was the last time you drove any piling?
A. Let me say this. I have been driving piles but not in the capacity of a crane operator.
Q. What experience have you had with driving piles?
A. About four years.
Q. Doing what?
A. Driving piles.
Q. That was with Mr. Gresham?
A. Three years with Mr. Gresham; roughly, one year with Mr. Carpenter.
Q. You have been a crane operator, you say, for one year but you have not been driving piles?

A. That's right.

Q. So that is one year you haven't had any experience?

page 81 } A. In the capacity of an operator, but working around driving piles is just as valuable experience as actually running the rig, and I might add, far more dangerous.

* * * * *

Mr. Green: We don't believe this witness is properly qualified.

The Court: Don't see how you could possibly qualify him anymore.

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page 82 } DIRECT EXAMINATION. (Continued)

Examined by Mr. Meredith:

Q. What, if you know, caused the follow-block to become disengaged with the hammer?

A. When the operator picked up the piles, some part of the pile hit the follow-block, raising it enough to disengage the hook.

Mr. Green: Your Honor understands our objection goes throughout?

The Court: Yes.

Mr. Meredith:

Q. Who had control over the equipment that was hanging from the crane at the time?

A. The crane operator.

Q. That included the follow-block and the hammer and the leads and the pile?

A. Yes, sir.

Q. He was the only man that could move it up or down?

A. That's right.

The Court: Mr. Meredith, before the Court permitted that question, the Court thought you were going to qualify him further.

Mr. Meredith: Thought that was in the record. I will be glad to bring it out.

Q. Will you tell me, Mr. Bjork, how long you have been an

David B. Bjork.

oiler with the crane or how long, sir, had you been an oiler with the crane at the time of this accident?

A. About three years.

page 83 } Q. And I believe you stated before the jury that you were studying to be a crane operator?

A. Yes, sir.

Q. More or less striking for that job, as the Navy would call it?

A. That's right.

Q. During the time that you were in this position as an oiler for Mr. Gresham, did you ever operate the crane as an operator?

A. Yes, sir.

Q. Did you ever drive pilings?

A. Yes, sir.

Q. With Mr. Gresham's cranes?

A. Yes, sir.

Q. Since you have left Mr. Gresham and gone to work for the Carpenter Construction Corporation, have you had occasion to operate a crane?

A. Yes, sir.

Q. How long have you been operating a crane for the Carpenter Company?

A. About eight months. I said a year before but eight months would be more correct.

Q. Closer to eight months than a year?

A. Yes, sir.

Q. That is what you are doing now, operating a crane?

A. Yes, sir.

page 84 } Q. Assuming, Mr. Bjork, that a bolt type of shackle had been used instead of a hook to connect the follow-block to the hammer, could the accident have occurred?

Mr. Green: We object to that.

The Court: Sustained.

Mr. Meredith: If Your Honor please, he qualified as an expert.

The Court: You asked him could the accident have happened. I think that is impossible to answer.

Mr. Meredith: I could say, "Would the accident have happened?"

The Court: I think what different type of connection was used—

Mr. Meredith: I will pose a hypothetical question, if I may. I think that is the proper way to raise it.

The Court: If he is a qualified man.

Mr. Meredith:

Q. Mr. Bjork, assuming that instead of the open hook that had been used, and in that connection, I show you a picture, "Plaintiff's Exhibit No. 6," instead of a hook of that nature having been used to secure the follow-block to the hammer on this particular occasion, if a shackle had been used similar to the one that I have here in my hand, such a shackle, bolt through, such as this had been used instead of the hook, could the follow-block have become disconnected by the bumping of the pile against the follow-block in the manner that you have described?

Mr. Green: We again object.

The Court: I sustain the objection for this purpose. The Court will permit you to ask this witness if he is familiar with the other type of connection that you have there. If he is, let him explain the difference between the two
page 85 } types of connections and what the effect is or the result is in using the two types, but not just purely expressing an opinion.

Mr. Meredith: I will work it this way. Have you ever seen, in your experience in driving piles, a shackle used instead of a hook to connect the follow-block to the hammer?

A. Is this before or after the accident occurred?

Q. I am asking you in your whole experience.

Mr. Green: I don't know what Mr. Meredith intends to bring out by this testimony but I think the man should be instructed at the proper time.

The Court: I don't see why. If he is qualified to testify as to what effect the particular type of operation is as to the moment when he acquired his knowledge, it would not necessarily be limited to the action.

Mr. Meredith:

Q. Mr. Bjork, have you ever seen a shackle used instead of a hook on the Gresham rig?

Mr. Green: Object to this testimony. May we have the jury excused?

David B. Bjork.

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Mr. Meredith:

Q. Mr. Bjork, have you ever seen a pile-driving operation similar to the one being conducted at the time Williams was hurt, a bolt type of shackle, similar to the one I have here in my hand, used instead of a hook?

A. Yes.

Q. From the safety point of view, do you have an opinion as to which would be the best, hook or the shackle?

The Court: I don't think he is qualified to express an opinion on that. Ask him if he knows. What I said was if he knows the difference between the results that would be achieved by the two types of connections.

Mr. Meredith:

Q. Can you give us the result of the different things that might happen by the use of the hook and the use of the shackle in this connection?

A. No. I mean your question is—

Mr. Meredith: I think the witness is thoroughly confused at this point by having so many rulings one way
page 89 } and the other. I would like to rephrase the question.

The Court: Go ahead . I am not going to ask the question but if my ruling has not been clear, it may be that I have confused the ruling. My ruling is this: this witness, like any other witness, whether he works for Mr. Gresham or not, or whether Mr. Gresham's company made a change after the accident or didn't make a change, if he is qualified to explain the two types of connections and the relative advantage or disadvantage, if any, in connection with them, then I will let him or any other witness, qualified, on either side be heard. That is what I have ruled.

Mr. Meredith:

Q. You have described that you have seen an open hook used to connect the follow-block to the hammer?

A. Yes, sir.

David B. Bjork.

Q. You have also described that you have seen a shackle to be used for that purpose?

A. That's right.

Q. Can you tell us the advantages or disadvantages, if any, to the use of the shackle instead of the hook?

A. Would the advantages or disadvantages be from a safety viewpoint?

Q. From a safety viewpoint.

A. From a safety viewpoint the shackle would be better.

Q. Why?

A. Because of the much more difficult chance for
page 90 } it to become unhooked.

Q. Could it come unhooked?

A. Possibly.

Mr. Meredith: If Your Honor please, I would like to go that far with the jury anyway.

The Court: What are your objections, gentlemen?

Mr. Green: No. 1, Your honor, the objection is this: We don't feel that this man is qualified to give any such testimony, and No. 2, the question is not which is the safest method to be used. The only question is whether this hook being used is a good, acceptable method, accepted in the industry for this type of equipment. That is the sole question involved. No question in the world about one thing being safer than the other.

You could go to the extreme by saying you could make it all in one piece rather than through the use of the shackle and that would be safer than the shackle. The question here is whether the use of a hook is good accepted practice in the pile driving industry.

The Court: You certainly can't place the burden on the insurer that he has to use the highest type of device provided the type he uses, as Mr. Green says, is reasonably safe and acceptable.

Mr. Meredith: I feel that in the final analysis, particularly in view of all the blocks they are trying to throw in the way of the proof which we offer, well, I was doing the best I could to show what the real cause of this accident was; and I think
that the hypothetical question, really, that I have
page 91 } asked would be more proper than the one the Court
has suggested.

The Court: What is that?

Mr. Meredith: That was the one based on his experience, if a shackle had been used and if it got the same type of bump

as it got on this occasion, would the follow-block become disengaged?

The Court: He said it could. He said it would be safer but it still wasn't accident proof. Isn't that what you said?

A. Yes, sir.

The Court: It is just a question of him expressing an opinion; what he would think safer than the other. I think you can have him explain the fact that he has seen the other type used and he can explain, if he can, how this other type could be secured. It can be screwed up tighter or something of that sort so it won't come unfastened like a hook.

Mr. Meredith: And the next question would be that assuming it got the same kind of bump as it got on this occasion, would it come undone?

The Court: It is not for the jury to decide that.

Mr. Meredith: The jury has to go by something.

The Court: I don't think he is; no, I am not going to permit him to go any further than to explain how the two types of connections can be used; how they can be secured or screwed; if it can be screwed up tighter. As far as expressing an opinion, he is not qualified to do that. He is not a safety expert. Have I confused you all more?

Mr. Meredith: I would like to try again.

page 92 } I would like to note an exception to the Court's not allowing the hypothetical question I proposed to the Court.

Q. Mr. Bjork, you have testified that you have seen two methods used; one is the open hook and the other is the shackle to hold the follow-block to the hammer. From a safety point of view can you tell me the advantages or disadvantages of the use of the shackle over the hook?

Mr. Green: We object.

The Court: I sustain the objection. Same question as before. I stated I would permit the question to ask him to explain how the two types of connections could be used and then let the jury decide, if it comes to that point, whether one is dangerous and the other is safe.

Mr. Meredith: If I understand Your Honor's ruling, it is all right to ask him how a shackle could be used instead of a hook and to get him to describe how it could have been used?

David B. Bjork.

The Court: Yes. Bolt—

Mr. Meredith: Bolt type of shackle.

The Court: You have noted your exception to the Court's refusing to let you go further.

Mr. Meredith: Yes. I note an exception to the Court's ruling on not letting me go further.

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DIRECT EXAMINATION. (continued)

Examined by Mr. Meredith:

Q. Mr. Bjork, you have stated that in your experience as a crane operator and as an apprentice oiler, studying to be a crane operator, that you have seen both types of apparatus used; that is, an open hook to connect the follow-block to the hammer and also a shackle such as the one that I have in my hand to connect the follow-block to the hammer?

The Court: Is that correct?

A. That's correct.

Mr. Meredith:

page 94 } Q. Assuming that a shackle such as the one that I have in my hand has been used, how would it have been used? In other words, assuming that we had the follow-block and the hammer and the cable, how would you use the shackle?

A. It would have been used to go through the eye of the cable and through the two eyes of the cable to hold them together and thus hold the follow-block up.

Q. When the time came to drive the pile and the follow-block had been set on top of the pile, what would you have to do? Could you demonstrate with this?

A. A man would have to go up the leads, unscrew the shackle, take it out of one loop, screw the shackle back in the other loop, throw the cable over the top of the hammer.

Q. How long would that take?

A. Two or three or five minutes, maybe. It would depend on circumstances.

David B. Bjork.

Q. If the hook is used and we want to do the same thing, we set the follow-block on top of the piling; we want to drive the pile. In other words, we want to disengage the follow-block from the hammer and the hook is used, how is that done?

A. In the same manner except the man wouldn't have to unscrew the hammer. He would unhook the hook and throw it over the hammer.

Q. Would that take more or less time?

A. Less time.

page 95 } Q. As an example of what we are talking about, I ask that this shackle be offered in evidence as the next Plaintiff's exhibit.

The Court: "Plaintiff's Exhibit 7."

(Mr. Meredith hands shackle to jury.)

Mr. Meredith: I have no further questions of this witness.

CROSS EXAMINATION.

Examined by Mr. Green:

Q. How old are you, Mr. Bjork?

A. Twenty-seven.

Q. I believe you testified that you worked for Mr. Gresham for three years as an oiler prior to going with Carpenter Construction Company, is that true?

A. Yes, sir.

Q. During that time, as oiler, I believe you testified that you did operate the crane on several occasions?

A. Yes, sir.

Q. When the operator let you do it more at your request, wasn't it?

A. Part of that time and part of that time I was employed as an operator by Mr. Gresham.

Q. How long?

A. Just on the operator's vacation; probably two weeks out of a year.

Q. You have been operating a crane for Carpenter for about eight months?

A. That's right.

page 96 } Q. You do that as full-time employment? Do any other work?

David B. Bjork.

A. I do other work, too.

Q. What type of work do you do, other work?

A. Rigging, mechanics; just about anything that comes along.

Q. What portion of your time is spent in operating the crane?

A. I would say, roughly, half of it.

Q. Half the time?

A. Yes, sir.

Q. And you have never driven piles for Carpenter Construction Company?

A. Not yet.

Q. Mr. Bjork, you testified as to the possibilities which may have happened here as far as the follow-block falling. Isn't it also true that there are many possibilities that have happened as far as that follow-block falling? Isn't it true that anything could have happened to cause the fall?

A. Well, yes, it's true.

Q. I believe you testified that at the time that the follow-block fell that you were standing on the bridge and that you were watching "Heavy" Williams, is that correct?

A. Yes, sir.

Q. And you could see the bottom half of the leads?

A. Correct.

Q. But you could not see the follow-block or the hammer; isn't that true?

page 97 } A. I am not positive.

Q. A shackle has been introduced here in evidence, Mr. Bjork. If a man did not get the shackle tight, that could cause a cable to become loose, couldn't it?

A. Yes, sir.

Q. And it is necessary in order to release this shackle if it is used on a follow-block for a man to climb all the way to the top to reach through the leads, unfasten this shackle from the follow-block by unscrewing it?

A. Yes.

Q. And then pulling it loose, put this back in the loop and rescrew it, isn't that true?

A. That's right.

Q. You were employed by Mr. Gresham at that time, Mr. Bjork and you went down there with the rig, isn't that true?

A. Yes, sir.

Q. Did you take any other equipment down there when you went besides the crane itself and a clam shell?

David B. Bjork.

A. That's all we took.

Q. And you went down there to do general maintenance work for the Chesapeake Bay Ferry District?

A. Some dredging, yes, sir.

Q. And you did a little dredging first, I believe?

A. Yes.

Q. Under the direction of Captain Daniels?

page 98 } A. That's right.

Q. And then I think they told you all they wanted to raise a paint barge?

A. Yes, sir.

Q. Who assisted you all in raising the barge?

A. I don't recall. I think "Heavy" was in on the dredging operations and then there were two or three other men.

Q. "Heavy" was dredging?

A. I said I think so. I am not positive.

Q. They raised the barge, and he had several other Chesapeake Bay Ferry District employees working with him; correct?

A. Yes, sir.

Q. And you all were operating the crane and these employees were hooking up the barge and the necessary appliances as far as raising that barge?

A. Yes, sir.

Q. And as far as you know, "Heavy" Williams was the one telling the other men what to do and how to work it up?

A. As far as I know, yes.

Q. Then after you raised the barge, you all were told, some individuals asked you if you all could drive some piles; isn't that true?

A. That's right.

Q. At that time, the pile-driving rig was sent for?

A. That's right.

Q. And you commenced driving piles?

page 99 } A. Yes, sir.

Q. Who helped you in that?

A. You mean in the pile-driving operation itself?

Q. Yes.

A. "Heavy" Williams and this white fellow named Rex and a couple of colored fellows.

Q. And they were employees of the Chesapeake Bay Ferry District?

A. Yes, sir.

Q. And the piling all belonged to the Chesapeake Bay Ferry District?

David B. Bjork.

A. Yes, sir.

Q. And they furnished all the equipment and the men to do the work?

A. Equipment? What do you mean?

Q. The piles and appliances for wrapping the piles and that type of thing?

A. Yes.

Q. You said "Heavy" Williams and three or four other people were there. Who was giving directions to the other employees?

A. "Heavy" was.

Q. "Heavy" was telling them what to do?

A. Yes. He was telling the colored boys what to do.

Q. About what each one should do?

A. Yes.

Q. Which one should trim the piles?

A. Yes.

page 100 } Q. And which one should go up on the leads to release the follow-block?

A. That was a volunteer system.

Q. They all went up, is that true?

A. Yes.

Q. And "Heavy" was the one that was giving the directions to Eddie Chappell about how to manipulate the piles, wasn't he?

A. At the time that that pile was raised in the matter in question, I think it was a white man named Rex on top of the pile that actually gave the signals.

Q. You say that at the time the follow-block fell that Williams was on a ladder leaning against the pile?

A. That's right.

Q. And that this other man was the one who gave the directions?

A. That's right. That's to the best of my knowledge.

Q. Did you see Williams on the pile, on the cluster, at any time, on his knees?

A. No, sir.

Q. You did not?

A. No, sir.

Q. When you all went to work down there in the morning, you got the crane ready to do the day's work, oiled it, greased it; got it ready to go?

A. Yes, sir.

David B. Bjork.

Q. Did you do any actual work until the Chesa-
page 101 } peake Bay Ferry District employees got there?
A. Not on the pile-driving operation, no.
Q. You waited until they got there to show you what to do?
A. That's correct.
Q. The whole job down there was under the supervision, general supervision of Captain Daniels and Mr. Barber?

Mr. Meredith: If Your Honor please, I believe he has gone beyond the scope of direct examination. He is making the witness his own and I ask he examine the witness with not leading questions.
The Court: I don't think it is responsive to direct.

Mr. Green:
Q. Who was in the general overall supervision of the job?
A. Captain Daniels.
Q. Had you been down there actually with Gresham rig before to do the same type of work?
A. Yes.
Q. On how many occasions?
A. One or two occasions. I can't remember exactly.
Q. After you had filled in a cluster or driven a new cluster, who wrapped the piling in a cluster?
A. Ferry District men.
Q. How were your hours of work set?
A. From 7:30 until 4:00, I believe.
Q. Suppose you had a pile halfway driven at 4:00. Would you knock off at 4:00?
page 102 } A. No. We would finish.
Q. You worked at the convenience of Chesapeake Bay Ferry?
A. Yes, sir.

Mr. Meredith: I object.
The Court: Don't ask leading questions.

Mr. Green:
Q. How did you all arrange as to going to lunch?

See Ins. t

A. I do other work, too.

Q. What type of work do you do, other work?

A. Rigging, mechanics; just about anything that comes along.

Q. What portion of your time is spent in operating the crane?

A. I would say, roughly, half of it.

Q. Half the time?

A. Yes, sir.

Q. And you have never driven piles for Carpenter Construction Company?

A. Not yet.

Q. Mr. Bjork, you testified as to the possibilities which may have happened here as far as the follow-block falling. Isn't it also true that there are many possibilities that have happened as far as that follow-block falling? Isn't it true that anything could have happened to cause the fall?

A. Well, yes, it's true.

Q. I believe you testified that at the time that the follow-block fell that you were standing on the bridge and that you were watching "Heavy" Williams, is that correct?

A. Yes, sir.

Q. And you could see the bottom half of the leads?

A. Correct.

Q. But you could not see the follow-block or the hammer; isn't that true?

page 97 } A. I am not positive.

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page 101 }

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Q. Suppose you had a pile halfway driven at 4:00. Would you knock off at 4:00?

page 102 } A. No. We would finish.

Q. You worked at the convenience of Chesapeake Bay Ferry?

A. Yes, sir.

Mr. Meredith: I object.

The Court: Don't ask leading questions.

Mr. Green:

Q. How did you all arrange as to going to lunch?

David B. Bjork.

A. What do you mean?
Q. Suppose you were in the process of driving piles? How was the arrangement made about going to lunch?
A. We stopped for that.
Q. All of you?
A. Yes, sir.
Q. Everyone on the job?
A. Yes.
Q. This work you were engaged in, Mr. Bjork, you were filling this cluster rather than driving new clusters, isn't that true?
A. That's right.
Q. That's all.

RE-DIRECT EXAMINATION.

Examined by Mr. Meredith:
Q. You have mentioned that Captain Daniels was the general supervisor, I believe?
A. Yes, sir.
Q. As such, he would tell you whether he
page 103 } wanted you to work on this pile cluster or that pile *custer;* that type of thing?
A. Yes, sir.
Q. Did Captain Daniels come down there and tell you where to put your crane?
A. No.
Q. Who selected that spot?
A. The crane operator.
Q. Did he come down there and go in the cab and say, "You are not operating the crane right" if it began jerking or something of that nature?
A. No, sir.
Q. In fact, you never had any orders or instructions from the Chesapeake Bay Ferry District as to how the crane should be operated in the pile-driving operation, have you?
A. No, I don't think so.
Q. Those are matters left to you and Mr. Chappell?
A. That's right.
Q. No further questions.

RE-CROSS EXAMINATION.

Examined by Mr. Green:
Q. Actually, the way the machine was being operated, there

was never any cause for complaint, isn't that true?
A. That's true.
Q. That's all.

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GERNIE THOMAS SPAIN,
a witness called in behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Meredith:
Q. Please state your name and address.
A. Gernie Thomas Spain, 505 Beechwood Avenue, Norfolk.
Q. Where are you employed?
A. Naval Base, Public Works Center.
Q. In what capacity?
A. Safety Inspector.
Q. How long have you been so employed?
A. As Safety Inspector, a little over four years.
Q. What was your experience prior to becoming Safety Inspector at NOB?
A. I was a rigger.
Q. When did you first become a rigger?
A. In March of 1942.
Q. Where was that?
A. Naval Shipyard.
Q. What were your duties as a rigger at the Naval Shipyard?
A. My duties were working with cranes, derricks, moving of heavy weights.

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Q. What does safe practice require insofar as connecting

up of a follow-block to a hammer in a pile-driving operation, using equipment similar to that shown in the photographs?

Mr. Green: I object to that question. No. 1, I don't believe that this gentleman has been qualified as an expert insofar as pile driving is concerned, as he stated that he had inspected these rigs, inspected certain cables on them and
page 110 } that type of thing but I don't believe he has been qualified in the field of pile-driving equipment. I remember he said on occasions he had seen some pile-driving I believe. My second objection is that the only duty encumbent upon Mr. Gresham was to keep the rig according to accepted practice in the industry.

This gentleman's testimony as to safety and that type of thing is not relevant.

The Court: I think it is on *prima facie* evidence. The question of what the duty is rests upon the Defendant; whether that duty has been performed is a matter we have no evidence about whatsoever. The Plaintiff has to put on his theory of the case and you cross examine his witness and he will have an opportunity to present his case.

The first objection, I don't believe the witness has been properly fully qualified as to his qualifications to answer the question. Suppose you ask him more generally and let him explain more fully exactly what his experience has been.

Mr. Meredith:

Q. Will you explain what your experience has been in connection with pile-driving operations?

A. We have three pile-driving floating rigs at the Naval Base. I have safety for about one thousand employees. Naturally, I can't stay on these three rigs at all times. That is why I use the word "occasionally." We have railroads, motor vehicle safety.

Q. Do you inspect these three rigs for safety? Confine your answer to the pile driving.

A. Yes, sir.

page 111 } Q. You say those rigs are in use more or less all the time?

A. More or less.

The Court: I overrule the objection as to qualifications.

Mr. Green: We except.

The Court: I rule he is qualified to answer the questions.

Gernie Thomas Spain.

Mr. Meredith:

Q. With that much about your experience, can you tell me what safe practice would require insofar as the method of connecting up the follow-block to the hammer in the pile- driving operation? How should it be done?

Mr. Green: We object.

The Court: "Safe practice" is rather generally misleading.

Mr. Meredith: I chose that because I thought it would be the proper word. I will be perfectly happy to follow Your Honor's objection as to the word.

Q. What does good pile-driving practice require in connection with that?

A. Well, good pile-driving practice is something one person may have an idea on good-pile-driving practices and someone else may have another idea.

Q. What is your idea as a Safety Inspector?

A. As a Safety Inspector, my idea would be to use the wire rope through the follow-block, connecting it onto the hammer with a screw type shackle.

Q. Is this the type of shackle you just de-
page 112 } scribed?

A. Yes, sir.

The Court: That is "Exhibit 7."

Mr. Meredith:

Q. If a hook is used instead of a shackle, what are the disadvantages or advantages to using the hook instead of the shackle?

A. It is a little faster to unhook and hook.

Q. You save a little time?

A. Yes.

Q. What about from the safety standpoint?

A. From that standpoint, you sacrifice. It is very dangerous using a hook in that position.

Q. Why is it dangerous?

A. Any time you get slack in a wire rope, it is liable to jump.

Mr. Green: Let the record show my continuing objections to this testimony.

Gernie Thomas Spain.

The Court: All right.
Mr. Green: Exception.

A. The wire is slippery and if there is any slack in the wire whatsoever, the wire jumps out of the hook and whatever is there, it's going to fall.
Q. When you say "slack," you mean the slack between the hammer and the follow-block?
A. Yes, sir.
Q. If the follow-block is raised does that create slack?
page 113 } When they are both hanging from the crane; when the hammer is hanging from the crane and the follow-block is attached to the hammer hanging on the wire rope and then the follow-block is raised upward, would that have the effect of slacking?
A. That would.

Mr. Howard: We are interested in one specific thing today; one specific accident. Mr. Meredith is asking this man to go afield on anything where there is a hook or shackle used.
The Court: Overruled.
Mr. Howard: Exception.

Mr. Meredith:
Q. If the follow-block is raised, what happens to the cable?
A. The cable will be slacked and then there is a danger to the hook jumping off.
Q. That you ascribe to the springiness of the cable?
A. Yes, sir.
Q. No further questions.

CROSS EXAMINATION.

Examined by Mr. Howard:
Q. How long were you in the Navy Yard?
A. Nine months.
Q. And you started there as a rigger?
A. Yes, sir.
Q. Did you go through the apprentice school as a rigger?
A. No, sir.
page 114 } Q. And you left and went into the Navy for awhile and after the Second World War, you went to the Naval Base?
A. No, sir: the Shipyard.
Q. As what?

Gernie Thomas Spain.

A. Rigger.

Q. As a rigger. Did you hook on and tie lines and strap things with metal to cables?

A. Yes, sir.

Q. And from there you went to NOB, is that right?

A. Correct.

Q. How did you get in the Safety Department at NOB?

A. In 1954, they added three Safety Inspectors to the staff. I qualified.

Q. Have you ever operated a crane?

A. No, sir.

Q. You have never handled those gears and lines or cables?

A. No, sir.

Q. Know nothing about the drums on them?

A. I know something about them but never operated them.

Q. You never operated on them?

A. No, sir.

Q. Have you ever used a follow-block and a hammer such as is used in this instance?

A. No, sir.

Q. You have had no experience on that?

A. Not on a follow-block.

page 115 } Mr. Howard: I ask that this man's testimony be stricken. He has had no experience on this particular job and his evidence amounts to nil. I ask that it be stricken.

The Court: Overruled.

Mr. Howard: Note an exception.

Mr. Howard:

Q. Were you ever an oiler on a crane?

A. No, sir.

Q. Have you ever had any experience driving piles?

A. Yes, sir.

Q. As crane operator?

A. No, sir.

Q. Let me ask you this, Mr. Spain. Is it usual procedure for a rigger to go up the leads and disconnect the hammer from the follow-block?

A. We don't use that kind of equipment at the Naval Base.

Q. What kind of equipment do you use then?

A. We use steam-driven and air-driven hammers.

Q. Then you know nothing at all about Mr. Gresham's equipment then?

Gernie Thomas Spain.

A. Yes, sir.
Q. You have had no experience with it at all?
A. Yes, sir. I have been around it being used for contracting personnel.

page 116 } Q. You have never had any experience with the use of the leads, the hammer, and the follow-block? Is that what you told me?
A. You put too many things together.
Q. Have you had any experience with the follow-block?
A. No, sir.
Q. Any experience with the leads?
A. Yes, sir.
Q. What kind of experience have you had with that?
A. In pile-driving operations.
Q. Have you had any experience with the hammer such as is used in this instance?
A. With this hammer, no, sir.
Q. Have you had any experience with steam-driven equipment?
A. Yes, sir.
Q. It is an entirely different situation when you talk about steam-driven equipment and the equipment used on this job, isn't that true?
A. It is different.
Q. And on this equipment, you haven't had the experience?
A. Do you want me to answer?
Q. Is it "Yes" or "No"?
A. No, I haven't had any experience.

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RE-CROSS EXAMINATION.

Examined by Mr. Howard:
Q. Mr. Spain, these hooks that you have seen here, in your experience as a rigger, you have seen, have you not, that it is the use of the hook as customary in the industry to use?
A. In what situation?
Q. Any situation where there is a lifting of the load.
A. No, sir; not customary in some and some it is.
Q. Is it customary at the Base?

A. On some operations and on some it isn't. You can't say. That is too broad a statement to say being customary in all this.

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The Court: Overruled.

Mr. Howard: Note an exception. Your Honor, there is one more question I would like to ask the witness.

Q. Are you being paid to appear here today by the Plaintiff?

A. Yes, sir.

Mr. Meredith: We concede that.

Mr. Howard: Let the witness answer.

Q. Did you say "Yes"?

A. Yes, sir.

Q. Do you know what your fee is?

A. Yes, sir.

Q. What is your fee?

A. $50.00.

Q. $50.00 to appear here today?

A. Yes, sir.

REX LEO CARAWAN,

a witness called in behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

page 119 } DIRECT EXAMINATION.

Examined by Mr. Meredith:

Q. Please state your name.

A. Rex Leo Carawan.

Q. Where are you employed?

A. Judkins Towing Corporation, Portsmouth.

Q. In what capacity?

A. Running mate on a tug boat.

Q. Going back to April 23, 1957, that was the day that Williams here, better known as "Heavy" Williams had an

Rex Leo Carawan.

accident down at Little Creek, were you working for the Chesapeake Bay Ferry District at that time?

A. Yes, sir.

Q. What was your job?

A. General work, I guess you call it.

Q. Were you working aboard a vessel or were you doing laboring work?

A. Labor work around the dock.

Q. They sort of kept you on during the week so you would be able to work on one of the boats on the weekend?

A. Not at that time.

Q. But you had worked on the boats, too?

A. Yes, sir.

Q. At the time that Williams was injured, where were you?

A. Well, I was on the ladder, ledge, whatever
page 120 } you call it.

Q. Ledge? Leads?

A. Yes, sir, leads; that's right.

Q. I show you the picture which has been marked "Plaintiff's Exhibit 2" and ask you whether the leads that you were on were similar to the one shown in the picture? It is lying down there, of course.

A. Yes. That is similar to the one.

Q. That was it?

A. Similar to it.

Q. Would you tell us what you know about Williams' injury? In other words, if you saw it, what caused it?

A. Well, the only thing I know is what we called the "lead block," it came off this lead unhooked. It come down.

Q. Is that what they call the "follow-block"?

A. Sir?

Q. Is that the block that fits on the top of the piling when they get ready to drive it?

A. Yes, sir.

Q. When you are putting in the new piling is that block hooked onto something else?

A. Yes, sir.

Q. What is it hooked to?

A. The hammer.

Q. On this particular occasion, just before Williams was injured, was the follow-block hooked to the hammer?

A. Wait a minute and let me understand you.
page 121 } Q. Before he was injured, when you were on this lead, you were holding onto the ladder, where

was Williams? I will ask you that question.

A. He was on the cluster of piling where we was getting ready to set this one.

Q. Above or below you?

A. I was on the lead and he was on the cluster of piling just below me.

Q. That block that you call a lead or follow-block, before the accident, where was it?

A. The lead block, that was hanging on the hammer from the lead.

Q. What attached the follow-block to the hammer?

A. There was what we call a stab. It went through the hammer and through the lead and that was hooked into it.

Q. What kind of hook was it?

A. Just an open hook.

Q. Was it a hook similar to the one in this photograph? Show us "Plaintiff's Exhibit 6."

A. Yes, sir.

Q. One like that?

A. Yes, sir.

Q. Tell us what happened.

A. Well, when he set the piling down, you know, if you have ever been around that kind of work, maybe it is the first time, you can see it where you want it, and if you don't page 122 } get it the first time, you have got to raise your piling up and maybe try again. We have tried three or four times to get them right where the man wanted them and when he raised this piling up to put it in position, the piling hit the lead block and the lead block raised up and tripped the hook and come down.

Q. What tripped the hook, if you know?

A. Well, I would say the piling that hit the lead block; that tripped the hook.

Q. The raising of the block disengaged the hook, is that what you said?

Mr. Green: We object.

The Court: If you don't understand it; I sustain the objection. *As* him over again in a different form.

Mr. Meredith: I will withdraw that question and re-word it.

Q. You stated that the hook came unfastened, or words to that effect. What caused that?

A. What caused the block to unhook?

Rex Leo Carawan.

Q. That's correct.

A. The slack was in this cable. The hook, well, in other words, when there was a little slack on that cable that run through there; you see, the hook was on the cable. All right. Then just a little bit of slack, she tripped.

Mr. Meredith: No further questions.

CROSS EXAMINATION.

Examined by Mr. Green:

page 123 } Q. Mr. Carawan, you were employed by the Chesapeake Bay Ferry District, is that correct?

A. Yes, sir; at that time.

Q. How many people were out there from the Chesapeake Bay Ferry District doing this work?

A. You mean the employed Ferry people?

Q. That's right.

A. I believe there was four.

Q. Four of you?

A. I believe so.

Q. And this work had been going on, I think, the day before, is that correct?

A. Yes, sir.

Q. And you had been the man who was up and down on the lead?

A. I had rode them a time or two.

Q. Rode the leads working the equipment into shape, replacing the pile and whatever was done? In other words, you were an integral part of that operation as far as operating the leads and releasing the follow-block and that type of thing?

A. Yes, sir.

Mr. Meredith: If Your Honor please, it appears that counsel is going beyond the realm of direct examination. I ask that his questions be confined to direct examination.

The Court: That seems to be proper cross examination.

Mr. Meredith: I am not objecting to what has gone before but what might come.

page 124 } Mr. Green:

Q. At the time of this accident, were you on the leads and Williams below you?

A. Yes, sir.

Rex Leo Carawan.

Q. And the follow-block and the hammer up above you?
A. Yes, sir.
Q. How far above him were you, Mr. Carawan?
A. I don't know that. The length of the leads, whatever they were.
Q. The length of the leads?
A. Yes, sir.
Q. Would you say twenty, twenty-five feet?
A. I wouldn't say that.
Q. You wouldn't?
A. No. I don't know.
Q. Can you estimate in the court room?
A. Yes.
Q. How far above you were the hammer and follow block?
A. I would say from here to the door.
Q. And that was straight up, is that right?
A. That's right.
Q. And you were standing on this ladder and Williams was below you and this hammer and follow-block were up in the air practically the distance from the stand to the door?
A. Yes, sir.

Mr. Green: I would like the record to show that.
page 125 } The Court: Do you gentlemen agree to that? This court room has not been measured yet. I don't know what the distance is. You suggest what you think it is.

(Note: Measurements proved distance from witness stand to door is thirty-three feet, four inches.)

Mr. Green: I think if there is any question, we could stipulate and put it in the record.

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Mr. Green:
Q. That was above you and Williams was below you. How far was Williams below you, Mr. Carawan?
A. He was on the cluster of piling and the legs were resting on the cluster of piling. All I had to do—
Q. You were just about level with him?
A. Yes, sir.
Q. And you all were looking down as he maneuvered the pile and tried to maneuver the pile in the slot?

Rex Leo Carawan.

A. Yes.

Q. You were looking down at the time?

A. I was looking at him.

page 126 } Q. And you were not looking up at the time this thing happened?

A. No.

Q. So your testimony as to what happened, you surmised that that is what happened, but you didn't see it? Isn't that true, Mr. Carawan?

A. No, that's not true.

Q. Did you actually see with your own eyes the piling strike the follow-block?

A. No.

Q. Did you actually see the piling with your own eyes strike the hammer or any other part?

A. Not that day.

Q. That is what I mean. So actually, of your own knowledge, you did not see what actually caused that follow-block to come loose, did you?

A. No, but I know what happened.

Q. You didn't see it?

A. I know what happened.

Q. You didn't see it, Mr. Carawan?

A. No.

Q. So, it is your personal opinion that that is what happened?

A. Yes, sir.

Mr. Green: I move to strike all the testimony as to the cause of the thing to fall on the basis that this witness says it is purely his opinion.

The Court: Overruled. Note your exception.

page 127 } Mr. Green: Exception.

The Court: It is a question for the jury to determine. He explained what he said happened and the conclusions he drew from it. I think it's proper.

Mr. Green: All right. Note my exception.

Mr. Carawan, who were you taking your orders from then?

A. Mr. Barber was the boss.

Q. Who on the job was right there to be boss?

A. I wouldn't say there was a boss on the job.

Q. Did Mr. Williams ever tell you anything to do?

Rex Leo Carawan.

A. I think so; not only Mr. Williams but the rest of them. If you saw anything going wrong then we all got to work together.

Q. The piling, to your knowledge, belonged to the Chesapeake Bay Ferry District?

A. As far as I know.

Q. How long had you worked there prior to the accident?

A. I wouldn't say how long. It might have been a month that I had been on the yard. I had worked on the ferries before but I had never worked on the yard.

Q. This work that was being done was part of the general maintenance for Chesapeake Bay Ferry District, putting in the piling cluster, filling in the cluster? Wasn't that part of the general maintenance?

A. Yes, sir, I would say so.

Q. During the month that you had worked there, had you done any of this type of work before?

page 128 } A. Not with the Virginia Ferry Corporation. I have on other jobs.

Q. After you got through driving the pile, who hooked the follow-block back to the hammer in order for it to be raised?

A. I couldn't tell you.

Q. Did you ever do that?

A. I have done it once or twice maybe the day before.

Q. But one of the other boys from Chesapeake Bay Ferry District hooked that up?

A. I won't say that particular day. I rode the leads. Who hooked the lead block, I don't know.

Q. But you had hooked it up?

A. Probably the day before; on that day, no.

Q. No further questions.

Mr. Green: To make the record amply clear on my last objection, I would like to interpose an objection on the basis that this last witness is certainly not qualified as an expert to express any opinion. I think he has stated that he was a laborer.

The Court: The Court did not recognize him or instruct the jury he was expert. The Court permitted him to testify as to what he saw or knew but not as an expert in the sense of the word.

Mr. Green: My objection is directed to the part where he said it was his opinion.

GEORGE C. DANIELS,
a witness called in behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

page 129 } DIRECT EXAMINATION.

Examined by Mr. Meredith:

Q. Please state your name and home address.

A. George C. Daniels, 9329 Capeview Avenue, Norfolk.

Q. Where are you employed?

A. Chesapeake Bay Ferry District.

Q. How long have you been there?

A. Twenty-two years.

Q. Did you use to be one of the ferry captains?

A. I did.

Q. A few years ago did you go ashore?

A. I have been ashore since 1950.

Q. You went ashore?

A. Port Captain.

Q. What is the duty of the Port Captain?

A. To see that the operation of the boats were properly operated; to inspect the vessels. That is with and without the Coast Guard.

Q. What business is the Chesapeake Bay Ferry District engaged in?

A. Transportation; automobiles and passengers from Kiptopeke Beach to Little Creek, Virginia.

Q. How are they transported?

A. By ferries.

Q. How many ferries *to* you have?

A. Six. Five at the present time. We have five on the Little Creek run and one on the east-west run
page 130 } from Old Point.

Q. Is the Chesapeake Bay Ferry District a subsidiary of the State?

A. I understand it is. It is a bond issued individually by the State but is state-controlled now.

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Q. Going back to April of 1957 and directing your attention to the dates of April 19, April 22nd and April 23rd (I skip the dates in between because the 19th is a Friday and the 22nd and 23rd were Monday and Tuesday), at about that time, was there a Gresham rig down at Little Creek?

A. There was.

George C. Daniels.

Q. How did it happen to be there?

A. I had called Mr. Bill Gresham. I don't remember the date; but I had called Mr. Bill Gresham to have a crane there to do some work for us. It was moving an old paint barge and to do some dredging and also to drive some piles.

Q. Did a supervisor come down from Gresham's to look at the job?

A. Mr. Powell from E. T. Gresham came down to supervise the job that was going to be carried on.

Q. What is Mr. Powell's type of work?

A. Foreman or Assistant Foreman for Mr. Gresham.

Q. After Mr. Powell looked over the job, did
page 131 } Gresham send some equipment down?

A. Yes, he did.

Q. What equipment was sent down by Gresham?

A. A crane and a rig, dredging bucket for doing the dredging and also for driving the piles.

Q. I am not concerned with the dredging operations but concerned with the pile-driving operation. What equipment did he send down to do the pile-driving operation?

A. The crane and the follow-block and tackle and everything that was needed for that kind of work.

Q. Who decided as to what would be sent down for the work?

A. Mr. Powell sent the equipment; told them what equipment to send down to the job.

Q. Did you specify which rig you wanted?

A. What crane or anything? No. We just told them we wanted a crane to do the work and he came down and looked it over and sent down the equipment to do the work.

Mr. Green: He called this witness as his own.

The Court: You are asking leading questions. Just as easy to ask it the other way.

Mr. Meredith:

Q. What about personnel? What personnel did Gresham send down?

A. A crane operator and an engineer, they call him, I believe it is. The crane operator handled the boom.

Q. Did you request that any particular indi-
page 131A } viduals be sent down?

A. We did not.

George C. Daniels.

Q. How did you pay Mr. Gresham for the work?

A. Paid him by the day or by the hour.

Q. Do you know what his rate was for the day?

A. I don't remember just exactly. I think about that time his rate went up a little. It varies from about $12.50 an hour to about $25.00 an hour according to the equipment he had engaged on the job.

Q. Over and above the charge that you pay for the crane, do you pay something additional for the crane operator?

A. We do not. Mr. Gresham pays it.

Q. Whether he sends one man or three men down, do you have any control over that?

A. We do not.

Q. Does the Chesapeake Bay Ferry District have any crane of their own?

A. They do not.

Q. Has the Chesapeake Bay Ferry District ever had any crane?

A. Not to my knowledge. No, they haven't because I started with them and they had no crane.

Q. Has the Chesapeake Bay Ferry District ever attempted to drive piles themselves?

A. They have not.

Q. How many men did Gresham send down? You said two, I believe.

A. Two.

Q. Did you pay those men?

page 132 } A. We did not.

Q. Do you know how much they were paid?

A. I do not.

Q. Could you fire one of those men, Captain, if you didn't like what he was doing?

A. I could not. The only thing I could do if they weren't doing the work satisfactorily was to call Mr. Gresham and make my protest to him that the man was not satisfactory.

Q. Was it a customary thing for Mr. Powell to come down and look over the work when the work was commenced?

A. Most every job that we had done, we would call and tell them the job was to be done and Mr. Powell came before the crane.

Q. Thereafter what happened?

A. Thereafter he would come down two or three times after the job was being performed. On this job I don't know if he had been down that day or not.

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CROSS EXAMINATION.

Examined by Mr. Howard:

Q. Mr. Daniels, you called Bill Gresham about the crane to be sent to the job; about *havng* the crane sent to the job?

A. Yes, sir.

Q. Did you go on the job while Mr. Powell was there?

A. On several occasions.

Q. You had three or four of your employees working right along with the crane, didn't you?

A. Yes, sir.

Q. And you had them chipping off the end of these piles?

A. We don't call it chipping. We call it topping.

Q. You had them topping the piling?

A. Yes, sir.

Q. What was the purpose of topping the piling?

A. So they would fit into the lead, fit into the

page 134 } follow-block.

Q. And you had a crew of men there doing that and you also had Mr. Williams there, too, on the job, did you not?

A. I did.

Q. Did you have Mr. Williams bossing the other men on the job?

A. No, he was no boss. He was only a carpenter working for the company along with the other men doing the job.

Q. Captain, you have a maintenance supervisor there. What is his name?

A. Mr. Barber.

Q. Is he here today?

A. He is here.

Q. Mr. Barber would go out to the job site, I take it, and he would be boss of Mr. Williams and the rest of the men on the job?

A. Mr. Barber is a foreman. He is foreman over the maintenance of the company.

Q. How many maintenance workers does Mr. Barber have under his supervision?

George C. Daniels.

A. Generally ten or twelve, according to how the work is going on. Sometimes he will have more than others but as a general rule, he has about ten or twelve maintenance men in his gang.

Q. In other words, in addition to the ferries, you all had to have a normal operating maintenance department?

A. The Coast Guard requires so many on the boats whether we want them or not.

Q. And you had to have a maintenance depart-
page 135 } ment at Little Creek, too?

A. That's right. That's to take care of the vessels and the terminals.

Q. In and about the maintenance department, this work was being done on this particular day and on the day before?

A. This had been going on for several days; general work.

Q. This particular job wasn't a whole cluster pile, was it?

A. It was not.

Q. Maintaining or adding piling within that cluster?

A. Repairing the cluster.

Q. Which you had done by your maintenance department and had them on the job?

A. No. We don't have it done by the maintenance department because we don't have the equipment to do it.

Q. But you had your maintenance men there on the job?

A. They were on the job, of course.

Q. Did you have knowledge of your maintenance men wrapping cable around some of the piling to be placed in position?

A. Sure.

Q. And riding up on the rig? You knew that?

A. Yes.

Q. And you had knowledge of the general integrated work of your maintenance department and Mr. Gresham's crane?

A. Working together. Mr. Gresham's crane and our men were working together.

Q. Captain Daniels, if you folks were going to
page 136 } build a new cluster pile or replace a full cluster
pile, you would not employ Mr. Gresham to come in but you would have somebody like Mr. Carpenter?

A. It is according to where that pile was to be placed. *It if* was going to be placed in the position that one was, close to the dock, we would probably get Mr. Gresham, if it was only just one pile rather than go to the expense of having to pay

Carpenter's tow bill to Little Creek and back. It was Mr. Gresham in this case and the floating rig.

Q. And on these smaller jobs you got Mr. Gresham?

A. That's right.

Q. After the cluster pile had been all filled then that piling was wrapped with a cable?

A. Yes, sir.

Q. You folks did that, did you not? With the assistance of the crane, you folks did that, sir?

A. They all worked together.

Q. When I say "You folks did that," your Maintenance Department did that? Gresham crew and the Maintenance Department?

A. Yes.

Q. When you get Carpenter or one of the big companies to come in and do the work, your employees didn't work with that company?

A. No. The only thing we do, sometimes we assist in bringing the piles, if the piles are not close to the dock; any way we can to expedite the job.

Q. But not as your Maintenance Department works as they do with Mr. Gresham, right close to the crane?

page 137 } A. No.

Q. How often did your Mr. Barber get out on the job, do you know?

A. I couldn't say. He had other jobs going on. Maybe four or five times during the day, according to how his other work was going. Maybe all day; but—

Q. You kept an eye on them?

A. Yes, as much as I could. I was interested in the fitting of the bow of the boat in that certain place. I had to have the pile in the same distance as the width of the boat.

Q. Do I understand then from those questions that the overall supervision was under you and not Mr. Barber?

A. No, I wouldn't say so.

Q. Under both of you?

A. Mr. Barber and I jointly had the supervision.

Q. Thank you.

RE-DIRECT EXAMINATION.

Examined by Mr. Meredith:

Q. On this question of overall supervision, did you ever tell the crane operator anything to do?

George C. Daniels.

A. I never did.

Q. When you say "overall supervision," what do you mean?

A. I mean we would come out and observe the job and see how it was going on. I was interested in when we could use the dock, when we could finish it so we could dock a boat in it.

Q. Were you interested in where the pilings were located?

page 138 } Mr. Green: Object to his testifying.
The Court: All right.

A. I was interested in getting the dock finished and also the cost of it. Wanted to cut down the cost on it.

Q. Were you interested in the position the crane got in to drive the piles?

A. No, but I was interested in the position of the piles so the piles would drop to fit the position for the bow of the boat.

Q. Were you interested in the details as to how the equipment sent down by Gresham was put together?

A. I was not. I wasn't because I thought they were experienced men and knew how to rig their own rig.

Mr. Meredith: No further questions.

RE-CROSS EXAMINATION.

Examined by Mr. Howard:

Q. Captain Daniels, you say you never told the crane operator what to do but Mr. Williams, out on the job, would give the crane operator the signals and what pile and so forth to pick up to go in the cluster, would he not?

A. The signals, sometimes he would, yes, sir. Sometimes I think they all worked together there as a unit.

Q. Who collected the pilings to go into a cluster?

A. I guess we generally take what we have. Sometimes, of course, if you have a hundred in a pile, you select the one that you think will fit in the hole best. Most of the men working on the job would do it.

page 139 } Q. Would you let Mr. Williams do it? He is a carpenter.

A. He could have done it or any of the colored boys could have done it. If they saw a good straight pile, they would pick it up.

Q. That's all, sir.

KENNETH BARBER,
a witness called in behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Meredith:

Q. Please state your full name and where you reside.
A. Kenneth Barber, 1117 Shore Drive, Lake Shores.
Q. Is that in Princess Anne County?
A. Yes, sir. Bayside.
Q. Where are you employed?
A. Chesapeake Bay Ferry.
Q. In what capacity?
A. I am supervisor of maintenance.
Q. Do you know the Plaintiff here, sitting by me?
A. Yes, sir.
Q. Does he work down there, too?
A. Yes, sir.
Q. In what job?
A. He is a carpenter, first-class.
Q. Going back to the dates of April 22nd and 23rd of 1957, what was going on down at Little Creek insofar
page 140 } as the driving of the piles was concerned?
A. Well, we were driving in piling in Berth No. 3.
Q. Whose rig was being used for that purpose?
A. Mr. E. T. Gresham's.
Q. What equipment had been furnished by Mr. E. T. Gresham?
A. There was a crane and a hammer; pile-driving rig.
Q. What else did the pile-driving rig consist of other than the crane and the hammer?
A. I think they call it the guide.
Q. Is that the same as the lead?
A. Yes.
Q. Is it something that fits on the top of the pile as the hammer strikes?
A. That's right; leads to the hammer or it leads the hammer to the top of the piling.
Q. What sets on top of the piling?
A. That is what they call a lead block.
Q. Is that the same thing as a follow-block?
A. That's right; yes, sir.
Q. E. T. Gresham Company furnished that equipment?
A. Yes, sir.
Q. At the time that Williams was injured on April 23rd,

Kenneth Barber.

what job was Gresham doing at Little Creek? What particular job were they doing?

A. They were driving piling at Berth No. 3.

page 141 } Q. Was Williams working on the job?

A. Yes, sir.

Q. Did you see the accident?

A. No, sir.

Q. Do you know Mr. Powell who worked for the E. T. Gresham Company?

A. He is the foreman, apparently. He comes down and we call him as a rule if we have a job to do and he orders the equipment suitable for the job.

Q. After Williams had his accident, did he come down to Little Creek; Mr. Powell?

A. Yes, sir.

Q. Did you have a conversation with Mr. Powell?

A. Yes, sir.

Mr. Green: I think we have reached a point—

The Court: Will the jury retire to the jury room for a few minutes?

(Jury leaves court room.)

Mr. Meredith:

Q. Mr. Barber, did Mr. Powell come down to Little Creek after Williams's accident.

A. Yes, sir.

Q. Tell me what happened when Mr. Powell came down?

A. We examined this hammer and the block and I suggested that I thought it was a poor rig, unsafe rig.

Q. What particularly did you say was unsafe?

page 142 } A. I said the hook. In other words, the hook and the cable that secured the lead block to the hammer.

Q. The follow-block to the hammer?

A. Yes, sir, and he said, "I agree with you." Immediately after that, they changed it and put a shackle in place of the hook.

Q. All right.

Mr. Meredith: That is the gist, Your Honor, of what I want to bring out.

Mr. Green: I object to everything. It is clearly inadmissible.

Kenneth Barber.

The Court: The last evidence, that the change was made, the Court will certainly not permit that.

Mr. Green: About what was said by Mr. Powell at the scene, I think it is *inadmissble* and in *Rice* v. *Turner,* 62 Southeast Second 24; 191 Virginia 601; an automobile struck a cow on the highway in this case—

The Court: What is your position?

Mr. Gawrys: We don't think that case is the same thing.

The Court: This is a question of a statement. If the statement is admissible at all relating to the method in which this was operated. Suppose Mr. Gresham had made that statement. Would it be admissible?

Mr. Green: I don't think it would insofar as it is an expression of opinion. The point is that in both of these cases neither one of these statements were made as part of the *res gestae* which this case adequately points out. In addition, Mr. Barber stated he said he thought it was a

page 143 } poor rig and this man said, "I agree." Were those the words, Mr. Barber?

A. Similar to that.

Mr. Green: That is an expression of opinion of Mr. Barber. Mr. Barber expressed an opinion in his individual capacity which could not bind E. T. Gresham Company. I submit it falls squarely within the principle of *Rice* v. *Turner.*

The Court: Mr. Barber couldn't bind Gresham but if he made a statement which was agreed to by Gresham Company, anyone who would have authority to bind Gresham in some affirmative act, it is an admission.

Mr. Green: It is not an admission an admission would be where someone said, "I told those boys last week this rig wasn't properly rigged up." That is an admission the rig was defective. Here you have a statement which was made afterwards which is no more than an opinion as to how the condition of the rig was.

The Court: Suppose Mr. Powell, himself, is an individual engaged in the work and an accident happened and nobody was injured except Mr. Powell. He, himself, had directed the method of handling and after it happened not as a part of *res gestae,* told him it was unsafe.

Mr. Green: That would be an admission. That is the distinction. That is an admission. The statement in this case agreeing with an opinion by Mr. Barber is merely an agree-

ment on the opinion that Mr. Barber gave; purely an opinion, not an admission.

Mr. Gawrys: We think Mr. Powell was of high enough authority to bind Gresham. We think Mr. Powell by

page 144 } agreeing with Mr. Barber that this was unsafe, Mr. Powell knew or should have known prior to its use that the use of that hook was unsafe because a third party could be injured by it becoming unhooked, as it did; and if he should have known that the hook was unsafe, it should not have been used. Mr. Powell certainly had authority to change the hook and use something else in its place.

Mr. Green: My position is that this is merely an expression of opinion by Mr. Powell and I would like to cite Your Honor on the case of admission; 169 Virginia 195.

Mr. Gawrys: This particular statement was within the scope of Mr. Powell's authority. He had authority over the men operating the rig.

Mr. Green: *Rice* v. *Turner,* 191 Virginia 601.

Mr. Gawrys: Our position is that a statement by Mr. Powell is binding on the Gresham Corporation.

The Court: The Court overrules the objection. Counsel made the statement it is binding on the Defendant. I can't concede any such statement as that. It is evidence the jury can consider; it is admissible evidence.

Mr. Green: Note our exception.

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Mr. Meredith:

Q. You stated that following the accident Mr. Powell came down to Little Creek. Will you tell me again who Mr. Powell is?

A. He is the foreman for the Gresham Company.

Q. Did you see Mr. Powell when he came down to Little Creek?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Yes, I did.

Q. Where were you when the conversation took place?

Kenneth Barber.

A. We were at the hammer and the follow-block; laying on the ground.

The Court: When was this?

Mr. Meredith:

Q. When, with reference to the accident, was this?

A. My best recollection is that it was possibly an hour after the accident. Possibly.

Q. Would you tell us what that conversation was that you had with Mr. Powell?

A. I said that I thought it was a poor rig, unsafe.

Q. What was poor and unsafe?

A. The hook and cable that fastened the follow-block to the hammer.

Q. To hook it?

A. To hook it.

Q. Go ahead. What did Mr. Powell say?

page 146 } A. Mr. Powell said, "I agree with you."

Mr. Meredith: Witness with you.

CROSS EXAMINATION.

Examined by Mr. Green:

Q. Mr. Barber, that statement by you, you thought that it was a poor rig and unsafe was merely your personal opinion?

A. My opinion, that's right.

Q. And the only words that Mr. Barber, I mean Mr. Powell said was, "I agree with you."

A. That's right.

Q. How long have you been supervisor of maintenance for Chesapeake Bay Ferry District?

A. Since they have been operating.

Q. How long is that?

A. I don't have the dates; probably two years, something like that.

Q. You say you had an average of about twelve men working for you?

A. I would have to count them up. Approximately that.

Q. On this particular day in question, who did you assign to go out to work on the pile-driving job?

A. I sent Mr. Williams and I think there was Mr. Carawan and three colored men.

Kenneth Barber.

Q. And those men were working directly under your supervision, is that right?

A. That's right.

page 147 } Q. And they were to go over to work on the pile-driving, isn't that true?

A. Not on the driver.

Q. They were to work on the pile-driving, wasn't that true?

A. On the job, I would say.

Q. On the pile-driving job. They were going to work, isn't that true? They were going to work on the pile-driving job?

A. That's right.

Q. Who was in charge of the men that you sent over there?

A. I am in charge of it.

Q. Was there anybody that you sent specifically?

A. No. I usually send a man that is familiar with the work. I check the work on occasions.

Q. You knew that Williams was a good carpenter and was familiar with this type of work?

A. Yes, sir.

Q. That's the reason you sent him, isn't that true?

A. That's right.

Q. And the rest of these boys were more or less working as laborers?

A. That's right.

Q. And you felt Williams would pretty well supervise this activity?

Mr. Meredith: Your Honor, I think he is going beyond the realm of direct examination.

(Court shakes head in negative motion.)

page 148 } Mr. Meredith: Exception.

Mr. Green:

Q. You picked Mr. Williams to go over there because he was experienced, knew the work and had done it before, isn't that true?

A. Yes.

Q. And the rest of the men didn't know as much about it as Williams?

A. That's right.

Kenneth Barber.

Q. And you picked Williams to send him over there to generally supervise the work? He was to work along with them and tell the others what to do, isn't that true?

A. He could tell the other men to head the piles and take hold of the piles and so forth but he couldn't tell Mr. Gresham's men what to do, I'm sure.

Q. How many times did you go over to the job while it was in progress?

A. I couldn't tell you that. I am back and forth on a number of jobs.

Q. This job was under your overall supervision, wasn't it?

A. More or less, yes.

Q. Who furnished the pilings for the job?

A. We buy the pilings.

Q. You had bought the pilings?

A. Yes.

Q. Let me ask you this. As a matter of practice from time to time when a pile would loosen up or you would

page 149 } have some decay, part of the usual maintenance, you all would fill the cluster in, isn't that true?

A. Well, yes, they are filled in, that's right.

Q. You do that from time to time as it is needed? Isn't that true, Mr. Barber?

A. Yes.

Q. You did this type of work before the accident happened and you have done it since, isn't that true?

A. Yes.

Q. Sending your men out to work along with the rig?

A. That's right.

Q. On the job to select the particular pile that would go into a cluster, who would decide where a pile was to be driven?

A. I would say Captain Daniels and I usually lined this work up first; see how many to be put in there and what type and what length.

Q. You would decide what type and when Williams would go out to do the job, would you tell him where you wanted the pile put in and which piles were to go in where?

A. Sure, we would; naturally, we would tell Mr. Williams and the rest of them.

Q. So, Mr. Williams was the man on the job who would select the pile and put it in a particular place in the cluster?

A. He wouldn't select them. We would select them.

Kenneth Barber.

Q. You selected the pile; but on the job site when it came to picking up and putting it in place?

page 150 } A. Naturally we would tell him; mostly always tell him.

Q. You mean Williams?

A. Yes.

Q. Where you needed the piles and Williams would be the one who selected and what pile was to go where, isn't that true?

A. Yes.

Q. Your men actually took part in operating then and it was Chesapeake Bay Ferry District man who would ride the lead, isn't that true?

A. That's right.

Q. And they headed the piles or chipped the piles?

A. Headed the piles.

Q. And they connected the piles to the crane when it was pulled up to be set and the Chesapeake Bay Ferry men set the pile in the cluster and they generally gave the signals to the crane operators to have it lowered or how to set it, isn't that true?

A. That's true.

Q. Mr. Barber, have you had any experience with a crane?

A. No, sir.

Q. Have you ever done any pile-driving yourself?

A. No, sir.

Q. Have you ever had a chance to become familiar with a pile driving rig?

A. No, sir.

Q. Then you didn't have any special qualifica-

page 151 } tions as far as expressing an opinion as to whether this rig was unsafe or not, isn't that true?

A. The only opinion I had it come loose and fell.

Q. And just because it came loose, that is the sole reason you thought the crane was unsafe?

A. That's right, yes, sir.

Q. It wasn't because of the equipment itself but because of what happened?

A. It came loose and fell and I figured it was not right if it came loose and fell.

Q. In other words, if it came loose and fell, you figured there was something wrong although there was nothing wrong with the equipment?

A. I don't know anything about a pile driver.

Kenneth Barber.

Q. Mr. Barber, as a standard practice for this *particule* type of work; let's start off with this particular case. This time you all needed some dredging to be done, isn't that true?

A. Right.

Q. And maintenance, those slipways to the shore come within your department as normal maintenance, isn't that true?

A. That's right.

Q. For instance, the paint barge sank. That came within your jurisdiction as part of the general maintenance, of keeping that up and when it sank, having to raise it, isn't that true?

A. That's right.

Q. And you assigned your men to do that, too, as far as raising the paint barge?

page 152 } A. That's right.

Q. And the pile situation, the same thing applies, isn't that true?

A. That's right.

Q. To do this type of work, you would generally get Mr. Gresham down there to help you out, isn't that true?

A. Yes, sir.

Q. When you needed a piece of equipment, you call Mr. Gresham?

A. Yes, sir.

Q. And you and he had been doing this same type of thing on a number of occasions for you all before this accident and since the accident?

A. For a number of years.

Q. All right.

RE-DIRECT EXAMINATION.

By Mr. Meredith:

Q. Did you have any control over who Mr. Gresham sent down to operate the crane?

A. No, sir.

Q. If the crane wasn't operated properly, what would you do about it? Would you fire the crane operator?

A. No, sir.

Q. What could you do about it, if anything?

A. If it wasn't being done suitable, I would say that we would have to call Mr. Gresham or one of Mr. Gresham's

company and tell him we weren't satisfied.

page 153 } Q. Did either you or anyone acting under you have anything to do with the place that the crane was placed to do the job?

A. No, sir.

Q. Who was that done by?

A. That must have been done by the operator.

Q. Has the Chesapeake Bay Ferry District ever operated a pile driver itself?

A. No, sir.

RE-CROSS EXAMINATION.

By Mr. Green:

Q. Mr. Barber, you stated in answer to Mr. Meredith's question that you could not fire any of these employees. You never did have any cause for complaint at any time about Mr. Gresham's employees or the way the machines were being operated, did you?

A. No, sir; never did.

Q. Always found them very satisfactory, isn't that true?

A. That's right.

Q. If it had been called to your attention that a defective piece of equipment was being used on that job or the crane wasn't being operated properly, you would stop it right there?

A. If I thought it was unsafe, yes.

Q. You could stop it and had the right to send the men off the job?

A. If I thought it was unsafe, I would. I couldn't send the men off the job. I don't think that would be up to me. I would have to call Mr. Gresham.

page 154 } Q. You could stop the job?

A. Yes. I could tell them to stop driving piles.

Q. What other duties do you have as Maintenance Supervisor?

A. Well, it's windows, doors, glass, door checks, painting, chipping.

Q. General up-keep and maintenance?

A. All the property and equipment.

Q. That's all. Thank you.

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KENNETH N. BARBER,
having been previously sworn, took the stand and testified as follows:

Examined by Mr. Meredith:

Q. Mr. Barber, you have testified that very shortly after the accident that you went out to the scene of the accident to investigate; now, what condition did you find existed with regard to the follow block and cable attached to the follow block?

A. I found the cable and the clamps and the hook all intact.

page 156 } Q. Was there any indication that the clamp had slipped on the cable or that the clamp had broken.

Mr. Howard: Your Honor—

The Court: Ask him what the condition was. That was a leading question.

Examination by Mr. Meredith continued:

Q. Would you please tell me what the condition of the cable itself was?

A. The cable looked to be in good shape.

Q. How about the clamps?

A. They were all intact.

Q. And the hook?

A. All in place.

Q. Was the hook connected with the cable?

A. Yes, sir.

* * * * *

page 157 } At this time the Court, counsel for both sides, and the court reporter retired to the Judge's Chambers.

Mr. Green: The defendant, E. T. Gresham, Incorporated, moves to strike the evidence of the plaintiff on several grounds. I don't believe there's been any showing in this case of primary negligence on behalf of the defendant, E. T. Gresham Company, in the operation of the crane, in the operation of the pile driving rig, or in any way that the equipment was furnished. We ask the Court to strike the plaintiff's evidence on the ground that they have failed to carry the burden of proof which the law requires of them.

The Court: What's the second ground?

Mr. Green: The second ground is on the statutory bar of Workmen's Compensation. I might say that I believe this argument is going to be right involved. There are a number of cases which I'd like to cite to you. I will preface my argument by saying our position is that in order for the action to be maintained, E. T. Gresham Company, in the meaning of Workmen's Compensation Act of Virginia, must be considered as another party. We'd like to move on the ground that it shows that plaintiff was guilty of contributory negligence as a matter of law, and on the further ground that the evidence is clearly to the effect that the employees of Gresham, under the circumstances, were loaned
page 158 } employees of the Chesapeake Bay Ferry District at the time the accident occurred.

Counsel for the plaintiff gave their answer to each motion.

After many citations and extensive argument by counsel for both sides, the Court overruled the motions.

Exception to the Court's ruling on each motion was noted by Mr. Green.

* * * * *

JAMES E. CHAPPELL, JR.,
a witness for the defendant, having been first duly sworn, took the stand and testified as follows:

Examined by Mr. Howard:

* * * * *

page 159 } Q. For whom do you work now?
A. E. T. Gresham Company.

Q. For whom were you working on April 23, 1957?

A. E. T. Gresham and Company.

Q. Were you then working for Mr. Gresham when the accident occurred at the Little Creek Ferry?

A. Yes, sir.

Q. What were you doing there?

A. Driving piling for the Chesapeake Bay Ferry Company.

Q. What operation did you perform on the crane?

James E. Chappell, Jr.

A. I was the operator.
Q. Did you have an oiler?
A. Yes, sir.
Q. What is his name?
A. David L. Bjork.
Q. Do you recall how long you had been on the job out at Little Creek Ferry?
A. We were there approximately a day and a half dredging and then the following day after that we were driving piling.
Q. For whom were you driving piling?
A. Chesapeake Bay Ferry Company.
Q. Were there any other employees on the job site there working with your crane?
A. Yes, sir.
Q. By whom were they employed?
page 160 } A. Chesapeake Bay Ferry Company.
Q. Do you recall any of their names?
A. It was Mr. Williams and a fellow by the name of Alex, and two colored fellows; I don't recall their names.
Q. Would you explain to us in pile driving, what were you putting in the water there?
A. We were driving piling; the cluster.
Q. Approximately how long were the piling?
A. They were fifty-five foot piling, I believe it was.
Q. How were those piling prepared to be put in the water, and who did that preparation?
A. First they were capped.
Q. Who did the capping?
A. Chesapeake Bay Ferry Company employees.
Q. Were they right there on the job site doing the capping?
A. Yes, sir.
Q. Then after you had capped a pile, what would you do with it?
A. We would hoist it into the air and bring it around to the site of the driving.
Q. Did you have—was there a cable that was wrapped around the piling to be lifted in the air?
A. A piling chain.
Q. Who wrapped the chain around the piling?
page 161 } A. Chesapeake Bay Ferry Company employees.
Q. You then raised that in the air for placing?
A. Yes, sir.
Q. Who told you where to place that piece of piling?
A. Mr. Williams.

James E. Chappell, Jr.

Q. After the piling was mounted in the area to be sunk in the water at the time of the accident, where was Mr. Williams?

A. He was standing on a ladder right in front of me leaning against a cluster of piling.

Q. Was anyone standing near him?

A. Only the man that was on top.

Q. What was his name, if you recall?

A. That was Alex.

Q. What was Alex, or whatever his name was, preparing to do with the lead?

A. After he placed the piling, then he gets on the lead and unhooks the hammer in the follow block.

Q. By whom was that fellow employed?

A. By the Chesapeake Bay Ferry Company.

Q. Who was it that gave you direction as to both placing the piling and as to lifting and lowering of your rig?

A. Mr. Williams.

Q. How did he give you those signals?

A. By raising and lowering his hand.

page 162 } Q. At the time of the accident, do you recall what Mr. Williams was doing?

A. He was standing on a ladder with his right hand on a piling and signaling with his left.

Q. What was Alex then doing?

A. He was standing on a cluster of piling waiting for his next operation.

Q. What was his next operation?

A. It was clamp the lead and unhook the follow block.

Q. How is the follow block and the hammer—what are the mechanics of it, how do they fit together?

A. Well, the follow block is fastened to the hammer through a cable that goes through the hammer and hooks into the follow block suspended.

Q. Now, how long—what is your experience in driving piles and operating a crane of that type?

A. I've been driving piling approximately ten years, of that type.

Q. How long have you been employed by Mr. E. T. Gresham?

A. Seventeen years.

Q. Did you learn the trade and business there with Mr. Gresham?

A. Yes, sir.

* * * * *

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* * * * *

Q. Now, you have had experience with the use of the leads and the hammer and the blocks, is that correct?
A. Yes, sir.
Q. Have you also had the related experience of using the hook on the hammer and block?
A. Yes, sir.
Q. Could you answer for us whether or not in your experience the use of the hook is accepted good practice in the trade of pile driving?
A. Yes, sir.
Q. Now, when this accident occurred, Mr. Chappell, you were looking at whom?
A. Mr. Williams.
Q. For what purpose?
A. To receive signals.
Q. After the accident occurred, what did you
page 164 } do?
A. The first thing I did was to administer first-aid and to see to it that he got to the hospital or doctor and to call my supervisor.
Q. Who was your supervisor?
A. Mr. William Powell.
Q. He came down afterwards?
A. Yes, sir.
Q. Was Mr. Bill Powell on that job with you folks?
A. No, sir.
Q. Was he there at any time supervising you how to do it or anything of that nature?
A. No, sir.
Q. From whom did you take those directoins as to how to do the job and how to place the pilings?

Mr. Meredith: I think the question should be more specific.
The Court: Suppose you break it down.

Examination by Mr. Howard continued:
Q. From whom did you take directions as to the placing of the piling in the cluster?
A. Mr. Williams.
Q. Can you tell us whether or not he told you where to put it in that cluster?

page 165 } A. Yes, sir.

Q. Did he take the necessary measurements and select the pole to go in the cluster?

A. He selected the straightest ones for the cluster.

Q. Did you have anything to do with the selecting of which pole was to go in which cluster?

A. No, sir.

Q. After the cluster was completed or repaired after the piling had been completed, what was the next operation?

A. The next operation would be to wrap it with cable and draw it tight.

Q. Can you tell us whether or not the Chesapeake Bay employees were engaged in that too?

A. Yes, sir.

Q. From whom did you take directions on that operation? Was it the Chesapeake Bay Ferry Company employees?

A. Yes, sir.

Mr. Meredith: I again think the question is too general. We have an operation here which two parties are performing, and admittedly it's a joint operation.

The Court: I think you can cross examine him on that; make it clear. I overrule the objection.

Examination by Mr. Howard Continued:

page 166 } Q. Now, Mr. Chappell, at the time Mr. Williams was standing on the cluster, where was the follow block and hammer in relation as to distance from him in any direction?

A. I would say approximately thirty-five feet.

Q. Whereabouts, over beside you, or where?

A. Over beside me.

Q. Approximately how high was Mr. Williams and also the man named Alex to you or/and the follow block and hammer?

A. Williams was lower than Alex so it would possibly be about ten feet lower than Alex.

Q. You mentioned operations, will you tell us what your next operation was after the hammer had been disconnected from the follow block?

A. What, in driving?

Q. Strike that question. Previous to raising the follow block and hammer, what operation took place and who did what? Do you get my question?

A. No.

Q. Before raising the follow block and hammer up in the

leads right before the accident, who did what, did anyone connect the follow block or hook the follow block and hammer together?

A. Chesapeake Bay Ferry Company employees hooked the hammer and the follow block up.

Q. Then was the hammer and follow block then

page 167 } raised up through the leads?

A. Yes, sir.

Q. If, and on your prior operations, what would have been the next thing to be done had the cap been placed on top of the piling?

A. The next thing would be to engage the driving.

Q. Would anybody disengage the hook from the follow block and hammer?

A. Yes, sir, the one on the ladder would disengage it.

Q. Who was the one on the ladder?

A. Alex.

Q. Can you tell us whose employee he was?

A. Chesapeake Bay Ferry Company.

Q. Now, on each one of the operations of driving one of the piling, can you tell us whether or not an employee of the Chesapeake Bay Ferry Company did the hooking and unhooking on the follow block and hammer?

A. Yes, sir.

Q. As to strapping or cabling the poles to be raised in the air, who did the strapping on these poles?

A. Chesapeake Bay Ferry Company employees.

Q. Chesapeake Bay Ferry Company employees?

A. Yes, sir.

Q. Was that cable then connected to your crane?

A. Yes, sir.

page 168 } Q. As I understand it, that operation was taken care of by the Chesapeake Bay Ferry Company employees?

A. Yes, sir.

Q. Mr. Chappell, can you, or have you already told us who selected the poles as to their length, and so forth, to go in the cluster?

A. Yes, sir.

Q. Who was that?

A. Mr. Williams.

Q. Can you tell us whether or not he instructed you as to when to raise that pole?

A. Yes, sir.

Q. Can you tell us whether or not he would have had any-

thing to say to you if that pole was too long after you had raised it, would he have changed the pole?

A. Yes, sir.

Q. If Mr. Williams selected the pole to be put in the cluster, if there was a possibility of the pole being too long and it would strike the follow block or the hammer, from whom would you get word that it was too long?

Mr. Meredith: I don't believe that's a proper question.

The Court: I sustain the objection.

Examination by Mr. Howard Continued:

page 169 } Q. Let me put this question to you: From whom would you get any word or warning had the pole itself been rasied to the follow block or hammer?

A. I imagine Mr. Williams; he was in charge of the job, and he gave us those instructions.

Q. Mr. Williams gave you those instructions?

A. Yes, sir.

Q. You imagine, do you know, yes or no, from whom you would get your instructions?

A. I would receive them from Mr. Williams, if it had been too long or too short or too crooked, or whatever was wrong.

Q. Now, Mr. Chappell, if the follow block was not high enough in the air, or was too high, would he tell you to raise and lower it?

A. Yes, sir.

Q. Who would tell you?

A. Mr. Williams.

Q. Mr. Chappell, I show you an exhibit marked P-2, and ask you whether that, or tell me what you see on that picture, please.

A. I see a piling, pile driving leads, hammer, follow block, timber hook, cable and axe.

Q. Could you tell us whether or not that follow block was the same one used on this operation, or is it a

page 170 } different one?

A. That's a different follow block there.

Q. Can you tell us whether or not that's a different hammer?

A. That's a different hammer.

Q. Now, how about as to the leads, were they the same leads?

A. Same leads.

James E. Chappell, Jr.

Q. Now, I also show you Exhibit P-6, and ask you whether that is the same hook or not?
A. That's not the same hook.
Q. I now show you Plaintiff's Exhibit 1, and ask you whether that is the cluster of piles that was being repaired on the day of the accident?
A. Yes, sir.
Q. Can you tell me whether or not after the operation of piling had been completed as to what party put the steel cable around the cluster?
A. Chesapeake Bay Ferry Company employees.
Q. Now, in that cluster of piles, were there old piling?
A. Yes, sir.
Q. Can you tell us whether or not you were adding new piling to it?
A. Yes, sir.
Q. Would you be leaving some of the old piling
page 171 } in the cluster?
A. Yes, sir.
Q. I show you Plaintiff's Exhibit #5, together with Exhibit #3, both being photographs, and ask you whether that is the crane itself that you used on that job that day, that being Crane #14?
A. Yes, sir.
Q. Do those two pictures show the follow block, hammer and leads hooked up in any way?
A. No, sir.
Q. I now show you Exhibit D-2 and ask you whether any of the employees there on that job site were the employees of Chesapeake Bay Ferry—

Mr. Meredith: These pictures were admittedly taken some four months later than the accident, and I think that the employees that might have been in a particular picture at that time is immaterial.
The Court: Objection sustained.

Examination by Mr. Howard Continued:
Q. Who was present at the time of the accident as to the employees?
A. Mr. Williams, Alex and two colored men.
Q. For whom?
page 172 } A. Chesapeake Bay Ferry Company.
Q. And yourself and Mr. Bjork were present?

James E. Chappell, Jr.

A. Yes, sir, myself and Dave.
Q. Dave is known as what?
A. Bjork.
Q. Mr. Chappell, can you tell us whether or not Mr. Williams gave orders to other employees of the Chesapeake Bay Ferry Company there on the job site?
A. Yes, sir.
Q. Can you tell us whether or not they followed his orders and instructions?
A. Yes, sir.
Q. On any occasion during your driving of this piling, did Mr. Bill—Willis Powell come down there?
A. Yes, sir.
Q. What were your instructions when you left from the Gresham yard to go to the job site, what were your instructions to do when you got on the job site?
A. Report to the employees and receive orders there on the job.
Q. Did Mr. Bill Gresham or any of the employees of Gresham tell you what to do down there on that job site before you left the plant?
A. No, sir.

Q. Upon reaching the job site, from whose em-
page 173 } ployees did you take directions?
A. Chesapeake Bay Ferry Company.

Q. Now, so that the members of the jury can understand this operation, Mr. Chappell, would you explain the operation of the hammer and the follow block and the leads?
A. Well, the hammer and follow block ride inside the leads, which is two parallel steel beams, and they fit in there. The follow block is hooked to the hammer through the cable, through the hammer, and comes through the other side and is hooked through the follow block, and by raising the hammer, which is the closing line, you raise the hammer and follow block together to the top of the leads. The piling is placed between the leads at the follow block—so that the follow block may fit upon the piling. By unhooking the hook or releasing the hammer, the follow block is released and then you draw the leads up higher—your hammer up higher and start driving piling on the follow block.
Q. Can you tell us whether or not the follow block is a cap that fits around a piling?
A. It fits on top of the piling.
Q. On top of the follow block itself, is there a cushion of some nature that stops the hammer?

A. It's a wooden cushion to keep from hitting metal to metal.

page 174 } Q. Now, once you have this follow block in position, do you then commence driving the pile into the water and ground?

A. Yes, sir.

Q. From whom did you take directions as to driving the piling?

A. Mr. Williams.

Q. Now, did Mr. Williams maintain his position on the cluster just immediately before the accident, or did he at my time look up at the leads, hammer and follow block?

A. I don't recall.

Q. At whom were you looking just immediately before the accident?

A. Mr. Williams.

Q. Did you keep your eye on him?

A. Yes, sir.

Q. For what purpose?

A. To receive the signals.

Q. At the time you were looking at Mr. Williams, could you also see Alex who was standing there?

A. No, sir.

Q. Where was he?

A. He was standing on top of the cluster pile.

Q. Where was Mr. Williams?

A. He was standing on a ladder beneath—between the ground and the top of the piling.

page 175 } Q. Where was his hand then, if he was standing on the ladder?

A. He was holding on to a piling.

Q. Mr. Chappell, in this operation when the accident occurred, can you tell the members of the jury, or the court, what happened?

A. I couldn't say, sir.

Q. Well, could you tell us whether or not it could have arisen from a number of possibilities and causes?

A. Yes, sir.

* * * * *

CROSS EXAMINATION.

Examined by Mr. Meredith:

Q. You have been with Gresham for seventeen years?

James E. Chappell, Jr.

A. That's right.
Q. You are still employed by Mr. Gresham?
A. Yes, sir.
Q. When you were down there at Little Creek on the day when Mr. Williams had this accident, who were you working for?
A. Chesapeake Bay Ferry Company.
Q. When the accident occurred, you ran and
page 176 } made a telephone call, didn't you?
A. Yes, sir.
Q. Who did you call?
A. Mr. Bill Powell.
Q. If you were working for the Ferry Company, why was it necessary for you to call Mr. Powell?
A. He was my supervisor and when there's an accident, I always call the supervisor.
Q. In these instances you look to the man directly over you?
A. Yes, sir.
Q. No matter what the problem is, you call Mr. Powell?
A. Yes, sir.
Q. Mr. Powell, before you go down on the job, he goes down and looks over the job and selects the equipment to be used?
A. No, sir, not necessarily.
Q. Who tells you which equipment is to be used on the job?
A. Mr. Bill Gresham.
Q. Mr. Powell does sometimes, doesn't he?
A. Yes, sir.
Q. And you say the first thing you did after the accident was render first-aid and then you called Mr. Powell and he came right down there, isn't that right?
page 177 } A. Yes, sir.
Q. You have never had a Chesapeake Bay Ferry man tell you how to run your crane, have you?
A. No, sir.
Q. They never told you where to place your crane when driving the piling?
A. Yes, sir.
Q. What did they do, tell you to place it in that lot over there?
A. Yes, sir, that's about all.
Q. Now, as to the angle and location of the crane, you as a crane operator do that?

A. That's right.

Q. Let's get down to the accident itself. You have stated in answer to a question by your counsel a minute ago that you did not know what caused the accident, is that correct?

A. Yes, sir.

Q. Do you know whether the hook came off, the hook that was holding the follow block to the hammer?

A. The hook came off, because it came down.

Q. So you know that the hook came off?

A. Yes, sir.

Q. That's the reason it came down?

A. Yes, sir.

page 178 } Q. So that much you do know?

A. That's right.

Q. If the hook had not come off, it would not have come down, is that right?

A. That's right.

Q. When you pick up a piling, Mr. Chappell, what sort of attachment do you put on the pile, or do you ask someone else to put that on?

A. We use the piling chain with a hook.

Q. With a hook or shackle?

A. With a hook.

Q. Are you sure of that?

A. Yes, sir.

Q. Do you recall, Mr. Chappell, that you testified in my office about three weeks ago on a discovery deposition?

A. Yes, sir.

Q. You do recall that?

A. Yes, sir.

Q. Don't you recall my asking you the same question at that time?

A. Yes, sir.

Q. Don't you recall telling me then that it was the shackle that was used when you wrapped around the piling to lift it, and you drew me a picture of that shackle?

A. No, sir, I said the piling chain was shackled

page 179 } to my cable.

Q. Why wasn't it hooked to your cable?

A. It was.

Q. Was it hooked or shackled?

A. It was shackled to the cable, but the hook was on the end of the chain.

Q. But you did have a shackle that held the sling, as it's so called, to the other?

A. Yes, sir.
Q. Why didn't you have another hook there?
A. It wouldn't be any way of fastening it.
Q. Why don't you hook the piling chain in the cable?
A. You don't have any way of hooking the other in.
Q. You could turn it around and hook it in the same hook, couldn't you?
A. No, sir.
Q. Let's direct yourself then to this picture of a shackle, I believe at the time you testified in my office you drew me a picture of a shackle?
A. Yes, sir.
Q. Is that the picture?
A. Yes, sir.

Mr. Green: I think we have a shackle in evidence, what's the purpose of it?

Mr. Meredith: This is to show that this wit-
page 180 } ness is thoroughly familiar with the type of shackle and the purpose it's used for.

Mr. Green: I think we can stipulate that the man is familiar with a shackle.
The Court: Objection is overruled; note your exception.
Mr. Green: Note my exception.

Examination by Mr. Meredith Continued:
Q. That's the sketch you drew for me and—

Mr. Howard: Wait a minute, where is that testimony, where's that testimony that you're referring to? I examined him on direct examination.
Mr. Meredith: While I'm looking for that reference on request of counsel, I will move on to another point. I will offer this in evidence as Plaintiff's next exhibit, if Your Honor please.
The Court: It will be P-8.

Examination by Mr. Meredith Continued:
Q. Again, please assume, Mr. Chappell, that a shackle similar to the one that you have drawn in that picture and similar to the one that I have here in my hand, which has been marked Exhibit #7, maybe a little longer, but
page 181 } similar to that, assuming that a similar shackle had been used to secure the follow block to the hammer, and further assuming that the piling when it was

lifted in response to the signal given by Mr. Williams, assuming that the piling had bumped underneath or on the side of the follow block and it raised it a few inches, and further assume that the shackle such as this had been used, could it have come loose?

Mr. Howard: Don't answer that question. He's asking this witness to assume situations and he's looking for possibilities; I object to it most strenuously. He's looking for possibilities of a cause.

The Court: Have you finished?

Mr. Howard: Yes, sir.

Mr. Meredith: I think that the facts that I propose in this question are facts that are reasonable to assume that existed in this case and I think that the answer is obvious, but I'd like to have it from the witness.

The Court: I overrule the objection.

Mr. Howard: Note an exception, please.

Examination by Mr. Meredith Continued:

Q. Assuming, Mr. Chappell, that the shackle had been used in place of a hook and that the piling when it was raised in response to the signal from Mr. Williams

page 182 } had bumped up against or in some way hit the follow block—it was hanging next to the leads?

A. Yes, sir.

Q. And the leads are open on the back side?

A. Yes, sir.

Q. Assuming that piling when it was raised had bumped the follow block and raised the follow block a few inches, and further assuming a shackle had been used, would the follow block have fallen; that's all I want to know?

A. We have always used—

Q. That's not my question.

Mr. Green: Let him finish the answer.

The Court: One of you speak at the time; I think that he ought to be permitted to answer.

Mr. Meredith: I want him to answer my question.

The Court: Let him answer it in his way.

A. We have always used the hook system every since I've been in crane operation. It's always good practice and for the simple reason if we use shackles it permits the man that's up on top—you can picture yourself sixty to seventy feet in

the air and trying to unshackle the thing and trying to hold on to something, and when all you have to do is hold on with one hand and lift the hook off with the other. Now, if it had been a shackle up there, it was a possibility of an accident also endangering a man.

page 183 } Q. I don't think you have answered my question. I will ask it again. I will ask the question and I will ask you to answer it; don't give me a lecture in safety. What I want to know is, if a shackle had been used instead of a hook on this particular occasion, and assuming that the piling had bumped the follow block and had raised it a few inches, would the follow block have fallen; a simple question.

A. If the hook would have come unfastened, it would have fallen.

Q. The question propounded to you was, if a shackle was used and not that hook, would the follow block have fallen down?

A. No.

Q. The answer is "no?"

A. That's right.

Q. Williams in this case was doing nothing more than any other person would be doing, as to giving you signals as to when to lower and when to raise?

A. That's right.

Q. In other words, whenever you do a job with a crane, there's somebody on the ground that can see better than you can see and says when to raise up and to lower?

A. Yes, sir.

Q. They don't tell you to pull "X" lever in the crane and tell you when to stop pulling it; that's your job,

page 184 } isn't it?

A. That's right.

Q. At this particular time there was hanging from your crane, the leads, the hammer, the follow block and the piling, is that correct?

A. That's right.

Q. You were the only one that had any control over those things?

Mr. Howard: We object to that, Your Honor, because he's already answered to the contrary.

The Court: Objection is sustained.

James E. Chappell, Jr.

Examination by Mr. Meredith Continued:

Q. My question is this, and I believe you have answered part of it, the piling was hanging from your crane?

A. That's right.

Q. The leads were hanging from your crane, is that correct?

A. Yes, sir.

Q. The hammer was hanging from your crane?

A. Yes, sir.

Q. And hanging from the hammer was the follow block hanging on the hook, is that correct?

A. Yes, sir.

page 185 } Q. Now, who had control over that as far as being able to raise and lower is concerned?

Mr. Howard: May I say, who had control over what, Your Honor, there's the crane, follow block, and hammer.

The Court: I thought counsel was going to make that more specific. If the witness doesn't know, say so.

Examination by Mr. Meredith Continued:

Q. I will ask it one part at the time. With the description that I have given you, who could raise or lower the pile?

A. I could raise and lower the pile.

Q. Could anybody else raise or lower the pile?

A. No, sir.

Q. Who could raise or lower the leads?

A. Me.

Q. Could anybody else raise or lower the leads?

A. No, sir.

Q. Who could raise or lower the hammer?

A. Myself.

Q. Could anybody else raise or lower the hammer?

A. No, sir.

Q. Who could raise or lower the follow block?

A. Myself.

page 186 } Q. Could anybody else raise or lower the follow block?

A. No, sir.

Q. Could anybody else disconnect the follow block with it hanging in the air like that?

A. I don't believe so.

Q. That follow block weighs about five hundred pounds, doesn't it?

James E. Chappell, Jr.

A. Yes, sir.
Q. That was hanging on the hook?
A. Yes, sir.
Q. The man that rides the leads, can you actually tell me whether there was a man in the leads on this occasion or not?
A. No, sir.
Q. You mean you don't know?
A. There was no one on the leads at the time.
Q. There was no one on the leads at this time?
A. That's right.
Q. This man you referred to as Alex, you say he was where?
A. He was standing on the cluster of piling.
Q. Your counsel kept talking about the man in the leads; I thought you had stated that you didn't believe there was anybody in the leads, is that correct?
A. That's right.
page 187 } Q. Has all of your employment in the operation of the crane been with Mr. Gresham? In other words, have you ever worked for anybody else as a crane operator?
A. No, sir.
Q. So when you say it's customary to use a hook, you mean customary for Mr. Gresham to use a hook, is that what you mean?
A. No, sir.
Q. You never have worked as a crane operator for anybody else, how do you know?
A. I don't know.
Q. The anwer is, you don't know?
A. I don't know.
Q. All you know is that it's customary for Mr. Gresham to use a hook?
A. The witness gave no answer.
Q. But sometimes, doesn't Mr. Gresham even use a shackle on his crane?
A. No, sir.
Q. You sure of that?
A. Yes, sir.

Mr. Meredith: No further questions.

page 188 } RE-DIRECT EXAMINATION.

James E. Chappell, Jr.

Examined by Mr. Howard:

Q. Mr. Meredith has asked you about control of the leads and the piling as it's raised in the air, now, the hammer and the follow block, does that unit have to be disconnected by someone other than who is handling lines on the crane?

A. Yes, sir.

Mr. Meredith: I object to the question unless it's shown that the condition existing at the time that the follow block is hanging from the hammer in the air. In the question I asked the witness, he said that it could not be disconnected and he was the only one that had control of it and that when it was on the ground anybody can.

The Court: Do you understand what the question was?

A. What he was referring to, was while it was in the air.

The Court: Ask Mr. Howard if that's what he meant and then answer it. I suggest that you understand the question before you answer it.

A. While it's hanging in the air, nobody could unhook it, but while on the piling, someone would have to unhook it.

Examination by Mr. Howard Continued:

page 189 } Q. Can you tell us whether or not Alex, or that employee of the Chesapeake Bay Ferry Company, there was—had he on prior occasions or on this occasion gone up the leads to make a disconnection?

A. Yes, sir.

Q. And on all occasions, had anyone from E. T. Gresham gone up the leads to make the disconnection when the follow block and the hammer—

A. No, sir.

Q. Or to make the connection on the ground while it was on the piling?

A. No, sir.

Q. Now, Mr. Chappell, though you would raise and lower the hammer or the follow block, upon whose directions did you raise and lower those items?

A. Mr. Williams.

Mr. Meredith: I think the question should be more specific.

Examination by Mr. Howard Continued:

James E. Chappell, Jr.

Q. Now, the shackle that we spoke about, was that shackle used on the piling chain?

A. Yes, sir.

Q. Would there still have been a hook on the
page 190 } end of one of the chains?

A. Yes, sir.

Q. Then, can you tell us whether or not the shackle was used on the side that never had to be disconnected?

A. Yes, sir.

Q. I ask this question without waiving our exceptions to the prior question of counsel here as to the shackle wherever it might be and had one been on the follow block or hammer, could one undo that shackle with one hand or is it a two-handed operation?

A. Two-hand operation.

Q. How high up in the air would that be when undoing the follow block from the hammer, undoing the shackle?

A. Approximately forty or forty-five feet; it depends on the length of the piling.

Q. Well, can you tell us whether or not that means that an employee up there would have to let go the ladder with his hand and hold the shackle with both hands to undo it?

A. Yes, sir.

Q. How could you undo a hook, could he hold on with one hand while undoing the hook?

A. Yes, sir.

Q. Now, that operation was carried on and handled by whom?

A. By Rex.

page 191 } Q. And he was an employee of whom?

A. Chesapeake Bay Ferry Company.

Mr. Howard: I see; thank you.

RE-CROSS EXAMINATION.

Examined by Mr. Meredith:

Q. Let's assume there's a man riding the leads, and that he wants to disconnect a shackle and the shackle is used instead of a hook, actually you say that the leads shown in this photograph, Plaintiff Exhibit 2, were the leads used on this occasion?

A. Yes, sir.

Q. The hammer used was very similar to this hammer, in size and shape?

A. Yes, sir.
Q. The follow block was also similar in size and shape?
A. Yes, sir.
Q. Assuming that the man went up this ladder to undo the shackle, and assuming that it takes two hands to undo it, is there any reason why he can't stick both hands through the ladder and thus protect himself while he was undoing the shackle with one hand?
page 192 } A. No, sir, he would have to hold up the other side of the shackle.
Q. It depends on how easy it turns?
A. The end of the shackle would have been fastened to the wire.
Q. The wire would have been run through the follow block?
A. Yes, sir.
Q. So that is danger of that falling?

Mr. Howard: I object to that. There's no danger of that falling. That's not proper cross examination, as to what is dangerous and what is not dangerous.
The Court: Disregard the question of danger and ask him what you meant.

Examination by Mr. Meredith Continued:
Q. This part of the shackle where I have my finger here, this is where the wire cable would be?
A. That's right.
Q. There would have been a wire clamp right beneath that?
A. No, sir, it's an open splice there.
Q. There would still be an eye in the cable?
A. Yes, sir.
page 193} Q. Now, when I reached through, assuming this was working and not rusty, you could unscrew it with one hand, couldn't you?
A. Yes, sir, it's possible.

* * * * *

RE-DIRECT EXAMINATION.

Examined by Mr. Howard:
Q. May I ask you, and without waiving my exception going to their questions, had this shackle or any shackle anytime it

was used, if it had not been properly screwed tight, could it have come loose?

A. Yes, sir.

Q. Mr. Chappell, what time did you all start to work there?

A. I think we were working on an 8:00 to 4:30 basis.

Q. Would you wait for the employees of the Chesapeake Bay Ferry Company to come to work before you started to work?

A. Yes, sir.

Q. Why did you wait for those employees to come?

A. Well, they have to hook up the piling. They have to get to working what apparatus they have to work page 194 } with on the job.

Q. Would you also have to wait for them for any orders or directions?

A. Yes, sir.

Mr. Howard: That's all; thank you.

* * * * *

RE-CROSS EXAMINATION.

Examined by Mr. Meredith:

Q. On this particular day, this was on Tuesday morning, and you got to work at 7:30, is that correct?

A. Yes, sir.

Q. And Bjork came along with you?

A. Yes, sir.

Q. You actually picked up on the leads and hammer before the Virginia Ferry men got out there on this particular morning?

A. I don't believe so.

Q. You don't remember, is that right?

A. Yes, sir.

* * * * *

page 195 } WILLIAM A. PETRIE,

a witness for the defendant, having been first duly sworn, took the stand and testified as follows:

Examined by Mr. Green:

Q. Will you tell the jury your full name, age, and residence?

A. William A. Petrie, seventy-two, construction business, pile driving.

William A. Petrie.

Q. Tell the jury what experience you have had in the field of pile driving, how long?

A. Fifty years.

Q. Who have you been driving pilings for during this time?

A. Myself about twenty-five years, and right now I'm connected with the Western Foundation Company in New York; I'm their representative in this district, and also I supervise a good many jobs for them.

Q. And that's been your business for over fifty years?

A. That's right.

Q. Western Foundation Company, I believe, is one of the biggest pile driving companies in the country?

A. They are second largest.

Q. You're their representative in this area?

A. That's right.

Q. Are you familiar with the drop hammer
page 196 } method of driving piles?

A. Yes, sir.

Q. Have you had experience of driving piles in that manner?

A. Yes, sir.

Q. Mr. Petrie, let me ask you this, in connecting the follow block to the hammer in the use of a drop hammer rig, is it good practice in pile driving—in the pile driving industry, to use a hook instead of a shackle in that operation?

A. I have always used a hook.

Mr. Meredith: I don't think the witness has been actually qualified.

Examination by Mr. Green Continued:

Q. Mr. Meredith has brought out the question of your qualifications in pile driving, will you tell the jury, basically, if you can, what experience you have actually had in driving piles?

A. Fifty years.

Q. In what capacity, do you go out to the job and supervise the work?

A. I never had a job in my life that I didn't supervise the job myself.

Q. You have actually driven piles yourself?

page 197 } A. Yes, sir.

Q. You are completely familiar with all the apparatus used?

William A. Petrie.

A. Yes, sir.

Mr. Green: Do you object to his qualifications at this time?

Mr. Meredith: I can't admit his qualifications, but you don't have to ask any further questions.

Examination by Mr. Green Continued:

Q. You say that you have always used in that apparatus, used a hook instead of a shackle?

A. Yes, sir.

Q. What are the relative disadvantages of a shackle over a hook?

A. Well, a hook is so much easier to use and if the hook is put on right, there's no question about it being all right.

Q. Now, is there any danger to the man who has to release the shackle?

A. Yes. A good many times when working cranes with a short set of leads above the ground, somebody has to climb the ladder and hang on with his legs while he unscrews the shackle.

page 198 } Q. Does he have to use both hands to unscrew a shackle?

A. Yes, sir.

Q. Mr. Petrie, I may have asked you this question, I'm not sure, is it customary in the pile driving field in using a drop hammer rig, to use a hook on the follow block rather than a shackle?

A. I have always used a hook.

Q. Do you know whether a hook is in general use in the industry?

A. As far as I have seen, the hook is used and on a good many times I rented Mr. Gresham's rigs and he always used that on his rigs.

Q. And you never voiced any complaint about that rig being used?

A. Never.

CROSS EXAMINATION.

Examined by Mr. Meredith:

Q. How long have you known Mr. Gresham?

A. Forty years, I guess.

Q. You are a good friend of his?

William A. Petrie.

A. He's a very good friend of mine.

page 199 } Q. Now, you have stated that a man going up the leads has to use two hands to work a shackle, is that right?

A. That's right.

Q. Have you seen that?

A. Yes.

Q. Have you seen a man go up the leads and use—

A. I said if that shackle was on there, it would take two hands to take it off.

Q. But you never used one yourself?

A. Not on the follow block; I used shackles around the rig or other kinds of work and I know what it takes to take a shackle apart.

Q. Now, you don't really know whether the man could get one off with one hand or two hands?

A. I said I knew what it took to take a shackle apart. I have never seen a shackle used on the follow block.

Q. Look at the hook contained in Plaintiff's Exhibit #6, that's quite a heavy hook, is it not?

A. Yes, this is a larger hook than we generally use.

Q. Assuming that that hook is hooked into an eye in the end of a piece of wire cable, how many hands would it take for a man to undo it?

A. One.

Q. After you put that hammer down on top of the follow block, usually that hook will fall out of the cable

page 200 } without anything having to touch it?

A. You've got that much slack given to you when you put your hammer down on the pile.

Q. That's exactly what I want. When the hammer comes down and sits on top of the follow block, then quite often the hook comes off of its own accord?

A. That's the purpose of using it. If it doesn't come loose, the man has to go up there and disconnect it, which he can do with one hand.

Q. If it's hanging up in the air and the bottom of the piling comes down like this—

A. It has no business doing that. If the man in charge of the rig will put a can hook on the pile and turn it, it goes up without doing anything.

Q. Who's the man in charge of that?

A. The foreman of the gang; he's the man that would have to give the order and watch the operation.

* * * * *

page 201 } Q. You stated that you never did a pile driving job without supervising it yourself, I believe you said that?

A. I said every job I had—every job that I had my own equipment on. On a good many small jobs I would rent a crane, but if I had the job, I supervised it myself and I saw that it was done properly.

Q. If your equipment was being used, you were out there supervising it?

A. Yes, sir.

RE-DIRECT EXAMINATION.

Examined by Mr. Green:

Q. You stated that when you used your own equipment that you were out there supervising the job?

A. That's right.

Q. In doing your pile driving and when that rig arrived there, you supervised the work that they were doing, didn't you?

A. That's right, and whenever I rented the rig from him, he had the operator and oiler on the rig.

Q. Who gave the orders and instructions on the job?

page 202 } A. The instructions and signals to the operator as to when to go up and when to come down, were given by the foreman or superintendent; the operator didn't have anything to do with running the job.

Q. This is the customary practice in the field, is it not?

A. Yes, sir.

* * * * *

WILLIAM N. GRESHAM,

a witness for the defendant, after having been first duly sworn, took the stand and testified as follows:

Examined by Mr. Howard:

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

A. William N. Gresham.

Q. Do you work with E. T. Gresham Company?

A. That's right.

Q. What job do you have over there?

A. Well, I'm the general superintendent and the dispatcher.

William N. Gresham.

Q. What does the dispatcher do?

A. Directs equipment and men to the jobs.

page 203 } Q. Can you tell us, Mr. Gresham, whether or not you were on duty there in April of '57, when Captain Daniels of the Chesapeake Bay Ferry Company called and ordered some equipment?

A. Yes, sir.

Q. What did he order, Mr. Gresham?

A. He ordered a crane and bucket and some pile driving leads and a hammer and stuff that goes along with dredging work and pile driving work.

Q. Did he tell you what he wanted down there at the Chesapeake Bay Ferry?

A. He said he wanted to do some cleaning up and pile driving and to send the equipment down, and so I did.

Q. What employee did you send down there?

A. Mr. Chappell; I think on Crane 14, that's the crane that went down.

Q. Did you send an oiler with him?

A. Yes, sir. The oiler was Dave Bjork at that time.

Q. When you dispatched Bjork and Chappell to the job, what did you tell them to do, or what was to be done?

A. Knowing what he had to do, I told him to take that equipment down there and they would tell him on the job what they would do. I thought that they were going to start doing some dredging to start with, as well as I recall, and then they had some pile driving, and I think the pile

page 204 } driving job was after the dredging had been done.

Q. Did you at any time go down and give any instructions as to how the job was to be done, to Chappell and Bjork?

A. No, sir.

Q. Can you tell us whether or not you left that to the Chesapeake Bay Ferry Company?

A. That was entirely their job.

Q. Well, can you then tell us whether or not they rented the equipment from you to do their own work?

A. That's right.

Mr. Howard: Would you answer Mr. Meredith, please?

CROSS EXAMINATION.

Examined by Mr. Meredith:

Q. Didn't Mr. Powell go down to Little Creek to look over

the situation first before you sent the equipment down there?

A. I don't know whether he did or not; I don't recall sending him down.

Q. You wouldn't be prepared to say that he did not go down there, would you?

A. I don't recall him going down.

page 205 } Q. You don't know that one way or the other?

A. No, sir, if he went down, I have no knowledge of it. Let me say that we work for the Ferry Company off and on at Cape Charles and on this side any number of times, two or three days a week, or ten days at a time, and in every case the crane was sent down there on their supervision, and unless it was something unusual, we never sent anyone down there before we sent to it.

Q. Did the Chesapeake Bay Ferry District request what rig was to be sent down?

A. Well, they had this same crane before; I think they did ask for Chappell.

Q. You can't swear to that, can you?

A. No, I know Eddie has always done a good pob. I think I can say that they asked for him.

Q. Did you send him down there because he had worked down there before?

A. Yes, sir, that's right.

Q. Not because they asked for him?

A. He had done their work satisfactorily; I think they said, "we'd like to have Eddie back." They knew him about as well as I did.

Q. It's not up to the Chesapeake Bay Ferry District to tell you that they want Eddie, or Bjork, or anything like that, isn't that left up to you?

page 206 } A. No.

Mr. Green: I object. We didn't go into this on direct examination.

The Court: I overrule the objection.

Mr. Green: Note the exception.

A. As I stated, Mr. Chappell had worked for the Virginia Ferry Company for any number of times and I have several customers that will ask for a man if he's available. They are one of the customers that had the crane several times prior to that, and I'm just as sure as I'm sitting here that they asked

William N. Gresham.

for that particular crane to come down there and do that work.

Q. Now, who decides how many men will go down with the crane?

A. That's not any decision to it; there's two men on the machine—the operator and the oiler; that's their regular work.

Q. What does Mr. Powell do?

A. He's general superintendent of the cranes.

Q. Doesn't he go down and look the situation over?

A. He could go down and look at the situation.

Q. Isn't that his job, to go down and see that the equipment is being used properly?

A. He does go by the job quite often and check.

page 207 } Q. So when somebody makes a contract with you, they get the equipment, the crane, operator and the oiler, and the supervision of Mr. Powell?

A. No, we're not supervising that job at all; we're working under the Ferry Company's orders.

Q. You are supervising your own equipment?

A. Naturally we were supervising the equipment. We're going to have good men on the equipment or we're going to put somebody else on there.

Q. You are also interested in furnishing the equipment?

A. Yes, sir.

Q. It was either you or someone in your company that selected the leads and hammer and follow block that was sent down on this particular day, was it not?

A. There's no selection to it; there's one set of leads, and the hammer that we had; that was it.

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page 208 }

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Q. Now, when someone contracts with you for a crane and pile driving and the accessories, the leads, hammer, and so forth, how much do they have to pay?

A. Well, we have a regular daily rate on the pile driving equipment, and an hourly rate on the crane equipment.

Q. What would the total be?

William N. Gresham.

A. The crane at that time, I think, was a twenty-five ton crane, I think it was eighteen dollars on hour on the crane, and the pile driving equipment was roughly, twenty-five dollars a day; I don't know that those figures are actually correct.

page 209 } Q. Now, that's twenty-five dollars for the pile driving equipment and assuming it's an eight-hour day, at eighteen dollars an hour, we get a hundred and forty-four dollars for the crane, plus twenty-five dollars for the leads and accessories, or a hundred and sixty-nine dollars, is that correct, per day?

A. If that's your figures, yes, sir.

Q. For that sum of a hundred and sixty-nine dollars, you furnished the crane, the pile driving equipment and the people to operate it, is that correct?

A. Yes, sir, that's right.

Q. When you render a bill, you don't render any separate bill for the salary paid to the crane operator or the salary paid to the oiler, or the salary paid to Mr. Powell, or anyone else, do you?

A. No, sir.

Q. In other words, when you make a contract with Gresham for equipment, you get the people to operate it; that comes along with it?

A. That goes with the equipment.

* * * * *

RE-DIRECT EXAMINATION.

page 210 } Examined by Mr. Howard:

Q. Now, as to the equipment that you usually send out on any job, is it customary that an inspection be made of that equipment?

A. Well, our equipment is inspected every day, so to speak, by the oiler and operator, or the truck driver or whoever may be handling that equipment. It's up to the man handling the equipment to see that it's in good shape, to see that it's in good operating shape.

Q. Does the equipment then get a daily inspection?

A. So to speak, yes. Now, the one job that the oiler has on that equipment is keeping that equipment in good shape. That's his main job and he usually does it in pretty good style.

Q. When the equipment is on the job, under whose direction

is that equipment while on a job, and particularly on the Chesapeake job?

Mr. Meredith: Would he specify as to whose directions?
The Court: Do you understand the question?

A. Who are you speaking of now?

Examination by Mr. Howard Continued:

page 211 } Q. Under whose direction is the crane when it's on the job as to directions as to work to be done and the raising and lowering of the piling to be driven, under whose direction is that crane?

A. In this particular case, Virginia Ferry Company had their own labor on this job and they were doing all the supervision of it.

Q. By Virginia Ferry, you mean Chesapeake Ferry?

A. I think at that time—I don't know whether it was Virginia Ferry or Chesapeake; anyhow, it changed name just recently.

Q. Mr. Gresham, when this equipment was on the job, your company was not getting paid for driving pile, but for rental of the equipment, is that true?

A. That's right.

Q. Now, Mr. Gresham, in what capacity was Mr. Powell?

A. He's the crane supervisor.

Q. Now, did you also say to Mr. Meredith here that he had general supervision of the cranes?

A. Yes, sir.

Q. Did he have general supervision of the work which was to be done by the crane?

A. No, sir.

Q. Whose was that?

A. Virginia Ferry—Chesapeake Ferry.

* * * * *

page 212 } RE-CROSS EXAMINATION.

Examined by Mr. Meredith:

Q. You stated that the job is under the supervision of the Chesapeake Bay Ferry District, how do you know that of your own knowledge?

A. Well, it—

Q. Were you down there?

A. No, sir, I sent the equipment to Captain Daniels, and it worked several days, and it would not have worked unless they had supervised the work. It would have been sent back to me, if they didn't want it.

Q. Actually, you don't know who was on the job?

A. No, sir, I don't know. I know it was the employees of the Ferry Company.

Q. How do you know that, if you don't know who was on the job?

A. Well, they were using the crane. They might have hired somebody else's people, but I doubt it.

Q. What you're doing, is guessing?

A. I'm not guessing, no, sir.

Q. But you do not know? You just don't know
page 213 } who was on the job?

A. No, sir.

WILLIS POWELL,

a witness for the defendant, having been first duly sworn, took the stand and testified as follows:

* * * * *

Q. Mr. Powell, in April of 1957, did there come a time when you went to the Chesapeake Bay Ferry District Terminal at Little Creek?

A. Yes, sir.

Q. What was the purpose of your going to the terminal at Little Creek at that time?

A. I went down in answer to a call from Captain Daniels to look at some work he had in mind that he wanted to do. He wanted me to see if we had equipment and could
page 214 } furnish him equipment to do the job.

* * * * *

Examination by Mr. Green Continued:

Q. Who was the work to be done for?

A. The work was to be done for Virginia Ferry Company.

Q. Who was the work to be done by?

A. By the Virginia Ferry Company.

Q. You mean Chesapeake Bay?

A. Yes, sir.

Q. Now, you went down and you looked over the job, is that correct?

A. That's right.

Q. Did you then come back to Gresham's yard, or where did you go after you left there?

A. I *belive* I went back to the plant, the office.

Q. In between the time that you went down there initially, let me ask you this first. Did the equipment come to the job while you were there?

A. No, sir.

Q. You went back to the plant and the equip-
page 215 } ment went to the job after you left?

A. At a later date.

Q. Did you go back to the job at any time between the time that you initially went there and this time?

A. I don't think I did. I don't remember, but I don't think I did.

Q. Did you have any part of the supervision of the work which was being done?

A. No, sir.

Q. Did you take any part in the supervision of the pile driving or any other operation which was being done there?

A. No, sir.

Q. Who had the supervision of the crane while it was on the job, Mr. Powell?

A. Well, I assume Captain Daniels, or some official of the Ferry Company.

Q. Did you take any part in the pile driving operation which was being done down there?

A. No, sir.

Q. No part of the supervision of it?

A. No, sir.

Q. Did you take any part in the supervision for raising the barge which had been sunk down there?

A. No, sir.

page 216 } Q. Did you have anything to do with the dredging which was being done?

A. No, sir.

* * * * *

Examined by Mr. Meredith:

Q. Mr. Powell, did you select the rig to be sent down to the job?

A. I didn't select the rig; I selected a rig that would handle the job; that I thought would do what he had to be done.

Willis Powell.

Q. Did you also select the people to go along with that rig?

A. They are assigned to the rig permanently.

Q. So when you select Rig 14, you get the crew with Rig 14?

A. That's right.

Q. You chose the rig that went down to Little Creek?

A. Yes, sir, I did.

page 217 } Q. And you also decided, or did you, Mr. Powell, as to what pile driving equipment would go down to Little Creek?

A. Well, that's right.

Q. In other words, you picked out the leads and the hammer and the follow block, and arranged for it to be put down there?

A. No, the leads and the hammer and the follow block is part of our original equipment. I told the dispatcher what we would need to drive these pilings and do this dredging, and so forth, and what the Virginia Ferry Company needed to do the job as best I could see, and they in turn got them loaded up.

Q. Who is "they?"

A. The operator and the oiler on it; the two men on the rig.

Q. When was that with reference to the pile driving, if you know?

A. Well, now, I don't remember whether they carried the pile leads and hammer, and so forth, when they went, or whether that was sent to them later; I don't remember that.

Q. If it was sent to them later, they would not have picked it out; it was picked out by somebody else?

A. We only got the one set of leads and hammer and follow block, no two sets. Now, we have got two sets; one that's a little heavier capacity and that's about the only difference in them.

page 218 } Q. I show you Plaintiff's Exhibit 2, which is a photograph of some equipment and I ask you whether or not that's the equipment that was sent down to do the job?

A. That's our equipment.

Q. Can you answer the question as to whether that's the equipment that was sent down there on this particular occasion?

A. I think it was; I'd say it was, yes. That picture was taken on another job that we did down there.

Q. Now, the follow block and hammer that you sent down there, what sort of rig did you have for attaching the follow block to the hammer?

A. Well, it's a temporary arrangement; when you are raising your hammer and your pile and your follow block, setting your pile, you get your hammer and follow block up in the air together and once you get your hammer and follow block above your pile, you then get your pile-head into the cone of the follow block and after that is settled, you disconnect your cable from your follow block and your hammer.

Q. What sort of connection do you disconnect?

A. A hook.

Q. Is it an open hook?

A. It's a vulcan hook.

Q. I show you a picture here marked Plaintiff Exhibit 6, and ask you whether that is the particular type

page 219 } of hook that you sent down with the rig on this occasion?

A. That's the type hook, yes, sir.

Q. That hook and the related equipment was all furnished by E. T. Gresham Company, is that correct?

A. Yes, sir.

Q. Now, let's assume, Mr. Powell, that you had been dealing with some other contractor other than—some other party other than the Chesapeake Bay Ferry District—in other words, someone that you had not done work for before, how about your going down then and checking things, or would you have gone down there?

A. Yes, sir.

Mr. Howard: I object. I think he's already answered the question, but I don't see where it would be relevant here.

The Court: Objection is overruled.

Examination by Mr. Meredith Continued:

Q. If it was a new firm, would you have gone down there to check on the job several times?

A. Supervision is my job.

Q. And you would have checked if it had been on a new person that they were going to work for?

A. Not necessarily, no, sir.

* * * * *

page 220 }

* * * * *

Willis Powell.

Examination by Mr. Meredith Continued:

Q. Let's assume a new customer called for some of E. T. Gresham's equipment to do a job, would you have gone down there on that job to supervise it?

A. No, sir.

Q. You would not have gone down there at all?

A. No, sir. I would not have gone down there to supervise the job, no, sir.

Q. Would you have gone down there for any purpose?

A. I could have, if they had requested that I come down.

* * * * *

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* * * * *

Q. Well, on this particular occasion, isn't it true that that's why you did not go down there from the time you originally selected the equipment up until the accident?

A. No, if I had had any business down that way, I would have certainly gone down to see how the job was, but I just didn't have anything else out that way.

Q. Didn't you actually go down there one day when this job was going on?

A. I don't remember; I can't remember that.

Q. When the accident occurred, did you get a telephone call?

A. The message was relayed to me. I didn't talk to anybody other than—

Q. It was a message from Chappell?

A. From Chappell, that's right.

* * * * *

RE-DIRECT EXAMINATION.

Examined by Mr. Green:

page 223 } Q. Mr. Powell, you testified on cross examination, I think Mr. Meredith asked you about the rig that was being used on the follow block and you said it was a temporary arrangement, will you explain to the jury what you meant by "temporary arrangement?" I may have misunderstood you.

A. I don't remember telling him it was a temporary arrangement.

Q. The way this thing was rigged up on the day in question is the way it's regularly rigged up, the way it's used all the time?

A. Yes, sir.

Q. So it wasn't anything temporary about the way it was rigged up on this particular day?

A. The temporary part in this, is fastening your follow block to your hammer when you are taking it up to set it on your pile that's rigged up long enough to pick it up and put it on your pile, and then it's disconnected.

* * * * *

page 224 }

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Examination by Mr. Green Continued:

Q. Mr. Powell, did you have any supervision over the work which was being done there?

A. No, sir.

* * * * *

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* * * * *

Mr. Green: We renew our motion which we made at the close of plaintiff's evidence to strike the plaintiff's evidence at this time on all the grounds previously stated. We argued the point this morning that there is no evidence in the case upon which the jury could predicate a verdict. All of the evidence which the plaintiff has attempted to introduce has all been within the realm of surmise and conjecture, page 226 } and on the basis of the two cases which I cited this morning, especially the one which I stated where the tire was changed and the situation and possible things that could have caused the accident. We move the Court to strike the evidence of the plaintiff as being insufficient. The plaintiff has certainly not strengthened their case by the testimony of the defendant, and further, the evi-

dence of the defendant, I believe, has greatly weakened any evidence which they may have had.

After considerable argument, the Court overruled the motion made by defense counsel.

Mr. Green: Note our exception.

* * * * *

EXCEPTIONS TO INSTRUCTIONS.

By Mr. Green:

The Defendant objects and excepts to the granting of any instructions by the Court in this case on the grounds that there is no evidence in the case to support any of the instructions which the Plaintiff requested and which were granted.

Further, the Defendant takes the position that there is no dispute in the evidence as to whether the work involved was part of the trade, business, and occupation of the Chesapeake Bay Ferry District, and that the Court should have ruled on that question as a matter of law rather than submitting same to the jury on undisputed evidence.

The Defendant further takes the position that the Plaintiff in this case was guilty of contributory negligence as a matter of law and that the Court should have so ruled and thereby eliminating the necessity of giving any instructions for the Plaintiff.

The Defendant further objects and excepts to the granting of any instruction to the Plaintiff on the ground that the evidence in this case clearly establishes that the suit is barred by reason of the provisions of the Workmen's Compensation Act of the State of Virginia by reason of the relationship of the parties and as such, the Court should have so ruled as a matter of law.

* * * * *

By Mr. Meredith: The Plaintiff objects and excepts to the refusal of the Court to grant Instruction No. 3 submitted by the Plaintiff on the grounds that it is based upon a correct statement of the law as set forth in *Sykes* v. *Stone and Webster Engineering Corporation,* 168 Virginia. 116.

The Plaintiff objects and excepts to the refusal of the Court to grant Instruction No. 5 offered by the Plaintiff on the grounds that it is based upon a correct statement of the law as recognized in the following cases: *Pierce* v. *Ford Motor Company,* 190 Fed. Second, 910, 4th Cir., 1951; Cert., denied

342, U. S. 887, *Standard Oil Company* v. *Wakefield,* Adm., 102 Virginia 824.

Plaintiff objects and excepts to the refusal of the Court to grant Instruction No. 6 offered by the Plaintiff on the grounds that this instruction is based upon a statement of law contained in *Tidewater Stevedoring Corporation* v. *McCormick,* 189 Virginia, 158.

Plaintiff objects and excepts to the refusal of the Court to grant Instruction No. 7 offered by the Plaintiff. This is a *res ipsa loquitur* instruction and was offered by the Plaintiff without waiving its position that he has shown sufficient evidence of negligence upon which the jury can make a finding. It is offered to fight the contention made by the Defendant that the cause of the accident is undetermined. If the jury sees fit to follow the argument of Defendant's counsel to the effect that the cause of the accident is undetermined and makes a finding to this effect then it would be proper for the doctrine of *res ipsa loquitur* to be applied since there is no dispute but that the instrumentality which caused the injury to the Plaintiff was in the sole control of the Defendant and the accident is certainly one that would not ordinarily occur if reasonable care was used and the Defendant certainly is in a position to know more about what caused it than anyone else.

I reiterate, however, that this instruction is offered without waiving the position of the Plaintiff that I have previously stated to the effect that sufficient evidence of negligence on the part of the Defendant has been shown and from this, the jury can determine the cause of the accident.

Plaintiff objects and excepts to the refusal of the Court to allow Instruction No. 8 offered by the Plaintiff on the ground that it is a proper statement of the law and should have been called to the attention of the jury by the Court since the Defendant had indicated in chambers that they intended to and did argue to the jury that the testimony of the Plaintiff's expert, Spain, should not be believed on the grounds that he would be influenced by the fee which it was agreed he would receive; and Plaintiff's attorneys argued to the contrary before the jury.

As to the instructions which were offered by the Defendant, the Plaintiff objects and excepts to the allowance of the following: Plaintiff excepts to the allowance of Instruction D offered by the Defendant on the grounds that it is repetitious and is adequately covered by Instruction B granted by the Court.

The Plaintiff objects and excepts to the allowance by the Court of Instruction F offered by the Defendant on the

grounds that it does not take into account the fact that the jury could find that the Defendant was negligent in that its employee, Bjork, failed to properly rig the pile-driving apparatus at the commencement of the pile-driving operation and it also eliminates any negligence on the part of the crane operator.

The Plaintiff objects and excepts to the allowance by the Court of Instruction G offered by the Defendant on the grounds that that said instruction is improper in that it, in fact, says that if the Defendant shall provide equipment which is customary and usual in the trade that this, in fact satisfies its duty to the Plaintiff.

There was a duty here on the part of the Defendant to supply equipment which was reasonably safe to do the job for which it was supplied and this, and not the customary and usual practice of the trade, is the proper measuring stick by which the negligence of the Defendant should be ascertained.

The Plaintiff objects and excepts to the allowance by the Court of Instruction I offered by the Defendant on the grounds that said instruction uses the language "Such maintenance work" rather than "Such pile driving" which was the work that the Gresham Company was engaged in at the time of the Plaintiff's accident.

We further object and except to the allowance of this instruction on the grounds that the word "essential" should have been inserted ahead of the word "part" on the sixth line of this instruction since it is only when a party is engaged in an essential part of its trade, business, or occupation that a recovery can be barred for this reason. Another way of expressing this would be to say that it is only when a party is engaged in work which is an essential part and not merely related to the trade, business, or occupation that recovery is barred by the Workmen's Compensation laws.

The Plaintiff objects and excepts to the allowance of Instruction K offered by the Defendant on the ground that there is no evidence in the case of any negligence on the part of an employee of the Chesapeake Bay Ferry District and hence the instruction is misleading and is apt to confuse the jury.

The Plaintiff objects and excepts to the allowance by the Court of Instruction N offered by the Defendant on the ground that the faulty condition of the equipment was known to the operator of the crane and there was no duty on the part of the Plaintiff to call it to his attention. It was also known to other employees of the Defendant to-wit: The Superintendent of the Defendant, named Powell, who selected the rig and sent it down to Little Creek to do the job.

The Plaintiff further objects and excepts to this instruction on the ground that it attempts to spell out what constitues contributory negligence on the part of the Plaintiff which is something that should be left to the jury.

The Plaintiff objects and excepts to the allowance by the Court of Instruction O offered by the Defendant on the ground that there is plenty of evidence in the case on which the jury can base a finding of negligence on the part of the Defendant and hence the words "surmise, suspicion, or conjecture" are inappropriate and would tend to mislead and confuse the jury.

The Plaintiff further objects and excepts to the granting of Defendant's Instruction I on the grounds that as submitted it implies to the jury that maintenance work being done was a part of the trade, business, or occupation of the Ferry District and that the equipment was so being utilized by the Chesapeake Bay Ferry District since the phrase "That such maintenance work was part of the trade, business, or occupation of the Ferry District and that the equipment was so being utilized by the Chesapeake Bay Ferry District and its employees at the time the Plaintiff sustained his injury" is separated from the first part of the instruction by a semicolon; this would imply to the jury that the Court itself has found that such maintenance work was part of the trade, business, or occupation of the Ferry District and that the jury must find its verdict for the Defendant, E. T. Gresham Company, Inc. in that under the instruction, as given, the only fact the jury must find is that the Defendant rented its equipment and personnel to the Chesapeake Bay Ferry District.

It is the position of the Plaintiff that there is a dispute of fact about whether this maintenance work was a part of the trade, business, or occupation of the Ferry District and that this issue of fact must be left to the jury.

* * * * *

MOTION.

By Mr. Meredith: If Your Honor please, we move that the verdict be set aside as contrary to the law and the evidence in the case.

The Court: Mr. Meredith, in view of the length of time that the case has taken and the questions involved, the Court would be willing under some circumstances to suggest that we defer the motion be continued but in view of the very thorough way in which this has been argued and the care in which the Court has read the cases, I don't believe there would be any

reason for the Court to set aside the verdict so I do not feel that there would be any advantage in continuing the motion or hearing any further argument in the case.

Mr. Meredith: I would like to argue the motion, continuance, but I can appreciate Your Honor's position in the matter.

The Court: I feel that the Court can act as well now as it would if it were continued. Overrule the motion. Note your exception.

Mr. Meredith: I except to the ruling of the Court.

* * * * *

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* * * * *

MADGE H. KOTTAL,

called as a witness, having been first duly sworn, testified as follows:

Examined by Mr. Gawrys:

Q. Mrs. Kottal, you have that page in your notes?

A. Yes, I do.

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Q. You recall that I called you and asked you to check through your notes on the cross examination by Mr. Green of Mr. Bjork?

A. That is right.

Q. Would you read the question as asked by Mr. Green to Mr. Bjork as you have it in your notes?

The Court: Beginning at Line 12 on Page 96 of the typewritten transcript?

Mr. Gawrys: Yes, Your Honor.

By Mr. Gawrys:

Q. Begin with Line 12, Page 96 of the typewritten transcript.

A. Does that start, "You testified—?" I can't tell about page numbers by this.

Q. It starts: "Question Mr. Bjork—"

A. "Mr. Bjork, you testified as to the possibilities which may have happened here as far as the follow-block falling.

Isn't it also true that there are many possibilities that have happened as far as that follow-block falling? Isn't it true that anything could have happened because of the fall?"

Q. Mrs. Kottal, are you sure that you have "because of the fall"?

A. Definitely. And, if you would like to verify it, I am sure Mr. Phlegar can look at it. He uses the same system.

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page 5

Q. What would your notes indicate if that last sentence read: "Isn't it true that anything could have happened to cause the fall?"

A. "Cause" and "because" are the same in Stenotypy. "To" is a word that is written out "t-o," and then "cause" would be "k-a-u-s." In other words, if I had heard it as "to cause," it would have come out "t-o," and on the next line "k-a-u-s." But, "because" is "k-a-u-s," and this is exactly what I have. I have no "to," whatsoever, in there.

Q. Is there any doubt in your mind that you heard that sentence as "because of the fall"?

A. As I have it on here, that is definitely what I heard, because that is what I was there for: to put it down exactly as I heard it, and this is what I heard.

Q. Thank you.

A. There is no question, whatsoever.

Mr. Gawrys: I have no further questions.

CROSS EXAMINATION.

By Mr. Green:

Q. Mrs. Kottal, isn't it possible that you might not have understood the word as it was said?

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page 6

A. All I can put down is what I hear.

Q. That is right. As far as you know that is what you heard?

A. That is what I heard.

Q. But there is a possibility that there may have been an error in what you did hear. Is that right?

A. Well, I don't see how I can say that.

Q. Well, Mrs. Kottal—

A. All I can do is put down exactly what I hear.

Q. At one point in the transcript this morning, Mrs. Kottal, I referred you to a place that I believe you recorded as "Judkins Toy Corporation"?

A. That is right.

Q. Do you now understand it is "Judkins Towing Corporation"?

A. That is right.

Q. So that was a mistake evidently in what you heard?

A. That is right; either my hearing or the person's enunciation. But, to me it sounded like "Toy Corporation."

Mr. Green: I think that is all.

Oct. 13, '58
page 7 } BERRYMAN GREEN, IV,

called as a witness, having been first duly sworn, testified as follows:

Your Honor, if I might just state this very briefly—

By the Court:

Q. All right.

A. Your Honor, with reference to the question which appears on Page 96 of the written transcript, which some controversy has arisen over, I was cross examining the witness Bjork with reference to a statement which he had made on direct examination that there were three possibilities through which this accident may have occurred. My purpose in cross examining this witness was to show that this witness' entire testimony was based merely on possibilities. For that reason I put the question to him. And, as it was one of the most important questions that I asked that particular witness, I remember the question which I did put to him. That question had to do with how many possibilities could have occurred—strike that—how many possibilities there were through which this accident could have occurred.

In reviewing the transcript on Page 96, as to that particular question, I note that the first part of the question was on that point. I followed it up with a question
Oct. 13, '58 which was probably in more succinct form than
page 8 } my previous question, contained in that same interrogation. I remember putting the question to the witness in the form: Isn't it true that anything could have happened to cause the fall? I remember that with enough certainty to so testify under oath.

Mr. Gawrys: Your Honor, is Mr. Green testifying at this time, so that I may examine him?

A. Certainly.

Berryman Green, IV.

CROSS EXAMINATION.

By Mr. Gawrys:

Q. Mr. Green, how do you remember that that was exactly what you said?

A. To the best of my recollection—and my recollection is such today that I am prepared to testify under oath that that question was put in the form which I have just phrased. The reason is because it was the most important question which I asked this particular witness. It had to do completely with whether the plaintiff in this case had carried the burden of proof as to establishing what had caused the accident.

Q. Mr. Green, did you have that question written out when you asked him?

Oct. 13, '58 page 9 } A. I did not have it written out.

Q. Did you have any of his questions written out?

A. I did not. I did not have it written out. I remember the point very vividly, though, because when that witness testified as to the possibilities on cross examination, I at that time had a conference with Mr. James A. Howard who was co-counsel in the case. I have since that time consulted with Mr. Howard and told him that I was positive that I had made such a statement, and asked him to verify it, and he did so verify it.

Q. You are talking about possibilities. Isn't it perfectly possible that you asked the question as it is here in the record right now?

A. I am prepared with such certainty—with much certainty—to the extent that I am prepared to state here under oath that I asked the question in the form that I have just phrased it. There is always an element of doubt on something like that, but I am prepared with reasonable certainty—with enough certainty—to appear here today and take the witness stand and so testify.

Q. How did you ask the previous sentence?

A. I can't remember what the previous sentence was.

Q. But you remember that sentence very well?

A. I do.

Q. But it is possible that you asked the question exactly as it is here in the record?

Oct. 13, '58 page 10 } A. It is possible? I would say a very outside possibility. As I say, I am certain enough in my own mind to appear here and take the stand. I think that is a reasonable interpretation to be given to it in view

of the portion of the question which went on before, and in view of the answer of the witness who was testifying in response to that question.

Q. But this answer of the witness, the response to that question, would have an entirely different meaning if the question was as you say it should have been?

A. Mr. Gawrys, I submit that the answer to the question would have no meaning, whatsoever, if it were given in response to the question which the court reporter has recorded here. It was admitted in this trial that this man had an injury to his hand as a result of the follow-block falling. Therefore, the possibilities as to what might have occurred were not in question in this case, as the result was admitted.

Q. But it is true that any number of things could have happened as a result of the fall of that follow-block. Isn't that correct?

A. Quite true.

Mr. Gawrys: Off the record.

(Thereupon, an off-the-record discussion was held, after which the following occurred:)

Oct. 13, '58
page 11 } The Court: Do you want to ask any more questions?

Mr. Gawrys: I would like to ask just one or two more, if I may.

By Mr. Gawrys:

Q. Mr. Green, if you remember that so vividly, it is true that you have reviewed this record several times now since it has been prepared. Isn't that correct?

A. That is correct. I might state for the record here that I think we spent some three hours, or approximately three hours, the other morning going through this record making corrections, by agreement of counsel, and this was the only correction which appeared in the transcript which counsel could not agree on.

Q. And since you have been reviewing it and you realize what you wanted to say, then isn't your memory somewhat strengthened because of that?

A. It is not—because, as I stated before, I was adamant in my contention before Judge Smith on last Monday that that

particular question should have read as I have previously stated in the record this morning. The reason was, as I have stated before, that that was the most important point which we wanted to cover with this witness Bjork.

Q. Mr. Green, this trial went on for three days. You contend it is not possible, after conducting direct and cross examination of various witnesses throughout those three days, that you could have made a mistake in one sentence for three days?

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A. It would be possible, Mr. Gawrys, that I did make such a mistake, except for the fact that immediately after this question was answered—as I have stated, it was the most important question which we put to the witness on cross examination—and immediately after asking that question I had a discussion with Mr. Howard at counsel table, because that was the point which we wanted to cover with the witness, and we had drawn an answer which we had sought to bring out from that particular witness.

Q. What you mean is that you had drawn an answer which answered the question in your favor, the question being the one that you thought you had asked him?

A. That is right; and that was confirmed at that time. I can assure you, Mr. Gawrys, if the question had been as is stated, I would certainly have rephrased it. I conferred with Mr. Howard at counsel table at the time that question was put and the answer was made; and having conferred on the matter before cross examining Mr. Bjork, that was the most important point which we wished to cover through that witness.

Q. You would have corrected it if you had realized what you had said?

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A. That is right; if I had phrased that question in the form in which it appears in the transcript.

Q. Would you go to the sentence just preceding that sentence?

A. All right.

Q. You contend that that sentence is improperly recorded?

A. Which one are you referring to?

Q. I will quote it. "Isn't it also true that there are many possibilities that have happened as far as that follow-block falling?"

A. I believe that that is probably a correct statement.

Q. That is the way you said it?

Berryman Green, IV.

A. Yes, sir.

Q. Does that sentence make much sense?

A. It doesn't make much sense. As I said, Mr. Gawrys, I am not prepared to testify as to that particular point. I don't believe that I said it in that manner. I may have. I might say that with respect to that portion of it I am not prepared to sit here and say that I did not put the question as it appears in the transcript. For that reason I would not testify that I made a different statement.

Q. Since that particular sentence does not make much sense, either, in view of the answer which you were trying to elicit from the witness, then it certainly is possible that the following sentence was properly recorded and was not the question which you intended to ask?

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A. Mr. Gawrys, as I stated before—I think you have amply covered that point—I cannot state as an absolute certainty, any more than anyone can ever state anything as a certainty. I state that I am prepared to testify under oath today that the question as it appears in the transcript is not the question which I put to the witness. I can assure you that if I had the slightest hesitation or slightest doubt in my mind as to whether I did put the statement to the wtiness as it appears in the transcript, I would not be on this witness stand testifying today.

Mr. Gawrys: I have no further questions, Your Honor.

By the Court:

Q. As to the preceding sentence: "Isn't it also true that there are many possibilities that have happened as far as that follow-block falling?," if the word "could" was inserted before "have" so it would read: "Isn't it also true that there are many possibilities that could have happened as far as that follow-block falling?," it would make more sense, wouldn't it?

A. I agree with Your Honor.

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Q. The word "could" may have been left out in that sentence. Of course the Court is not suggesting that it be inserted, as counsel have not made such request.

A. Your Honor, I can state that I have read that question over, and it occurred to me that in all probability I did so put the question as Your Honor has suggested, but I am not pre-

pared to state under oath that I did put the question in the manner in which Your Honor stated.

* * * * *

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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