201 VA 348

Return to
FILE COPY
Clerk Supreme Court of Appeals
Richmond, Va.

Record No. 5001

In the Supreme Court of Appeals of Virginia at Richmond

HARVEY WILLIAMS DINWIDDIE

v.

ROBERT DAVIS HAMILTON

FROM THE CORPORATION COURT OF DANVILLE

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. 5001

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 19th day of February, 1959.

HARVEY WILLIAMS DINWIDDIE, Plaintiff in Error,

against

ROBERT DAVIS HAMILTON, Defendant in Error.

From the Corporation Court of Danville

Upon the petition of Harvey Williams Dinwiddie a writ of error and *supersedeas* was awarded him by one of the justices of the Supreme Court of Appeals on February 17, 1959, to judgments rendered by the Corporation Court of Danville on July 17, 1958, and October 30, 1958, in a certain motion for judgment then therein depending wherein Robert Davis Hamilton was plaintiff and the petitioner was defendant; and it appearing that a suspending and *supersedeas* bond in the penalty of nine thousand, five hundred dollars, conditioned according to law has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code of Virginia, no additional bond is required.

RECORD

* * * * *

page 9 } INSTRUCTION NO. 1.

The Court instructs the Jury, that if the defendant negligently failed to keep a proper lookout or to keep his vehicle under proper control, and if such negligence, if any, was the proximate cause of the accident, then you must find your verdict for the plaintiff and assess his damages in accordance with the instructions of the Court.

Given.

A. M. A.

page 10 } INSTRUCTION NO. 2.

The Court instructs the Jury, that many persons have, in the structure of their bodies, certain members which are weak and more susceptible to injury than is normal, because of some pre-existing injury, disease or inherited condition, but that no such pre-existing infirmity or susceptibility to injury shall in any wise mitigate or lessen the liability of one who negligently causes new injury to such body member or aggravates a pre-existing condition, so long as such new injury or aggravation is the proximate consequence of the defendant's negligence; and,

Even though Robert Hamilton may have had a spinal condition which made him more susceptible to spinal injury than is normal, the defendant, if guilty of negligence proximately causing the accident, is liable for any new or additional injury to Robert Hamilton's spine or any aggravation of his pre-existing condition.

Given.

A. M. A.

page 11 } INSTRUCTION NO. 3.

The Court instructs the Jury, that if Robert Hamilton is entitled to recover damages, you should consider the following elements in arriving at the amount of such damages:

1. The nature, character, extent and duration of his injuries, whether temporary or permanent, and their effect, if any, upon his normal enjoyment of life and his ability to follow his usual affairs;
2. Any physical pain, mental suffering or nervous disorder which Robert Hamilton has endured as a result of his injury in this accident or which he may hereafter endure;
3. His loss of earnings and the effect upon his earning capacity in the future;
4. Expenses incurred for doctors, hospitals, x-rays, and medicines as a result of the injury and such expenses as may be incurred in the future.

The aggregate amount of such damages, however, shall not exceed $25,000.00.

Given.

A. M. A.

page 12 } INSTRUCTION A.

The Court instructs the jury that the defendant was not an insurer of the safety of plaintiff, but the basis of this action is negligence. You are not to presume negligence from the mere fact that an accident occurred, or that plaintiff was injured as a result thereof. On the contrary, there is a presumption that the defendant was not negligent, until the plaintiff has proved the contrary by a preponderance of all the evidence. The burden rests upon the plaintiff to prove, not only that the defendant was negligent, but that his negligence was a proximate cause of the accident. This burden rests upon the plaintiff throughout the entire trial, and unless you believe from the evidence that the plaintiff has sustained this burden, you must find your verdict for the defendant. If you should believe, after hearing all the evidence, that it is just as probable that the defendant was not negligent as that he was, then the plaintiff has failed to sustain the burden of proof and you must find for the defendant.

Given.

A. M. A.

page 13 } INSTRUCTION B.

The Court instructs the jury, that in fixing the damages to which the plaintiff is entitled, if any, you must be guided

by the same burden of proof rule that is applicable in determining the liability of the defendant in this case—that is, the burden of proof rests upon the plaintiff to prove by a preponderance of the evidence every item of damages claimed by the plaintiff, and the jury cannot base its verdict upon conjecture, speculation or guess work. If it is just as probable that the claimed injury resulted from a cause other than the negligence of defendant as it resulted from his negligence, then you must disregard such injury in arriving at your verdict. Your verdict must be in an amount, which in your opinion, will reasonably compensate plaintiff for damages suffered by him as a reasonable and probable consequence of defendant's negligence.

Given.

A. M. A.

page 14 } INSTRUCTION C.

The plaintiff is claiming in this case an aggravation to an old spine injury or condition. The Court instructs the jury that the plaintiff is entitled to recover for aggravation of said injury only in such an amount as will reasonably compensate him for the increased intensity of his spine condition over and above that which existed immediately before the accident on December 25, 1957. If you believe that plaintiff's spine injury or condition that existed at the time of the collision on December 25, 1957 was not intensified or aggravated as a result of said collision, then the plaintiff is not entitled to any amount on account of said spine injury or condition.

Given.

A. M. A.

* * * * *

page 21 }

* * * * *

ORDER.

This day this case came to be heard upon the motion of the plaintiff to set aside the jury's verdict rendered herein on

the 23rd day of June, 1958, and was argued by counsel; and,

It appearing to the Court that the damages awarded by the verdict in this case are too small,

Upon consideration whereof, it is hereby ORDERED that the verdict in this case, rendered upon the 23rd day of June, 1958, be, and the same is hereby, set aside as to the damages awarded by said jury, pursuant to the provisions of Section 8-224 of the 1950 Virginia Code, as amended, and a new trial is hereby ORDERED upon damages alone, to which action of the Court in setting aside the verdict and granting a new trial and in directing a new trial as to damages only, the defendant, by counsel excepts; and,

It is further ORDERED that the plaintiff pay the costs incurred in the first trial of this case.

(on back)

Enter 7/17/'58.

A. M. A.

• • • • •

page 24 } INSTRUCTION NO. 1.

The Court instructs the jury, that Robert Hamilton is entitled to recover damages from the defendant, and you should consider the following matters in arriving at the amount of such damages:

1. The nature, character, extent and duration of his injuries, whether temporary or permanent, and their effect, if any, upon his normal enjoyment of life and his ability to follow his usual affairs;

2. Any physical pain, mental suffering or nervous disorder which Robert Hamilton has endured as a result of his injury in this accident or which he may hereafter endure;

3. His loss of earnings and the effect upon his earning capacity in the future;

4. Expenses incurred for doctors, hospitals, x-rays, and medicines as a result of the injury and such expenses as may be incurred in the future.

The aggregate amount of such damages, however, shall not exceed $25,000.00.

Given.

A. M. A.

page 25 } INSTRUCTION NO. 2.

The Court instructs the jury, that many persons have in the structure of their bodies certain members which are weak and more susceptible to injury than is normal, because of some pre-existing injury, disease or inherited condition, but that no such pre-existing infirmity or susceptibility to injury shall in any wise mitigate or lessen the liability of one who negligently causes new injury to such body member or aggravates a pre-existing condition, so long as such new injury or aggravation is the proximate consequence of the defendant's negligence; and,

Even though Robert Hamilton may have had a spinal condition which made him more susceptible to spinal injury than is normal, the defendant is liable for any new or additional injury to Robert Hamilton's spine or any aggravation of his pre-existing condition, if proven by the preponderance of the evidence.

Given.

A. M. A.

page 26 } INSTRUCTION A.

The Court instructs the jury, that in fixing the damages to which the plaintiff is entitled, you must be guided by the burden of proof rule which requires the plaintiff to prove by a preponderance of the evidence every item of damages claimed by the plaintiff, and you cannot base your verdict upon conjecture, speculation or guess work. The defendant is not liable for anything other than damages actually caused by the negligence of the defendant, and it is not sufficient to prove that the plaintiff has suffered from causes which may have possibly resulted from such negligence; he can only recover for damages which are shown by the evidence with reasonable certainty to be the direct result of the negligence of the defendant in the accident complained of. If it is just as probable that any of the claimed injuries resulted from a cause other than the negligence of the defendant as that it resulted from his negligence, then you must disregard such injury or injuries in arriving at your verdict.

Given.

A. M. A.

page 27 }

INSTRUCTION B.

The plaintiff is claiming in this case an aggravation to an old spine injury or condition. The Court instructs the jury that the plaintiff is entitled to recover for aggravation of said injury only in such an amount as will reasonably compensate him for the increased intensity of his spine condition over and above that which existed immediately before the accident on December 25, 1957. If you believe that plaintiff's spine injury or condition which existed at the time of the collision on December 25, 1957 was not intensified or aggravated as a result of said collision, then the plaintiff is not entitled to any amount on account of said spine injury or condition.

Given.

A. M. A.

• • • • •

page 30 }

• • • • •

MOTION OF DEFENDANT.

This day comes defendant, Harvey Williams Dinwiddie, and renews his motion made at the conclusion of the trial on October 17, 1958, and after the jury had returned its verdict in favor of the plaintiff, to set aside said verdict and grant defendant a new trial upon the ground that said verdict is excessive.

Defendant moves the Court to set aside said verdict in the amount of $8,000 and grant him a new trial on the merits of the case upon the ground that said verdict is excessive.

HARVEY WILLIAMS DINWIDDIE
By Counsel.

Counsel

MEADE, TALBOTT AND TATE
516 Masonic Building
Danville, Virginia.
By EDWIN B. MEADE
Member of Firm.

Filed in Clerk's Office, Corporation Court, Danville, Virginia October 27th 1958.

Attest:

MARGARET EDMUNDS, Deputy Clerk.

* * * * *

page 32 }

* * * * *

This day came again the parties by their attorneys, and the Court having maturely considered the motion of the defendant to set aside the verdict of the jury rendered in this cause on Friday, the 17th day of October, 1958, on the grounds that it was excessive and having heard arguments of counsel doth overrule said motion, and the defendant, by counsel, excepts.

Therefore, it is considered by the Court that the said Robert Davis Hamilton recover and have judgment against the said Harvey Williams Dinwiddie in the sum of $8,000, the amount of damages by the jury in its verdict awarded with interest thereon at the rate of 6 per centum per annum from the 17th day of October, 1958, together with its costs by him about his action herein expended.

And, the said defendant intimating to the Court his intention to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment aforesaid, it is ordered that execution on the same be suspended for sixty days upon the said defendant, or some one for him, executing before the Clerk of this Court, within ten (10) days from this date, October 30, 1958, bond with approved security in the penalty of $9,500, payable and conditioned according to law.

Enter 10/30/58.

A. M. A.

* * * * *

page 34 }

* * * * *

C. B. Stowe.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Defendant hereby files with the Clerk of the above styled court Notice of Appeal in this case, and assigns as errors of the trial court the following:

1. The trial court, erred in setting aside the jury's verdict on first trial in the amount of Twenty-five Hundred Dollars ($2,500), and granting plaintiff a new trial, upon the grounds that the damages awarded were too small.
2. The trial court erred in overruling defendant's motion to set aside the jury's verdict on the second trial in the amount of Eight Thousand Dollars ($8,000), and grant defendant a new trial upon the ground that said verdict was excessive.

HARVEY WILLIAMS DINWIDDIE
By Counsel.

Counsel

MEADE, TALBOTT AND TATE
516 Masonic Building
Danville, Virginia.
By EDWIN B. MEADE
Member of Firm.

Filed in Clerk's Office, Corporation Court, Danville, Virginia December 18th 1958.

Attest:

MARGARET EDMUNDS, Deputy Clerk.

* * * * *

WRITTEN STATEMENT OF FACTS, TESTIMONY AND OTHER INCIDENTS OF CASE BEFORE TRIAL COURT.

C. B. STOWE,
Danville Police Officer.

Officer Stowe testified that he investigated a collision between the automobile of plaintiff and the automobile of de-

fendant which occurred on the afternoon of Christmas Day, December 25, 1957, on North Main Street, near its intersection with Riverside Drive in the City of Danville, Virginia; that both cars had been proceeding south down said North Main Street when a red light had stopped line of traffic proceeding south towards said intersection; that the Hamilton car had stopped in line with traffic and that the Dinwiddie car had struck it from the rear; that the Dinwiddie car had good tires with good tread, and had good brakes; that he estimated the damages to the Hamilton car to be $175.00 and the damages to the Dinwiddie car to be $275.00; and that there had been a light rain on the afternoon of the accident
page 2 } but prior thereto this rain had stopped but the streets were wet.

DORIS B. HAMILTON,

This witness testified that she was the wife of the plaintiff; that she was riding with him with her baby in her lap at the time of the accident; that her husband had stopped for a red signal light on North Main Street and had been sitting there approximately one minute waiting for the light to turn green when he was struck violently from behind by the Dinwiddie car; that she didn't see or know of the approach of the Dinwiddie car from the rear until it struck the Hamilton car; that the impact was very severe and that her husband's neck was jerked and thrown against the door post of the car on his left; which knocked him unconscious; that he remained in a dazed condition until he was put on an ambulance stretcher and taken to Memorial *Hospita;* that the impact also jerked her head, injuring her, but that she held to her baby and her baby was not thrown out of her lap; that prior to the accident her husband had been in excellent health and had never had any trouble with his back or neck; that her husband had always worked regularly, doing work which required a considerable amount of lifting at his job at Dan River Mills and also that he held down a second job as a part time butcher prior to the accident; that subsequent to the accident he was out of work approximately twelve weeks before the doctor released him to return to work;
page 3 } that she visited him daily during the first eighteen days which he was confined to Memorial Hospital, as well as during the subsequent ten day period which he was confined to Memorial Hospital and that he appeared to be suffering greatly from the after effects of the accident; that subsequent to his release from the hospital he had a great

deal of difficulty in sleeping at night; that he frequently had to get out of bed at night and walk the floor; that he had been in a highly nervous state ever since the accident; that though he had returned to work he was still experiencing considerable pain and difficulty.

ROBERT DAVIS HAMILTON,

Testified that on the afternoon of the accident he intended to drive his wife and family from his home on Halifax Street in North Danville, across the river to South Danville to show them the Christmas lights; that he drove his 1951 Ford automobile down North Main Street intending to cross Riverside Drive at the foot of the hill, and continue across Main Street Bridge; that as he approached said intersection there was a red signal light and traffic ahead of him stopped; that he stopped in the line of traffic and waited for the green light; that after his car had been standing in said line of traffic for approximately one minute it was struck violently from behind by the Dinwiddie car, which he had not seen in his rear view mirror; that his head was jerked backward, then forward and again backward, and struck the door post on the inside of the car to his left, knocking him unconscious; that the motion of his body broke the adjustment mechanism of the seat and the steering wheel; that he was removed page 4 } from the automobile and remained dazed until the ambulance arrived; that he was still dazed when he arrived at Memorial Hospital and was taken to the emergency room; that he remained in Memorial Hospital for eighteen days on his first trip; that he suffered severe pain in the neck and back region, as well as severe headaches during a substantial portion of the time he stayed at the hospital; that he took large quantities of narcotics to relieve his pain while in the hospital; that after eighteen days in the hospital he was released and remained at home for approximately eight days; that during the eight days he remained at home he went each day to the office of his physician, Dr. Drake Pritchett for treatment; that after eight days he has having great difficulty from pain, headaches and general nervous condition and Dr. Pritchett ordered him readmitted to the hospital; that on his second stay in the hospital he remained ten days; that after he was released from the hospital from the second visit he continued to suffer severe pains in the neck and back region as well as severe headaches; that on March 17, 1958, Dr. Pritchett discharged him with instructions to return if he

continued to suffer from his injuries; that his old job at Dan River Mills was not available to him as the particular work to which he had been assigned had been eliminated from the Mill scheduled while he was absent from the mill due to the injuries he sustained from the accident; that he went back to work on another job at Dan River Mills about March 29, 1958, and has worked there continuously since that page 5 } date to the date of trial on June 23, 1958; that he still took drugs to relieve his pain at the time of the trial; that the type of work he was required to take when he went back to Dan River Mills required the lifting of large spools of cotton, which aggravated the pains between his shoulders and his neck; that as a result of his injuries he lost eleven weeks and thirty-two hours from his job, at an average weekly wage of $71.82, this average being taken from wages paid during the month prior to the accident, making a total of $838.51; that on account of said injuries he lost $34.00 of his vacation pay; that his hospital bill amounted to $648.80; that his drug bills were $17.35; that Dr. Drake Pritchett's bill was $301.00, making a total of $1,839.66 in special damages; that he may have previously injured his back while a child, but that he had no recollection of any such injury.

HARVEY WILLIAMS DINWIDDIE,

Defendant, Harvey Williams Dinwiddie, testified that he and his wife were enroute from Lynchburg to the home of his wife's mother on College Avenue in South Danville at the time of the accident; that he was driving his 1954 Buick automobile down North Main Street at a lawful rate of speed, saw a line of traffic stopped for a red light some distance ahead of him, and applied his brakes to stop in said line; that he had sufficient space within which to stop but that upon applying brakes the car slowed down almost to a stop and then started rolling toward the Hamilton car and then slowed down again, but did not come to a stop before striking the standing Hamilton car ahead of him; that he had his page 6 } car repaired at Wyatt Buick Garage at Danville, at a cost of $480.00, and was told that his brakes did not need to be repaired; that in the collision his wife received a fracture to her knee, requiring hospitalization and a cast, but that he was not injured.

MRS. DINWIDDIE,

Mrs. Dinwiddie testified that she and her husband were enroute from Lynchburg to the home of her mother on College Avenue in South Danville at the time of the accident; that her husband was driving his 1954 Buick automobile down North Main Street at a lawful rate of speed and they saw a line of traffic stop for a red light some distance ahead of them; that he applied his brakes and had sufficient space within which to stop his car, but that the application of his brakes was not effective to completely stop it; that the car slowed down and almost stopped but started up again and continued towards the rear end of the Hamilton car; that her husband's car almost stopped before striking said Hamilton car; that she upon realizing the brakes on her husband's car were not effective, moved to the front of the seat and looked down to the floorboard to see what might be wrong with the brakes; that she did not brace herself for the impact for the reason that she thought her husband's car would stop before striking the Hamilton car and that upon the impact she was thrown forward and her knee struck the dashboard, resulting in a fractured kneecap.

page 7 } DR. PRENTICE KINSER, JR.

Dr. Kinser qualified as an orthopedic surgeon and testified in relevant substance as follows: That he first saw the plaintiff Hamilton on June 12, 1958, and made an examination of him at the request of the defendant. He was called as a witness for plaintiff. He received the following history from Hamilton. That he was seated under the steering wheel of his automobile on December 25, 1957, and his automobile was standing still when it was struck from the rear. The force of the collision threw his head backward and forward and hyperextended his neck over the back seat then threw his body forward over the steering wheel, then backward a second time. That his head struck the center post of the car and knocked him unconscious. That he regained consciousness after a few minutes when he was removed by ambulance to the emergency room of Memorial Hospital in a dazed condition. That he had no cuts or lacerations on his body. That he was suffering severely from pain in his back, neck and head. That subsequently he spit up blood for a few days. That the result of his own examination on June 12, 1958, the head was negative; the pupils were equal, regular and reacted to light and accommodation. The mouth, nose and throat were negative. The tongue protruded in the midline and

Dr. Prentice Kinser, Jr.

there was not present any disturbance of sensation over his scalp or face. The head and lungs were normal and blood pressure was 130 over 80. Compression of the chest was negative and he could find no trace of pain in his chest. All motion of his shoulders appeared to be normal and page 8 } free from trigger tenderness over the shoulder joints. Examination of the spine revealed the cervical spine to be normal and to have normal motion in all directions. There was not present any muscle spasm of the cervical muscles. He complained of tenderness and pain on forward flexion of his spine and these pains are referred to the base of his neck at the attachment of the neck to the chest. There were no muscle spasms of the back muscles. He complained of tenderness on percussion over the upper dorsal spine in the region of the 7th and 8th thoracic vertebra. An x-ray of the dorsal spine was done and this shows a minimal wedging of the 7th thoracic vertebral body and narrowing of the intervertebral space between the 7th thoracic and 8th thoracic vertebra. These changes appeared to be old. Upon review of the x-rays taken of Hamilton on December 25, 1957, by Dr. Drake Pritchett, he was able to demonstrate the presence of this narrowing inter-space and the wedged 7th dorsal vertebra. The measurements on this vertebra on December 25, 1957, were exactly the same as they were on June 12, 1958. There was not present any evidence of a fracture in this patients dorsal spine at that level on December 25, 1957. This patient had this narrowed interspace between the seventh and eighth thoracic vertebra with the narrowed seventh dorsal vertebra before the accident on December 25, 1957. It was his impression that the patient had a rather severe sprain of the cervical spine and had a new injury which probably caused some aggravation or irritation of the old dorsal spine injury. His symptons are localized to the mid thoracic spine and he is definitely having continued symptons in that region. He He felt that he was making a very satisfactory re- page 9 } covery from these injuries. He had some cerebral concussion at the time of the injury and he still had headaches that could be an aftermath of the concussion. He did not think that the patient was entirely well from the injuries he sustained. The residual findings that he was able to elicit were (1) post-concussion headaches, (2) pains in the thoracic spine at the level of the seventh thoracic and eighth thoracic vertebra associated with pain on percussion at this level over these vertebra, (3) x-ray evidence of narrowing of the interspace between the seventh thoracic and eighth

thoracic vertebra with a wedging of the seventh thoracic vertebral body.

He expressed the opinion that at some time in his life Hamilton had suffered a back injury which had compressed the bone structure of one of the vertebral in the spinal region between the neck and the lower or lumber back into a wedge shape. The significance of this abnormality is that it renders Hamilton more susceptible to injury to the thoracic spine than a normal person. He believes that a person could have this abnormality of the spine which could remain dormant for the balance of the persons life and that such person might be unaware of its existence unless he should suffer some subsequent injury.

Dr. Kinser expressed the opinion that such a whiplash injury as Hamilton suffered is quite painful and that recovery is slow and protracted and difficult to predict. He felt that there would be ultimate recovery but could not predict how long this would take. He thought that Hamilton needed further treatment and that it might be advisable for him to wear a brace for his spine.

page 10

DR. DRAKE PRITCHETT,

Dr. Drake Pritchett, being called by plaintiff, qualified as a physician and surgeon and testified in relevant substance as follows: That he saw the plaintiff, Robert D. Hamilton, in the emergency room of Memorial Hospital on December 25, 1957, very shortly after he had been hurt. That he received a history that Hamilton was in his automobile in the driver's seat with his car at a standstill when his car was suddenly struck by another car from the rear. That he had received an injury commonly known as a "whiplash injury," which he later classified as severe. He complained of severe pain in his neck and in his back and shoulders and head. There were no lacerations that required suturing. He had a severe muscle spasm of his neck and of the shoulders and muscles of his back. He could not determine the severity of the injury just at that time. Mild injuries of this type last several weeks and the more severe ones may last for years. He described what a "whiplash injury" is; that the head is thrown back and forward and back and forward in a matter of seconds. That the head and neck catch the brunt of it, but the shoulders and back muscles are also involved. He also suffered severe pain in his neck and shoulders and had severe headaches. Apparently his chest had struck the steering wheel and several days later, he started spitting up blood, but he considered this

Dr. Drake Pritchett.

of no consequence. X-rays revealed no fracture and no lung injury.

page 11 } Hamilton stayed in the hospital as Dr. Pritchett's patient. At first he required large quantities of opiates to relieve his pain. He was treated with hot packs and heat and diathermy to his neck. During the first week he was confined to his bed. After that he was allowed to get out of bed and have bathroom privileges. He was kept in the hospital from December 25, 1957, until January 12, 1958, when he was allowed to go home. The Doctor intended to treat him outside of the hospital and prescribed Cortisone and Sodium Butisal to ease his suffering and help him sleep, but he could not sleep and his condition deteriorated, and the Doctor ordered him back to the hospital on January 20th, and discharged him the second time on January 30th, at which time the Doctor did not consider him well, but expected to be able to treat him in his office. He continued to give him diathermy and sedatives and Cortisone to relax his muscles. On March 17, 1958, he permitted him to go back to work, not because he thought he had recovered from the injury, but because he realized it was financially necessary for him to go back to work, and thought this might raise his spirits. He expected to continue to treat him. He did not see Hamilton from March 17, 1958 until date of trial on June 23, 1958. In Dr. Pritchett's opinion Hamilton will have pain in his neck on strenuous exercise, or any sudden movement of his neck or any unusual or violent exercise he might do that involves his neck. He thinks he will have more tenderness and soreness following exercise than the

page 12 } ordinary person would have, had he not had this injury. He thinks he will have some pain in the injured area during inclement weather. He has had tenderness in the mid thoracic vertebra, about the middle of his back. He thinks that his difficulty will gradually subside for the most part and that he will have less trouble as time goes on, provided there is no new injury to his neck, but thinks he will always be conscious that he has had an injury to his neck, and he thinks the neck is more susceptible to injury as a result of this injury because of the scar tissue that will remain. Scar tissue will tear but will not stretch.

His prognosis for Hamilton is that his only disability is going to be that of excessive maneuvering of his neck, and perhaps in bad weather, and as a result of excessive exercising he is going to have pain. He does not think he is going to have anything in his neck that will incapacitate him from

work, but probably would have muscle soreness and pain as a result of lifting heavy objects.

The presiding judge of the first trial and the second trial adopts the following answers to the proposed questions as substantially reflecting a part of the testimony of Dr. Pritchett on cross examination at first trial held June 23, 1958.

"Q. Do you have in your file there a copy of your report of March 29th to Mr. Carter on the condition of Mr. Hamilton?

"A. Yes, sir.

"Q. Did you not state there, and did you not

page 13 } testify on a former occasion, that on the 20th of January the patient—that is, Mr. Hamilton, was having so much trouble having to come to the office that he was readmitted to the hospital for further treatment which was again physiotherapy and where again physiotherapy and heat was given him?

"A. Yes, sir.

"Q. At that time was his wife working?

"A. I believe she was but I am not sure.

"Q. And he found he had difficulty getting back to and from your office?

"A. He was having a great deal more pain. It sounds as if this was a transportation problem and I didn't mean that. I think that the exertion of his having to come to the office was causing him to have some difficulty.

"Q. Now, down further in that report did you not state that on March 17th that this patient was thought to be doing very satsifactorily and all medications were stopped?

"A. Yes, sir.

"Q. And you so testified before. Is that right?

"A. Yes, sir.

"Q. Then later as to your prognosis you said here: 'As to the prognosis at the present time, this man is free of all pain; however, in my experience, these patients may have pain during inclement weather or the pain may be precipitated by slight trauma to the neck that ordinarily would not cause a normal person to have any disability.' Did you have that in your report?

"A. Yes, sir.

"Q. And you so testified at a former trial, is that right?

"A. Yes, sir.

page 14 } "Q. Now, did you not discharge Mr. Hamilton on March 17th, 1958 without restrictions or limitations as to his activities?

Dr. Drake Pritchett.

"A. Well, I haven't got anything about that in my letter. I doubt very seriously if I did discharge him without any limitations. As I stated before, I don't have a record but I did discharge him with the idea to try to not do things that he knew was going to hurt his neck that were unnecessary, not to put any undue trauma to his neck that wasn't absolutely necessary.

"Q. Do you recall stating on the stand in June that you discharged Mr. Hamilton with no instructions, only to come back if the conditions bothered him?

"A. According to this letter I instructed Mr. Hamilton that if he had further difficulty to return to my office for further treatment. As to what I said in June I don't have any written record of what I said at that time. I thought I said that I instructed him not to do things that he knew was going to hurt his neck and I don't think I would very likely tell him for you to 'Go ahead and do what you want to do and forget about your neck.' I don't think I said that.

"Q. Well, have you limited him or restricted him in his activities?

"A. Only to the point of what I said to begin with, that I instructed him not to do unnecessary things that would hurt his neck when he didn't have to do it; that if he could prevent a wrenching of his neck in any way that he ordinarily would not pay any attention to then not to do it. I didn't think he should put his muscles of his neck to the acid test.

"Q. Did you mean such things as football or diving?

"A. They could be considered as that." (Tr., second trial pp. 24-26)

page 15 } INCIDENTS OF TRIAL.

Plaintiff was present throughout the trial and testified in person before the jury.

After the evidence had been completed the Court took into consideration instructions offered by the plaintiff and by the defendant. No claim was made in the motion for judgment for damages to plaintiff's automobile. Defendant's counsel urged the Court to include in Instruction 3, offered by plaintiff covering measure of damages, the item of damages to plaintiff's automobile, but counsel for plaintiff objected and the Court refused to submit to the jury the question of damages to plaintiff's automobile. The Court instructed the jury on the theory of liability, as well as the question of damages resulting from personal injuries sustained by plain-

tiff. Defendant's counsel at the beginning of his argument stated to the jury that the defendant was liable to the plaintiff for compensatory damages resulting to plaintiff as a result of the collision complained of, and that such damages should be fixed in accordance with the Court's instructions on damages.

Tendered on this, the 18th day of December, 1958, and within sixty days after final judgment.

A. M. AIKEN
Judge of the Corporation Court
of Danville, Virginia.

Signed on this, the 18th day of December, 1958, and within seventy days after final judgment.

A. M. AIKEN
Judge of the Corporation Court
of Danville, Virginia.

* * * * *

page 3 } DR. DRAKE PRITCHETT,
having been first duly sworn, testifies as follows:

* * * * *

page 4 } A. I saw Mr. Hamilton in the emergency room at Memorial Hospital shortly after the accident that he stated he had been in. At this time he had a severe pain in his neck and in his back and shoulders and head.

Q. Now, Doctor, did he describe the accident or give you a history of the accident?

A. Yes, he did. I might not be too accurate about what he told me but he stated, if I remember correctly, that he was at a stop light, or had stopped. I remember it was extremely bad weather, I think that night, and that a car struck him from the rear.

Q. Now, with this history what was your diagnosis of the difficulty that he had? What type of injury did he have?

A. Well, of course, if I remember correctly there were no truly lacerations that required any suturing. He had a severe muscle spasm of his neck at this time and of his shoulders and the muscles of his back. This would be con-

Dr. Drake Pritchett.

sidered a so-called whiplash injury of the neck. The severity of the injury at that time I could not tell. These injuries give the appearance of being very severe at the time of the first examination and may not turn out to be too bad, whereas some of these injuries may go several weeks before they even seek any kind of advice because they have more or less of a delayed reaction to the severity.

Q. Doctor, could you explain for us just what the
page 5 } mechanical process is that the body goes through
when a person sustains a so-called whiplash?

A. Well, a whiplash is as the name describes. It is so designated because of the motion that the neck goes through is a whiplashing and when a person is standing still, or is in a parked car, and is struck from the rear it throws the neck forward like this very suddenly and then back and then back forward like this. All of it is done very quickly and all in a matter of seconds, those three motions, as a rule is what he goes through.

Q. Doctor, when one is injured with a whiplash motion is it just the head in motion or what part of the body?

A. It is really the head and neck that catches the brunt of it. However, the shoulders can be thrown forward too but usually the muscles of the back and shoulders are strong enough for it not to do a great deal of damage to the muscles of the back. It can do it, depending upon the severity of the blow.

Q. Now, what part of the body is put under stress and strain by this unusual motion?

A. Well, that causes the most disability. I suppose any injury can happen. As a rule, the back is braced against the seat pretty well and it has a tendency not to be whipped as it may be thrown forward and come back but it is the
neck and head and especially the cervical muscles
page 6 } of the neck which are the muscles back through here
(indicating) and in front. The cervical muscles, or rather the cervical spine and cervical spine means the first part of the vertebra as it leaves the skull.

Q. Now, Doctor, you say when you found him in the hospital he was suffering some pain in the neck, the back and also the head. Now, what did you determine about his head?

A. Well, my feeling at the time was that he did not have any severe injuries *per se* to his head. It is my feeling that the pain in his head was coming from these muscle attachments from the neck that go to the skull. The muscles that would make one be able to put his head back like that comes

from the muscle that goes up and attaches to the skull back of the crown and his head ached and his head hurt him and it was more coming from the severe contusion of the muscles and ligaments of the vertebra rather than the actual trauma to the head itself.

Q. Doctor, this type of injury, whiplash injury, do you see many or are they rather rare?

A. Well, we see a fair amount, some are much worse than others. These injuries are more or less classified as mild and severe and then the in between kind. In the mild ones the pain may last a few days to a few weeks and the more severe ones may last years, but they are not too uncommon an accident. Most of them are regularly treated as not
page 7 } perhaps as severe as this particular one was. Most of them are treated as an office patient and never is too difficult.

Q. Now, what treatment did you administer to Mr. Hamilton?

A. Well, he was admitted to the hospital and we obtained x-rays and found there were no broken bones and then he was started on physiotherapy in the department of the physiotherapy at the hospital.

Q. Doctor, during the first several days of his convalescence was he spitting up any blood?

A. Yes, not immediately. He started spitting up blood several days after he was admitted to the hospital.

Q. Were you able to trace this to some type of injury?

A. Well, the x-rays of his chest did not find any evidence of any lung disease or any injury to his lungs and since he had never given a history of any spitting or blood before it was my opinion that at this time that probably in the accident he had probably struck his chest against the steering wheel of the car and that had probably caused some contusion or bruising of the lungs. As far as the x-rays were concerned none of this was confirmed. The x-rays when they were obtained did not show anything but at the same time his ribs had to be ruled out and any previous diseases had to be ruled out.

Q. Now, Doctor, was he experiencing any pain at
page 8 } this particular time?

A. The pain was very severe and he had severe headaches.

Q. Did you have to give him anything to alleviate the pain?

A. He required large quantities of opiates for relief of his

Dr. Drake Pritchett.

pain.

Q. How long did you continue to give him opiates?

A. Several days before he left the hospital and when he left the hospital he was extremely nervous and was to the point that his nervousness was more of a problem then than the actual headaches.

Q. Now, Doctor, you say you gave him physiotherapy?

A. He received heat and hot packs and diathermy to his neck.

Q. Is that the usual treatment given to whiplash injuries?

A. Yes. The necks are usually put at rest, as anything would be put at rest, along with heat to help and promote healing of the torn muscles and torn ligaments.

Q. Was he confined to the bed during a period of time?

A. No, he was not confined to his bed but he was allowed to be up and have bathroom privileges.

Q. During the first week that he was there?

A. He was confined to his bed.

* * * * *

page 10 }

* * * * *

Q. He was there from when?

A. From the 25th of December to the 12th of January.

Q. Then you permitted him to go home?

A. Yes, sir.

Q. What did you prescribe for him after he left the hospital?

A. Well, he was continued on cortisone and mild sedation.

Q. What was the purpose of the cortisone?

A. To promote muscle relaxation and muscle healing and tenderness of ligaments and tendons and muscles.

Q. When you say, mild sedation, what is that?

A. That consisted of sodium butisol, which is a barbiturate and then I don't remember exactly what he was given at that time to provoke sleep. This man had a great deal of difficulty sleeping after he went home and apparently was just walking the floor all night and that presented quite a problem.

Q. And you gave him sodium butisol which is a barbiturate to relieve nervousness during the day and gave him something stronger at bedtime to help him sleep?

Dr. Drake Pritchett.

A. Yes, sir.

Q. Now, did you see him in the office during that period of time after he was discharged from the hospital?

page 11 } A. Yes, I saw him each day or practically each day from the time he was discharged from the hospital until nearly March. It wasn't every day. The days are on this chart. Then he was readmitted to the hospital. Things went from bad to worse and I assume I had used very poor judgment in letting him go home on the 12th of January and he was readmitted to the hospital on the 20th of January for ten days.

Q. Was he readmitted because he was not progressing properly?

A. He was readmitted because his symptoms became worse. His nervousness had increased, his headaches increased and he wasn't doing at all well.

Q. So you put him back in the hospital?

A. That is correct.

Q. What sort of treatment did you prescribe then?

A. He continued the physiotherapy, heat, rest, diathermy and muscle relaxation.

Q. It wasn't or was it necessary to give him sedation the second time he went back to the hospital?

A. Yes.

Q. When did you discharge him from the hospital the second time?

A. January the 30th.

Q. He was admitted on what day?

A. January 20th.

• • • • •

page 12 }

• • • • •

Q. Now, Doctor, did you have occasion to treat him after he was discharged from his hospital on January 30th?

A. Yes, sir, I saw him quite a few times.

Q. What type of treatment were you giving him then?

A. Diathermy and an occasional dose of cortisone.

Q. The cortisone was to relax the muscles?

A. Yes, sir. This man at this time was showing very gradual but slow improvement and his treatment was continued. There was no change in the treatment.

Dr. Drake Pritchett.

Q. I believe you looked after him until about March 17th. Did you permit him to go back to work at that time?

A. Yes, sir.

Q. Did you feel he was highly capable of going back to work at that time, Doctor?

A. Well, I thought that perhaps this man would probably do better if he had not gone back to work but I also realized he had a wife and family he had to support and I figured the sooner we could get him back to work probably the better off his frame of mind would be. I thought probably the muscle injury, as compared with the nervous tension of the injury, that one overshadowed the other, and I was willing to try to see if we could get him back to work to try to alleviate tension by keeping him busy to see if it wouldn't help.

page 13

Q. Did you envisage at that time he might be needing medical help?

A. Well, these patients, as a matter of fact, when he was told he would go back to work I told him to return to the office at intervals so we could keep check on him because I didn't know whether or not it would be necessary to stop him from work if his pain became so bad.

Q. Did you prescribe some home treatment for him?

A. Yes, he was continued on small dosages of cortisone and mild doses of sedation and they were being gradually cut down as he was improving. He was still having difficulty but he was improving.

Q. Doctor, when was the next time after March 17th that you observed him?

A. I saw him again June 25th.

Q. June 25th of this year?

A. Yes.

Q. What did you find his condition to be then, Doctor?

A. Well, it had been approximately three months since I had seen him and at that time I found he was still having some difficulty with his neck and he was working. He still had some residual muscle tenderness but very little spasm at that point.

Q. By spasm of the muscles in the neck what do you mean by that, Doctor?

page 14

A. The muscles actually go into spasm. I think most of us have experienced what is spoken of as a charley-horse. That is a muscle spasm.

Q. This muscle spasm accompanies the whiplash injury to the neck?

Dr. Drake Pritchett.

A. It is coming from the injury to the muscles which, in turn is coming from the whiplash.

Q. Does that muscular spasm indicate to you objectively whether there is some pain or trouble there?

A. I don't think you could get muscle spasm without having pain. I don't think any of us know how long it takes these necks or any muscles to heal completely nor what is the process it is going through in healing. We do know that the more a muscle is injured at the time of the original injury the more permanent damage it is going to be and that the only thing anything can heal, no matter what it is, is by scar tissue and if there is a great deal of hemorrhage into the muscle then you are going to get a resulting scar tissue and fibrosis of the muscle and the muscle after it does that, depending upon the amount of difficulty there, is going to lose its flexibility and develop from that pain, depending on the amount of injury.

Q. Depending on the degree of injury?

A. The degree.

page 15 } Q. That is the residual injury you get?

A. That is right.

Q. You say oftentimes this muscular injury is accompanied by hemorrhage in the muscle itself?

A. All muscle injury is going to be affected by hemorrhage to the muscle, depending on how severe it is. The muscle is a very vascular mechanism. It has to have blood and the more it is used the more blood it is going to require and when these muscles are suddenly stretched or torn then it is going to tear the blood vessels at the same time.

Q. Now, these muscles heal and leave scar tissues?

A. Anything that heals leaves scar tissue, no matter what it is.

Q. Does that scar tissue have a tendency to leave you or is it always with you?

A. Scar tissue is always present.

Q. And it is the scar tissue that brings about the residual injury and continuing trouble?

A. That is correct.

Q. Now, Doctor, is a muscular spasm of the neck for example something that you can find or something that you can reproduce?

A. No, I wouldn't think so.

Q. Then the spasm of the muscle is an involuntary reaction

Dr. Drake Pritchett.

of the body?

page 16 } A. That is correct.

Q. Now, Doctor, you say you found some muscular spasm as late as June of this year?

A. I found muscle tenderness but very little spasm.

Q. In other words, the spasm had almost disappeared at that time?

A. That is correct.

Q. Now, did you continue to treat Mr. Hamilton after June of this year?

A. Yes.

Q. Will you give us a run down of what you prescribed and what you found?

A. Well, at the time I saw him I didn't think any particular medication was necessary, other than to try to build this man up some. He had lost a great deal of weight since this accident. His weight was gradually going down and I think he was given just a supplementary diet of minerals and vitamins to improve his appetite, diathermy, and the heat was continued each time he came by the office. I saw him twice in June and then five times in July and once in September and twice this month. Each time he was given diathermy to his neck and his shoulder.

Q. Now, you gave him vitamins and minerals to more or less whet his appetite and build his body resistance up. Over what period of time have you noticed this losing

page 17 } of weight?

A. Since the original injury back in December. I don't have a record of Mr. Hamilton's weight in that his weight was never any problem with him so for that reason I don't know how much he weighed at that time; however he was a great deal heavier. I do have a record on September the 24th when I weighed him and he weighed 156 pounds. I would imagine that he weighed close to 185 pounds prior to the accident but I don't know of any actual record of it.

Q. Doctor, have you discharged this man from your care?

A. No, sir. He has not been discharged. He has been told to return to the office if it continues to bother him or if he has more pain. I have not set any specific date for him to return to my office.

Q. Do you anticipate he is going to need any further medical treatment?

A. That I couldn't answer.

Dr. Drake Pritchett.

Q. Well, what do you think the future holds for an injury of this kind which has persisted this long?

A. I think he will have pain in his neck on strenuous exercise or any sudden movements of his neck or any unusual or violent exercises he might do that involves his neck. I think he will have a great deal more tenderness and soreness following exercise than the ordinary person would have had they not had this injury.

Q. Is it reasonable to expect that he may have
page 18 } pain when the weather is damp, for example?

A. Yes, because of humidity or some reason or another people do have pain. It seems that people who have had injuries do have more difficulty in inclement weather.

Q. Has he had any tenderness or any suffering in any areas other than the immediate neck region?

A. Yes, he has had some tenderness in the mid-thoracic vertebra, about the middle of his back.

Q. In the area of his spinal column?

A. Yes, sir.

Q. Do you anticipate that this man will be entirely free of pain at any time in the future as the result of this accident?

A. I think that his difficulty will gradually subside for the most part and I think that he will have less and less trouble as time goes on, providing that there is no undue injury to his neck. I think he will always be conscious that he has had an injury to his neck.

Q. By "conscious" what do you mean?

A. I think where he has always been able to do anything he wanted to do and never considered any part of his body getting hurt I think that he will unconsciously avoid things that he knows is going to hurt his neck.

Q. Is the neck more susceptible to injury as a result of this than it would be ordinarily?

page 19 } A. I think so, because of the scar tissue that is there.

Q. Now, Doctor, where the convalescent or healing process has been protracted as this does that mean anything to the medical profession as to the prognosis of the future?

A. A book has been written by two or three good orthopedic surgeons, Dr. Charles Frankel, at the University of Virginia has written quite a treatise on whiplash injuries of the neck and I believe this book was written more for the legal profession than the medical profession, although both are brought into it. He, in his book, divides these whiplash

Dr. Drake Pritchett.

injuries into three categories, mild, moderate and severe. Then he brings out that the mild may have temporary pain that lasts for a few days and then disappears and the patient never suffers any ill effects. The moderate, the symptoms are a little bit more but in the severe injuries the symptoms will last for years and no one knows how long. There is no way in the world that you can tell just how severe an injury is exactly on these particular injuries except by the patient's objective and subjective findings. Well, as a rule, excepting the very severe injuries you don't get fractures. Now, you can get fractures of the cervical vertebra and, of course, if the thing is hard enough to get a fracture then you know you have got pretty good injuries. If you don't get some fractures then you have nothing except what you can feel with your hands and see with your eyes on a man's neck
page 20 } and you don't know how much injury has been done to the ligaments or muscles because you never get a chance to look at them, no way you can x-ray the muscles or ligaments.

Q. Now, Doctor, you say what you can see with your eyes and feel with your hands. Can you feel muscle spasms?

A. Sure.

Q. Muscle spasm is more acute in the more severe cases than in the lesser cases?

A. Oh yes.

Q. Judging from the muscle spasm that you have detected in this patient would you say his was a lesser or greater degree of intensity?

A. I would say his was greater.

Q. Would you say his was one of the more or less severe types of whiplashing?

A. I would say one of the more severe.

* * * * *

page 21 }

* * * * *

Q. Did you attribute much importance to the fact that he spit up some blood there after the accident?

A. I didn't think it was of any consequence, in that I thought he probably had been struck by the steering wheel in his chest and probably caused some contusion of the lung

which I didn't think would ever cause any difficulty. I wasn't concerned about it.

Q. That is what I said. Then in the progress he has made it has proved your thought in the matter that the spitting up of the blood did not prove serious?

A. That is right.

Q. Do you think any of the nervousness which he complained of when you saw him at the time he left the hospital was due to sedation?

A. No, sir, the nervousness was there before the sedation was given. The sedation was given because of the nervousness.

Q. Considerable sedation does bring about a
page 22 } nervous condition, doesn't it?

A. In the first place, I don't believe this man had considerable sedation. He may have had sedation over a long period of time but it was only very mild sedation, a sedation that perhaps any one of us could take and continue on with our work without even knowing that we had it.

Q. I understood you to say he had a strong sedation?

A. No, sir. He had mild sedation during his waking hours. Perhaps he was given a little heavier sedation at bedtime to try to induce sleep; however, in this particular case it was even very difficult to induce sleep. He had no more sedation than an average post-operative patient or a person who may be in the hospital who is having difficulty resting.

Q. You find people in normal life having difficulty resting, especially as they get older, do you not?

A. Yes, sir.

Q. Now, I believe you took x-rays of Mr. Hamilton's chest at the time of his injury?

A. Yes, sir.

Q. Were they negative?

A. Yes, sir.

Q. Tell the jury what you mean by negative. What does that mean when you say the x-rays are negative?

A. No abnormal findings could be noted.

page 23 } Q. Doesn't it mean that you couldn't find any fracture or any abnormality?

A. You asked about his chest. You are not looking for fractures when looking at a chest area and this report written by Dr. McClennan stated that the lungs and heart were normal.

Q. Those x-rays would show fractures of the ribs, wouldn't they?

Dr. Drake Pritchett.

A. Yes, sir.
Q. So there were no fractures of the ribs?
A. No, sir.
Q. And there were no abnormalities found in those x-rays?
A. No, sir.
Q. At the time that Mr. Hamilton was in the hospital and up until the time that you discharged him in March, March 17, 1958, did he complain of any pains in the middle of his back, down in the thoracic region?
A. Yes, sir, he complained some of some pain in his back and on several instances he was given diathermy over his back at the point he was complaining.
Q. Was that the point that was subsequently found to be a condition of abnormality by Dr. Kinser?
A. Yes, sir.
Q. At the time he was complaining of that thing in his back, the middle back, he did not have an x-ray of that?
page 24 } A. No, sir, he did not.
Q. Do you have in your file there a copy of your report of March 29th to Mr. Carter on the condition of Mr. Hamilton?
A. Yes, sir.
Q. Did you not state there, and did you not testify on a former occasion, that on the 20th of January the patient—that is, Mr. Hamilton, was having so much trouble having to come to the office that he was readmitted to the hospital for further treatment which was again physiotherapy and where again physiotherapy and heat was given him?
A. Yes, sir.
Q. At that time was his wife working?
A. I believe she was but I am not sure.
Q. And he found he had difficulty getting back to and from your office?
A. He was having a great deal more pain. It sounds as if this was a transportation problem and I didn't mean that. I think that the exertion of his having to come to the office was causing him to have some difficulty.
Q. Now, down further in that report did you not state that on March 17th that this patient was thought to be doing very satisfactorily and all medications were stopped?
A. Yes, sir.
Q. And you so testified before. Is that right?
A. Yes, sir.
page 25 } Q. Then later as to your prognosis you said here: "As to the prognosis at the present time,

this man is free of all pain; however, in my experience, these patients may have pain during inclement weather or the pain may be precipitated by slight trauma to the neck that ordinarily would not cause a normal person to have any disability." Did you have that in your report?

A. Yes, sir.

Q. And you so testified at a former trial, is that right?

A. Yes, sir.

Q. Now, did you not discharge Mr. Hamilton on March 17th, 1958 without restrictions or limitations as to his activities?

A. Well, I haven't got anything about that in my letter. I doubt very seriously if I did discharge him without any limitations. As I stated before, I don't have a record but I did discharge him with the idea to try to not do things that he knew was going to hurt his neck that were unnecessary, not to put any undue trauma to his neck that wasn't absolutely necessary.

Q. Do you recall stating on the stand in June that you discharged Mr. Hamilton with no instructions, only to come back if the conditions bothered him?

page 26 } A. According to this letter I instructed Mr. Hamilton that if he had further difficulty to return to my office for further treatment. As to what I said in June I don't have any written record of what I said at that time. I thought I said that I instructed him not to do things that he knew was going to hurt his neck and I don't think I would very likely tell him for you to "Go ahead and do what you want to do and forget about your neck." I don't think I said that.

Q. Well, have you limited him or restricted him in his activities?

A. Only to the point of what I said to begin with, that I instructed him not to do unnecessary things that would hurt his neck when he didn't have to do it; that if he could prevent a wrenching of his neck in any way that he ordinarily would not pay any attention to then not to do it. I didn't think he should put his muscles of his neck to the acid test.

Q. Did you mean such things as football or diving?

A. They could be considered as that.

Q. Dr. Pritchett, did I understand you to say that an injury such as Mr. Hamilton has suffered caused muscle spasm and muscle spasm in turn caused pain?

A. Yes, sir.

Q. And following muscle spasm you have scar tissue?

Dr. Drake Pritchett.

A. I did not say that.

Q. What is the connection between muscle spasm and scar tissue?

page 27 } A. There is no connection between muscle spasm and scar tissue.

Q. I understood you to say on your direct examination that the scar tissue caused pain?

A. That is correct.

Q. What is the relation then? You say there is no relation between muscle spasm and pain.

A. I would rather repeat what I said before. I said an injury to a muscle will cause hemorrhage into the muscle which, in turn, causes the muscle to have muscle spasm. When that muscle heals then scar tissue forms where the hemorrhage was but you can have plenty of muscle spasm without getting any scar tissue.

Q. I understood that, but I was asking what caused the scar tissue.

A. Hemorrhage, blood coming from the injury.

Q. And then the further question is how does the scar tissue bring about pain? How does that produce pain?

A. Because the muscle has to be pliable to move and stretch and muscles will stretch. Scar tissue won't stretch and you have the nerves in the scar tissue which are caught up in the scar tissue and they won't stretch. They will tear but they won't stretch.

Q. You are constantly doing surgery. You have scar tissue after every operation?

A. That is correct.

page 28 } Q. And does that necessarily mean because you have scar tissue you are going to have pain continually after the operation?

A. Some people may have a great deal of pain in the incision which you may attribute to scar tissue. Others have very little. It all depends upon the amount of trauma, and most incisions are placed so you do less damage to a muscle than if you use another incision. It is far better to cut across the muscle and cut the muscle across its breadth than to split the muscle from one end to the other.

Q. In many operations you do a great many of the patients have no pain after they fully recover?

A. That is correct, but that is coming from a lack of trauma to the muscle. You are not tearing the muscle across the muscle when you do that. The more traumatic the operation the more pain you are going to have.

Dr. Drake Pritchett.

Q. Dr. Pritchett, considering all that you found and all that you have learned from the beginning of this case to the present time do you find anything now that will interfere with or militate against Mr. Hamilton's competition in his employment field?

A. No, sir.

Q. In other words, presently he can perform his work as he has done in the past and as he would be expected to do in the future?

page 29 } A. Yes, sir.

Q. Now, one further question and that is at the present time, did I understand you to say that Mr. Hamilton's possibilities or probabilities, whichever you want to express yourself or put it, as to any injury extending in the future for some unlimited time is pain, would arise from pain and nothing else?

A. I am not quite sure I understand all of that question.

Q. I want you to make it plain and clear to the jury whether you think that Mr. Hamilton has any type of permanent injury or injury which cannot be prognosed as to the time other than the possible pain that he might have.

A. I think his only disability is going to be that on excessive maneuvering of his neck, perhaps in bad weather, excessive exercises, he is going to have pain. I don't think he is going to have anything in his neck that is going to incapacitate him from work.

Q. And he has full motion in his neck?

A. With pain. He can move his neck but he still has pain.

Q. Does he always have pain?

A. I couldn't say he always does but he has pain in his neck with movement.

Q. When you get hold to him and twist his neck

page 30 } he has pain?

A. I don't twist his neck.

Q. Then the pain you are talking about in the future will not incapacitate him as to work?

A. No, I don't believe it will.

Mr. Meade: I believe that is all.

RE-DIRECT EXAMINATION.

By Mr. John W. Carter:

Q. Doctor, is there any particular type of movement, parti-

Dr. Drake Pritchett.

cularly from the standpoint of work, that would accentuate or increase the pain?

A. On extreme flexion of his neck or extreme turning from side to side could cause it.

Q. If he had a job which called upon him to lift heavy objects from about the floor level up to about the level of his head with his hands would that type of motion have a tendency to give him any pain?

A. He would probably have some muscle soreness and pain but I don't think it would be extreme. I don't believe he would have any more than what he has already had.

Q. There wouldn't be any more than what he has already had. Now, Doctor, are employers ever reluctant to employ someone who has some physical disability?

A. I couldn't answer that. I don't know.

page 31 } Q. Now, Doctor, after having written a letter on March 17th you made further examinations of this man, did you not?

A. Yes, sir.

Q. And you have found that he still has symptoms of whiplash injury subsequent to your letter?

A. Yes, sir.

• • • • •

page 32 }

• • • • •

Q. In the case of someone who sustained a severe whiplash injury is it necessary for them to avoid doing anything such as playing football or any violent exercise that would aggravate that condition?

A. Yes.

Q. What type of deviation from the normal use of the neck would it take to bring about some additional trauma or some additional pain?

A. I think any violent exercise involving the neck.

Q. Would it necessarily have to be a violent exercise? Could it be a quick turning of the head?

A. Well, yes.

• • • • •

page 39 }

• • • • •

DR. PRENTICE KINSER, JR.,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. John Carter:

* * * * *

page 40 }

* * * * *

Q. Doctor, in June of this year did you have occasion to examine Mr. Robert Hamilton at the request of Mr. Edwin Meade?

A. I did.

Q. Would you be good enough to explain to the court and jury what you found on your examination?

A. At the time that I saw this gentleman on June 12, 1958 he gave a history of disability with his neck and back and associated with headaches. He stated that this disability dated back from an automobile accident on December 25th of 1957. The patient stated that he was sitting still in his car on the front seat beneath the steering wheel and was struck from the rear by another car, throwing him forward striking his chest against the steering wheel and hyper-
page 41 } extending his neck over the front seat of the car.

Q. What do you mean by hyperextending?

A. It means switching your head back past a normal degree of backward flexion. In other words back in this position (indicating).

Q. Doctor, was there anything inconsistent about the complaints he had with the type of injury that you often see where an automobile is at rest and is struck from behind and one of the passengers complains thereafter?

A. No, it is not inconsistent. That type of accident will result in a sprain of the superficial fascia and ligamentary structures of the neck and if it is severe enough it can damage the bone and also can produce central nervous system changes. You can damage the cord and get a dislocation from it if the force is carried to sufficient severity.

Q. Is there any type of description of this type of injury that is more comprehensible to the layman?

A. I think the most logical explanation would be to say it

Dr. Prentice Kinser, Jr.

is an acceleration—deceleration in this type of injury or just a simple sprain is what we used to call it.

Q. Now, do these sprains appear in greater or lesser degrees in recent years?

A. Yes.

Q. Was there any history of striking his head?

A. I didn't get any history of his head injury
page 42 } from a direct blow on the head but we do know that
this type of injury results from the head being rocked back and forth on the neck and you will get a certain amount of concussion of the brain which varies in severity, of course, depending on the force that produced the blow and how long the force acted and how severe the force was. That would determine how much concussion there was. You don't have to strike the head against any direct object to get a concussion.

Q. From the history that you had what did you consider the causation of the headache he complained of at the time?

A. At the time I saw him his headaches did not conform with any nerve root distribution from the second and third thoracic nerves applied to the scalp and the type of headache did not conform with that and so I assumed, and I thnik it is a logical assumption, that his headaches were due at that time to the concussion he had received.

Q. Do headaches often follow a brain concussion?

A. You do find them quite frequently following a concussion and the severity of the headaches will vary from time to time and may last for several weeks to several months following an accident.

Q. Now, Doctor, just what mechanical process takes place in the neck region following one of these sprains resulting from deceleration to acceleration or *vice versa*? Just what
type of injury is it? What portions of the neck are
page 43 } injured and what is the type of injury?

A. Well, of course, the type of injury you receive will depend upon the force that produces the injury. In the very mild type, which occupies the greater percentage of them. only the superficial fascia of the neck is stretched.

Q. What do you mean by superficial fascia?

A. That is the fascia that overlies the muscles beneath the subcutaneous skin.

Q. What is the fascia?

A. That is the fibrous tissue lining that covers your body and fascia contains the nerves that pass through the fascia and the fascia is very painful when it is damaged because of

the sensory distribution of nerves that come into the fascia and it is the fascia that is damaged and the majority of the cases of deceleration or sprains we see with this type of injury do fall into this particular category of injury and damage to the superficial fascia, and that fascia is extended from the neck on down over the shoulders and on down the back even to the lower lumbar region of the spine, and it can be stretched as far down as that area there and that is the reason why a big percentage of the cases involving this type of injury complain of pains in and around the shoulders, in and across the back, and down onto the lumbar spine because of that stretching action on that fascia. Now, that is in the mild cases and, of course, as we know, fascia and the various

page 44 } nerves distributed there will give a bizarre type of picture that you can not put your finger on in any particular area or any particular group of muscles that are involved, but that heals in around six to eight weeks and the symptoms will gradually subside but they are symptoms from the superficial nerve damage and that may last for several months after the injury.

Now, if the force is greater you get a stretching of the ligamentous attachments of the muscles of the neck on each side of the neck and in the back you have groups of muscles that support the cervical spine. Now, when that is done you have, of course, a more serious type of injury. The muscles are tender, the ligaments are tender, and if there has been sufficient damage to the muscles and ligaments you may get hemorrhage from the torn structures into the deep spaces of the neck and you can sometimes see a swelling of the throat from that type of injury by looking into the throat and it may affect to a certain extent the patient's voice or ability to talk or swallow because of the damage to his ligaments.

Now, if the ligaments are completely torn and it goes on down, the force is carried on deeper into the boney structures, you will get a tearing of the ligaments around your joints and you may go on to a dislocation of the cervical spine or you may get a fractured dislocation of the cervical spine if the force is of sufficient severity.

Q. Now, Doctor, when you have the more severe

page 45 } type of sprain where there is hemorrhaging is there any scar tissue produced as the ligaments heal?

A. As the ligaments heal they heal by scar formation, yes, sir.

Dr. Prentice Kinser, Jr.

Q. Now, does this make the injury more painful in the future?

A. Not necessarily from the ligaments, the deep ligaments, because they are relatively free of nerve fibers.

Q. The muscle tissue attached to these ligaments, is that nerve free?

A. That depends upon the individual muscles.

Q. Is there any pain sensation after a severe whiplash injury, as it is sometimes called?

A. In the severe ones, of course, where the ligaments are torn you have pain in addition to your superficial nerves and superficial fascia which is a very painful area. You go on deeper and you have your nerve trunks that come off with the motor *trun* and a sensory trunk. This motor trunk goes to your muscles and the sensory trunk comes out to the fascia, the superficial fascia, and to the overlying skin in that particular region of the body where it is supposed to go.

Q. Speaking of the nerve trunks, are those the passages, the nerve passages that come out between the vertebrae, down the spinal column and are distributed out to the various parts of the body?

page 46 } A. That is true.

Q. Now, you say this was a painful injury. What I am trying to determine is whether the sensory nerves come into play as a result of this injury.

A. I think the majority of the sensory nerves come into play in the superficial fascia, damage to the superficial fascia, unless you do have neurological changes, a definite showing or evidence of neurological damage such as loss of use of a motor group with anesthesia or something like that.

Q. Doctor, did you notice any other abnormality that Mr. Hamilton had at the time you examined him?

A. At the time I examined him on June 12th he was complaining of a pain over the seventh and eighth dorsal vertebrae.

Q. Doctor, could you demonstrate about approximately where that is on me?

A. At the time I saw him he was complaining of pain when I pressed in this region through here and that is the level of the seventh and eighth rib. The point of the shoulder blade is at the level of the seventh and it was in this level he was tender on pressure. He was complaining of intermittent presence of pain in this region here which I felt was due to the possible damage to the superficial fascia when he was in the accident.

Dr. Prentice Kinser, Jr.

Q. Doctor, you said there was evidence of pain
page 47 } on pressure?
A. On percussion.
Q. What do you mean by percussion?
A. That is when you pound on it.
Q. Did you make any x-ray examination of the area that was sensitive on percussion on the seventh and eighth vertebrae?
A. An x-ray was made of his neck and his dorsal spine too. X-ray of his neck was entirely negative, showed normal curve denoting there was not present any muscle spasm in the cervical muscles, and an x-ray on his dorsal spine shows that he did have a narrowing of the seventh dorsal vertebra with some narrowing of interspace between the seventh and eighth dorsal vertebrae.
Q. Doctor, you have spoken of a narrowing of the interspace. Perhaps we can get the blackboard in here and let you demonstrate what you mean.
A. I have an x-ray here. I know it is difficult to see. I will try to draw it on the blackboard. The x-ray was taken from the lateral projection. The patient lies on his side. X-ray tube is up here and the film is down on the opposite side and it shows the profile of your dorsal spine.

(The witness draws on blackboard and proceeds to explain the drawing.)

It shows up the body of the vetebra. Say this is the
page 48 } sixth one and this is the seventh one. You notice a
little narrowing of this body here and then comes in and instead of having this interspace here which has mucous in it it is narrowed and then comes down to a normal width vertebra. This is the seventh and this is the eighth and this is the interspace that is narrowed over what this one is between the eighth and the ninth and you can see the total size of the body here in the sixth and eighth but this seventh one is smaller and you have a disturbed interspace between the seventh and eighth.
Q. Doctor, is it possible to have this type of thing in one's back without having realized any trouble from it before?
A. This type of thing that is present there is brought on by an injury generally of some type, or some type of trauma to the back. In other words, it could be trauma from disease, something he had earlier in life or it could be from some injury that he had received earlier in life, I don't know. This

Dr. Prentice Kinser, Jr.

is the end result of a pathological process produced by some type of trauma, whether the trauma was disease or traumatic injury I don't know.

Q. What I am trying to get at is, could one have that condition without having had any trouble from it before?

A. Oh yes.

Q. Now, does it constitute a point of weakness in the back that is more susceptible to injury and damage than the normal back?

page 49 } A. Yes, sir. It is an area which is not normal. It is abnormal and it can be more easily traumatized because of the disalignment of the vertebra there in that area.

Q. Could we logically say that any stress put on the spine would probably be reflected in that area?

A. Yes, it could be reflected in that area very easily.

Q. Now, with the symptoms you observed at this time were they consistent with some injury in that area of the back?

A. The thing that I could pick up at that time was tenderness to percussion. He did not have any muscle spasm in his dorsal spine. Of course, we know motion in the dorsal spine is a negligible thing. We have most motion in the lumbar spine and in the dorsal—lumbar, where your chest joins on to the lower part of your back, there is very little motion of the vertebra in that area but there is a small amount of motion. This is limited motion in that area but the motion of his spine was pretty free.

Q. Doctor, is this a painful type of injury?

A. What type are you speaking of?

Q. Let me put it this way: Where one has an aggravation of a condition such as the narrowing of the vertebra interspace does the aggravation produce an appreciable pain?

A. Yes, sir, it is painful in that area because in addition to the joint spaces being narrowed between the seventh and eighth there is bound to be a strain on that joint

page 50 } of the back of the vertebra that hooks one vertebra onto another which I did not show in the view in my drawing there but the joint on the back over the left that attaches one vertebra to the other, one on each side of the spine, they are thrown out of alignment too.

Q. Doctor, is the injury to the ligaments and muscles of the cervical spine or neck a painful injury?

A. I don't think you would have too much pain. There is bound to be a certain amount of pain associated with it but, as I told you before, your pain nerve goes to the superficial

fascia and to your skin, the overlying skin and there is a certain amount of pain.

Q. You are of the opinion there was a damage to the superficial fascia?

A. I will have to say there is a certain amount of pain associated with the tearing or stretching of ligaments but your big pain comes from your fascia attachments.

Q. Is it usual or unusual to have patients who have suffered this neck injury to have to be hospitalized and given sedation and considerable treatment for a long period of time?

A. It is not an unusual thing in severe types where there is associated concussion and also where the deep structures have been damaged also because they are associated with a lot of muscle spasm and have limited motion and stiffness in the neck.

page 51 } Q. Does the concussion indicate anything about the severity of the sprain of the neck?

A. Well, it only means that the blow has been severe enough to cause the head to rock back and forth and with that rocking motion the brain tissue, of course, is a soft jellylike material, and it becomes injured also.

Q. Doctor, based on the history you took in this case would, you classify this as a more or less severe type of injury to the neck?

A. Well, with the prolongation of the symptoms—I didn't see the man in the original phases when it was active so it is difficult for me to say how severely he was injured. All I have to go on is my findings of now, or of June 12th, and say that it certainly was more than just a mild strain or injury to the superficial fascia. I think definitely he had more to it than just that very mild sprain.

Q. I believe, Doctor, after you examined him in June of this year you recommended that he take some further treatment. I think he had discontinued treatment for awhile?

A. I never treated the man. I did examine him once more, which was just the other day on the 15th of this month. I checked him over again.

Q. I believe at the time you examined him in June that you did recommened that this man have some further treatment?

A. I don't have any record of recommending to

page 52 } you or to Mr. Meade any particular treatment for him but I would say this; that with that condition present as we found it there on that date that what I usually recommend is a form of shoulder support, called the figure of eight, to improve the posture of the individual. We put them

Dr. Prentice Kinser, Jr.

on exercises. We also give them diathermy to the back. How much benefit diathermy does I don't know but we use it. It is recommended and it does seem to help some people to a certain degree to relieve the symptoms.

Q. You did feel in June some further treatment would be of benefit to him?

A. Yes, sir. I think he continued under the care of Dr. Pritchett, as far as treatment was concerned.

Q. Doctor, if an individual had the injury that you have been able to not demonstrate but diagnose by virtue of the history given you, and his job or employment required him to reach down to about floor level and pick up heavy bats of cotton and place them in a machine about the level of his head, would this have a tendency to aggravate his condition or to cause him additional pain?

A. I think after he gets well I see no reason why it should.

Q. After he gets well?

A. After he gets well from this accident he can go on and do anything he wants to.

Q. Has this been a rather prolonged recovery page 53 } he has experienced?

A. At the time I saw him in June, of course, that was six months after the accident and I didn't think then he was entirely recovered on June 12th. I thought he was still having symptoms which could be and should be attended to by his physician, which I think he followed.

CROSS EXAMINATION.

By Mr. Meade:

Q. Dr. Kinser, I believe on June 12th you examined Mr. Hamilton at my request and you wrote a letter or report under date of June 16th and I assume you sent a copy of this report to Mr. Carter?

A. Yes, sir, that is true.

Q. Then again on June 18th you wrote another letter to us explaining further the condition which you found there in the area between the seventh and eighth thoracic vertebra. Is that correct?

A. Yes, sir, that is true.

Q. Now, those reports, or those letters, treated with the conditions which you found upon examination and upon taking x-rays of Mr. Hamilton?

A. Yes, sir.

Q. I am going to confine my questions to your examination

and to your report rather than to the general
page 54 } dissertation of whiplashes generally and I will ask
you to refer to your report, or you may remember independently of your report the findings which you came up with. Now, let me first ask you to explain to the jury the difference between subjective findings and objective findings.

A. In taking a history, or in examining a patient, we have two types of symptoms that we go on to arrive at our diagnosis. The first is what the patient tells us and how he feels and what he has experienced in the way of pain and what he can do and what he can't do and what effect it has on his body and so forth. That is what we call subjective symptoms, what he tells us. Now objectively are those findings we are able, as physicians, to pick up by examining the patient himself, examining his physical body and arriving at any irregularities from the normal person.

Q. Now, you were asked to examine Mr. Hamilton thoroughly and take all x-ray pictures which you thought might be necessary to throw any light on the subject, were you not?

A. Yes, sir.

Q. Look at your report and refer to your file and tell us whether you found his pupils normal, the pupils of his eyes normal and regular, and whether they reacted to light and accommodation.

A. That is true.

Q. Did you find any trouble with his mouth, nose
page 55 } or throat?

A. No, no trouble there.

Q. Was there present any disturbance of sensation over his scalp or face?

A. No disturbance of any sensation.

Q. Was there anything unusual or extraordinary about his heart, lungs and blood pressure?

A. They were normal.

Q. Was there any indication of compression of the chest?

A. That was negative.

Q. What about the motion of his shoulders? Were they free and normal?

A. They were normal.

Q. Was there any tenderness over either shoulder joint?

A. No, sir, there was not.

Q. Now, at this point will you explain to the jury the three sectors of the back? You have your cervical spine. What area is that in?

A. The cervical spine is that area from the first dorsal

vertebra and extends up to the skull where the first cervical vertebra attaches to the skull, the area between the shoulders.

Q. Beginning at the base of the skull and going down you first have the cervical spine?

A. Yes, sir.

Q. Then next to that is the dorsal spine?

page 56 } A. The dorsal spine.

Q. And the next and lower down in the hip region is the lumbar spine?

A. That is the small of the back and that is the lumbar spine.

Q. Was there normal motion in the cervical spine in all directions?

A. That was my impression at that time that the motion of the cervical spine was normal.

Q. Was there any muscle spasm in the cervical spine?

A. Not any spasm in the cervical muscles.

Q. What about the dorsal or lumbar spine, were they straight?

A. Now the dorsal spine and the lumbar spine were found to be straight.

Q. Was any muscle spasm of the back muscles?

A. No muscle spasms were present.

Q. Was there any injury or abnormality to the sacroiliac and hip joints?

A. No, they were normal.

Q. Did you test his ability to raise his legs?

A. I did and they were normal. Straight leg raising was normal.

Q. You made a Babinsky test. What sort of test is that?

A. That is a test where you scratch the sole of

page 57 } the foot and the toes normally will flex and if anything is wrong in your central nervous system the toes will hyperextend and wave like that (indicating).

Q. What about the intercostal nervous system, was there any damage or any injury to that?

A. I was unable to demonstrate any anesthesia or hyperthesia over any of the intercostal nerves. Of course, the intercostal nerves are the nerves that come out from the dorsal spine and pass around between the ribs to the front part of the chest. Those are the nerves that are involved when you see people with shingles.

Q. Did your x-ray of the cervical spine indicate any abnormality of the bones, joints or any vertebra spaces?

A. No, x-ray of the cervical spine was negative.

Dr. Prentice Kinser, Jr.

Q. Were any of the soft tissues of the neck abnormal?

A. I was unable to demonstrate any abnormality of any soft tissues of the neck.

Q. Dr. Kinser, in the area of the cervical spine is where he had whiplash, was it not?

A. That is the area that receives the major portion of the damage, although that force is not localized. In an accident you cannot localize force because you are thrown in different directions and in this case he was knocked partially unconscious by the blow and in so doing in going back and forth he also damaged the dorsal spine, the ligaments. I

page 58 } think the ligamentous structures in the dorsal spine were injured.

Q. I will ask you this: Was there a normal lordotic curve to the cervical spine?

A. Yes, sir, normal curvature and no evidence of muscle spasm. When you lose that curve you have muscle spasm in the cervical muscles. There was no muscle spasm present. He did not show any signs of any muscle spasm of the cervical muscles.

Q. I believe you say there was no evidence of fracture or dislocation of the cervical spine?

A. That is correct.

Q. Now, Dr. Kinser, if Mr. Hamilton had been examined by you and x-rayed by you on June 12th and no one had told you he had been in an accident of the type which we know about on December 25th, 1957 could you have demonstrated from your examination and x-rays that he had had a whiplash?

A. No, I could not have made a diagnosis of whiplash just from my examination. I would say that the man was not entirely a well man at the time that I saw him but I couldn't say just what type of injury he had had.

Q. Now, the condition which you found him in so far as the whiplash was concerned, with your history you received, was solely a matter of pain, wasn't it?

A. Yes, and my ability to produce pain.

Q. Sir?

A. His symptoms of pain and my ability to pro-

page 59 } duce pain. There was his subjective history of pain and my ability to produce pain in the individual at that time.

Q. That was both as to the neck and the area where he had the whiplash and the back?

A. Yes, sir.

Q. Now, you have explained to us the condition you found

Dr. Prentice Kinser, Jr.

the dorsal spine to be in, what you call a narrowing of the space between the seventh and eighth thoracic vertebra?

A. That is right.

Q. And that, in turn, causes a wedging. Now, did you have access to the x-rays taken by Dr. Pritchett on December 25th, 1957?

A. I did not at the time I first x-rayed him on June 12th but after talking with Dr. Pritchett in regard to this we got his old x-rays out and compared them with the ones that I had taken on June 13th and his were December 25th, 1957 and they show the same changes in December as on June 13th.

Q. I believe in your report of June 16th you said those changes appeared to be old and then in your letter, or report, of June 18th you explained that you had had the opportunity to examine the old x-rays taken on the day of the accident and I believe you said that the measurements on this vertebra on December 25, 1957 were exactly the same as they were on June 12th, 1958?

A. That is right.

page 60 } Q. And "There was not present any evidence of a fracture in this patient's dorsal spine at that level on December 25, 1957."

A. That is very true.

Q. And your conclusion was that that same condition which you have shown on the blackboard there existed immediately prior to the accident on December 25, 1957?

A. That is true.

Q. And then in your statement when you said there was no evidence of a fracture in the dorsal spine you were speaking particularly with reference to the seventh and eighth thoracic vertebrae, were you not?

A. Yes, sir.

Q. With the condition that he had at the time of the accident there in the area of the seventh and eighth thoracic vertebrae and he had a severe lick or trauma in that immediate area wouldn't you be of the opinion that that particular area would come up with a fracture?

A. Not necessarily. You do not necessarily have to have a fracture to have the pain that he was complaining of in that region.

Q. Then for that particular area your finding was pain only. I mean there was no disability of any kind?

A. It was painful to percussion.

Q. It was pain. It was no limitation of motion or
page 61 } anything of the kind. He had normal motion in that
area?

A. As far as I could determine I would say motion was normal. There wasn't any muscle spasm.

Q. Is that what produces limitation of motion to a particular joint or a particular boney structure, muscle spasm?

A. Muscle spasm is the usual cause of limited motion.

Q. Unless a bone is broken. Of course if it is fractured you have limited motion and the limited motion then is due to what?

A. It is due to muscle spasm.

Q. So all limited motion is due to muscle spasm?

A. Unless you have a dislocation. Of course, if a joint is dislocated you will have limited motion.

Q. Did you find any dislocation in his whole body that you x-rayed?

A. I was not able to demonstrate any dislocation.

Q. And you say you found no muscle spasm anywhere?

A. No, sir, I didn't find any.

Q. But you did find tenderness over the cervical spine?

A. The patient complained of tenderness and pain on forward flexion of his spine. You did not cover that part of my report. My report said "He complains of tenderness and pain on forward flexion of his spine and these pains are referred to the base of his neck at the attachment of the neck to the
chest." That is one of the things I was able to elicit
page 62 } pain from.

Q. He had no pain in the side movement or back movement, only in the forward movement?

A. Just in the forward flexion, coming forward.

Q. Did you find any indication at the time of the tearing of ligaments with relation to the cervical spine and dorsal spine?

A. I was unable to demonstrate where any particular ligament or group of ligaments had been disrupted. I felt that the tenderness and pain he was having in that neck on forward flexion was due to the ligaments being injured and to fascia injury to his neck.

Q. In severe whiplashes you do find torn ligaments, do you not?

A. In severe whiplashes you can find torn ligaments.

Q. Isn't it a fact in severe whiplashes you do find torn ligaments?

Dr. Prentice Kinser, Jr.

A. Not particularly, not necessarily are they torn so you can demonstrate them.

Q. Can you demonstrate scar tissue in a particular area where you do not have a fracture?

A. Can you demonstrate scar tissue?

Q. Yes, sir.

A. No, sir, you cannot.

page 63 } Q. So in your examination of Mr. Hamilton there was no indication to you that he had any scar tissue in his cervical spine or in his dorsal spine as a result of the whiplash or any injury to the area there of the seventh and eighth thoracic vertebrae?

A. Not from the actual standpoint of demonstrating scar tissue. I was unable to do that.

Q. Can anybody say whether there was scar tissue there unless they cut into the flesh?

A. I doubt if it could be demonstrated then unless you knew exactly where to cut and exactly what ligaments were damaged and then you might be able to demonstrate it by incision.

Q. The type of injury which Mr. Hamilton received in the beginning is calculated to produce muscle spasm, is it not?

A. Yes, sir, that is true.

Q. Now, with the muscle spasm isn't it true that you have a more intense pain than you do when the muscle spasm disappears?

A. Well, I don't know which comes first, whether it is the pain that causes the muscle spasm or the muscle spasm that causes the pain. I think it is the pain that causes the muscle spasm, as a general rule, and then after the patient has had the pain relieved then you are able to block the cycle of muscle spasm.

page 64 } Q. If pain produces muscle spasm then when the muscle spasm disappears you would draw the conclusion that the pain has subsided. Is that right?

A. That is true.

Q. So when you examined Mr. Hamilton on June 12th, 1958 you found no muscle spasm anywhere?

A. That is true.

Q. Then doesn't that indicate to you strongly that there was no pain, no intense pain in that area to produce those muscle spasms and for that reason there was no intense pain?

A. That is the logical assumption that you might assume unless you did not find a condition existing such as is in the

dorsal spine there between the seventh and eighth and finding pain on percussion when you percussed his back.

Q. Then it is your opinion that after the injury to his neck and cervical spine resulting from the whiplash at the time you examined him on June 12th, 1958 he was fully recovered?

A. I felt like his neck was doing all right. I could not find any pathology in his neck.

Q. That he was fully recovered. Is that right?

A. Yes, sir, that is correct.

Q. Then you referred to the condition which you found in his dorsal spine, which Dr. Pritchett had not observed after the accident, and when you went back to see whether

page 65 } he had that condition you determined he did have that condition prior to his accident. The only question now is whether or not that preexisting condition was aggravated. Is that correct?

A. It was my feeling he had an aggravation of a preexisting condition there from the accident.

Q. And if he didn't have any pain before the accident you arrived at the conclusion if he had pain in that dorsal spine area it was because of an aggravation to that preexisting condition?

A. That is true.

Q. As to what degree or extent of aggravation to that particular area you can't say, can you?

A. It is difficult to say definitely just how much.

Q. And you can't say how long it would last or how long it will continue?

A. There is no way to determine that.

Q. Dr. Kinser, in your opinion, can Mr. Hamilton continue to engage in competitive employment and perform the duties required of him in his former employment and the duties he is doing at the present and in the future?

A. It is my feeling he can return to work in his regular job. I think he told me he returned to work on May the 15th of this year and he has continued under that employment.

Q. And you feel that he is fully able to engage in

page 66 } what you call competitive employment?

A. Yes, sir.

Q. He can do the work required of him in a particular job?

A. Yes, sir.

Q. In a particular job that he is qualified for?

A. Yes, sir, that is right.

Mr. Meade: That is all.

Dr. Prentice Kinser, Jr.

RE-DIRECT EXAMINATION.

By Mr. John Carter:

Q. Doctor, you speak of objective and subjective findings. When you have a broken bone or something you can see with a fluoroscope or an x-ray that is an objective finding?

A. That is correct.

Q. Isn't it rather difficult to make an objective analysis of a sprain or damage to muscles or ligaments?

A. That is true.

Q. Now, Doctor, you say there was no evidence of scar tissue. There is no evidence there was and no evidence there was not scar tissue in the neck?

A. There is no way I can be dogmatic and say it is or isn't present in an individual.

Q. Doctor, you examined Dr. Pritchett's x-rays of December 25th, did you not?

page 67 } A. That is right, I did.

Q. Did you observe a straightening of the cervical spine in those?

A. Yes, sir.

Q. Which indicated to you that on December 25th he did indeed have some muscular spasm there?

A. That is right. He had enough injury to produce muscle spasm and to disalign the vertebra of his neck at the time of the accident.

Q. Then there was no question in your mind about whether or not this man was malingering or whether he had injury or not?

A. No, sir.

Q. Doctor, when you made your examination you had certain tests that you make to tell you certain things. Possibly when a patient comes in he doesn't complain of anything that could be easily correlated if you didn't make these tests, the Babinsky test or the one where you make them close their eyes, and those tests are not because the patient has made some complaint that you are trying to test but you are simply trying to test his general over-all health and reactions. Is that correct?

A. That is true.

Q. Now, when Mr. Hamilton came in he didn't complain of any abnormality of the pupils of his eyes, did he?

page 68 } A. No.

Q. What would that indicate to you?

A. It would indicate some serious damage to the brain, an injury in the region of the optic nerves.

Q. And he wasn't complaining about his mouth, nose or throat?

A. No.

Q. Which would indicate what to you if he had made such complaints?

A. If I had found some swelling in the back part of the throat it would have indicated to me he had a sufficient amount of tearing of the fascia, of the tissue there of the neck to cause a hemorrhage to produce swelling of the throat.

Q. That doesn't appear in all of these cases, does it?

A. No, but it does sometimes when you get into the more serious types.

Q. Doctor, you did demonstrate even in June, some six months after the accident occurred, some muscle spasm when the head was flexed forward?

A. It was mostly pain.

Q. Was there any indication of muscle damage there?

A. There wasn't any demonstration of muscle spasm in the neck but when he did forward flexation of the neck he complained of pains in the cervical muscles on the lateral side on each side.

page 69 } Q. Was that consistent with this type of injury?

A. Consistent with damage to the muscles in that particular area.

Q. Consistent with what you could demonstrate on Dr. Pritchett's x-rays?

A. Yes, sir, that he had had injuries to his neck muscles.

Q. Doctor, muscle spasm usually accompanies very intense pain, does it not?

A. Yes, sir, it does.

Q. In the less intense pain usually there is no muscular spasm?

A. Not if there is not enough pain to cause the patient to guard and protect his neck in the milder types of pain.

Q. Dr. Pritchett has seen this man over a long period of time and said there was continued pain in this area, coupled with objective findings and muscular spasm. Would that indicate to you that this was severe and there might well be some muscle or ligamentary trouble involved?

A. It was my impression he had some ligamentous injury to the muscles there as well as the fascia.

Q. Doctor, I believe you felt at the time you wrote your letter of June 16th that he was having post-concussion head-

aches; that he was having pain in the thoracic spine at the level of the seventh thoracic and eighth thoracic vertebrae, associated with his interspace pain on touch, and page 70 } that the evidence showed narrowing of the interspace. Was that your finding?

A. Yes, sir.

Q. You also found considerable pain and tenderness upon forward flexion of the head in the neck region?

A. Yes, sir.

The Witness Stands Aside.

* * * * *

MRS. R. D. HAMILTON,

having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Charles Carter:

* * * * *

page 71 }

* * * * *

Q. What sensation did you experience at the time of the accident?

A. Well, we were sitting at the light and there was a few cars in front of us and then when the car hit us in the back it was a terrible blow, you know, and it kind of stunned me for a minute. I didn't know what had happened. Then the baby was almost knocked out of my lap. Then when I looked at my husband his head was way back and then I knew the car was still rolling so I got my foot on the brake and stopped the car before it hit the bank. It had gotten up on the curbing.

Q. Was your husband conscious or unconscious at that time?

A. Well, I would say he was unconscious because he didn't move. He was just laying perfectly still and at the time I stopped the car he didn't say anything and then he burst out crying. I think he kind of come to himself for a second and then he didn't say anything. He didn't say anything then but he was crying.

Mrs. R. D. Hamilton.

* * * * *

page 72 }

* * * * *

Q. What was the nature of the interior of the automobile immediately following the accident, if you observed?

A. What do you mean?

Q. Was there any noticeable damage on the inside of the car?

A. Well, the seat was broke.

Q. What seat was that?

A. The front seat.

Q. That was the seat, I believe, on which you were seated, the seat on which both of you were seated?

A. That is right.

Q. And was there any other visible damage?

A. Well, the steering wheel was bent.

Q. In what manner was it bent?

A. Well, you know, just bent a little.

Q. Bent more on the top or lower side?

A. The lower side.

Q. Now, after you took the child home and went to the hospital—First, how long did it take you to take the child home and go to the hospital?

A. I would say fifteen minutes.

Q. It took approximately fifteen minutes and did you see your husband when you arrived at the hospital?

page 73 } A. Yes, I did.

Q. Now, what was his condition at that time?

A. Well, I asked him if he felt any better and he said no he didn't. I said "Where are you hurt?" He said "my head, my neck, my back and my chest hurt me so bad I don't know what to do", and by that time Dr. Pritchett had got there so I didn't talk with him any more until he went to his room.

Q. And did you have occasion to observe him all the time he stayed in the hospital?

A. Yes, sir, I visited him every day and particularly noticed if I could see any improvement in him and he would lay there flat of his back with his eyes closed and didn't have anything to say and I don't think his mind was exactly clear for a few days because he would ask me things over and over each time and then I will say after a few days his mind seemed to be all right but he still suffered. They used this light on

him and I always asked him if he felt any better and he said he did for awhile until the medicine began to die out and then he started suffering bad again.

Q. Do you recall how long he was in the hospital?

A. The first time he was there eighteen days.

Q. Eighteen days, and after he returned home from the hospital the first time did you have occasion to examine him then?

A. I watched him very close and the first two
page 74 } days he seemed to be doing all right and then he
began to go backwards. The pain was very bad and he couldn't rest and it looked like he was miserable and just walked the floor so I called Dr. Pritchett and told him about it and he said he was giving him as strong a medicine as he could at home.

* * * * *

Q. How long did he stay at the hospital the second occasion?

A. Ten or eleven days.

Q. Did you see him at the hospital on that occasion?

A. Yes, sir.

Q. How frequently?

A. Every day.

page 75 } Q. What was his condition then?

A. Well, it was about the same. I didn't see any improvement until after three or four days and then I could see a little difference in him. He began to improve after that.

* * * * *

Q. That was approximately thirty-five days later or thirty-six days later following the accident. Now, after he returned from the hospital the second time would you bring us up to date as to what his condition was following that trip?

A. Well, he would go to the doctor every day and he couldn't walk straight. He was leaning this way and it was about three or four weeks I guess before he straightened up completely.

Q. Was that three of four weeks following the accident?

A. Three or four weeks after he returned from the hospital the last time.

page 76 } Q. And was he walking about and was he able to do his usual things?

Mrs. R. D. Hamilton.

A. Yes, he walked about and did anything he wanted to around the house. He could walk around in the house or outdoors but he couldn't drive the car for awhile.

Q. Do you recall how long it was before he was driving again?

A. I think it was around two weeks after he came home from the hospital the last time.

Q. And that would have been about the middle of February?

A. Yes, I think that is about correct.

Q. Now, in the evening was he sleeping normally or was there any difference?

A. He couldn't rest. He couldn't sleep good at night at all.

Q. What would he do at night, if anything?

A. He rolled and tossed and he couldn't rest. If he laid on his back his back would hurt. If he laid on his side his shoulder would hurt and he just tossed and turned until way in the morning before he would go to sleep.

Q. And how long did that continue?

A. Well, all the way through up until now. He still doesn't rest good.

Q. Do you recall when he returned to work?

A. Yes, I remember when he went to work.

page 77 } Q. Do you remember approximately when he returned to work?

A. Well, I think it was two weeks after Dr. Pritchett released him to go to work.

Q. Do you remember about what month that would have been?

A. Well, I think that was about the first of April. He was released March 17th and it was two weeks after that before he went to work. It was around the last of March or the first of April.

Q. And after he returned to work what were his working hours?

A. He worked eight hours in the mill, from 4:00 to 12:00.

Q. And what was his condition as observed by you during a period of time after he returned to work? Did he have any further difficulty or did he make any further complaint regarding his condition?

A. He was all the time complaining of his neck hurting or his shoulder or his back every day. It was different ones. He wouldn't say they all hurt him at one time but it was at different times. He still complained of it hurting him and he wasn't active and all like he used to be.

Mrs. R. D. Hamilton.

Q. And how long did that continue?

A. On up until now.

page 78 } Q. He still seems to be having difficulty now?

A. That is right.

Q. Can you notice any difference in him as to his general conduct now, or rather the things he is able to do and those that he did prior to the accident?

A. Well, I don't think he is able to work the job he is working on, that is lifting, and outside of that doesn't anything seem to bother him. He doesn't do anything else much but work. He used to work two jobs nearly all the time and never heard him complain about anything and now it seems all he can possibly do is to just work his eight hours in the mill.

Q. How long did he work two jobs?

A. Just about ever since we have been married.

Q. Was he working two jobs up to the time of this accident?

A. I don't remember but if he wasn't it hadn't been long that he was working two jobs. He worked at Palmer's Meat Market the last part-time job he had.

Q. How long have you all been married?

A. Twenty years.

Q. Have you noticed any difference in his weight?

A. I have noticed a big difference in his weight. I think he has lost about twenty pounds since December.

Q. Between December and today?

A. That is right.

page 79 } Q. Was the weight he lost lost immediately after the accident or over a long period of time?

A. I don't think he lost any weight at first but I think he has lost more weight in the last two months than he did at first.

Q. He still appears to be losing weight?

A. Yes, sir.

Mr. Carter: Your witness.

CROSS-EXAMINATION.

By Mr. Meade:

* * * * *

page 80 }

* * * * *

Mrs. R. D. Hamilton.

Q. And you had your baby in your lap?
A. Yes, sir.
Q. How old was your baby?
A. Six months old.
Q. Did you have any notice or did you realize that this car, the Dinwiddie car, was coming up behind you before it actually struck you?
A. No, sir.
Q. When it struck the rear end of your husband's car did it not knock the baby out of your lap?
A. No, sir. It knocked him up to my knees but I held on to him.
Q. You had your baby in your lap?
A. Yes, sir.

• • • • •

page 81 }

• • • • •

Q. I believe you said for quite awhile, or for several years, he has worked at two jobs?
A. Yes, sir.
Q. And up until shortly before the accident?
A. I don't remember whether he was working right then at the two jobs but if he wasn't it was just a short while before that.
Q. What was the last job he had, the second job, before the accident? I mean what was the other job he had beside his job at the mill?
A. It was Palmer's Meat Market.
Q. Down on Craghead Street?
A. That is right. He was working there. He would work there for awhile and when business was slack he would stop for awhile and then he would go back to work there.
page 82 } Q. He was working in the mill all of the time too?
A. Yes, sir.
Q. And working extra at Palmer's Meat Market?
A. That is right.
Q. So he is an experienced man in the meat business as well as in the textile business?

Robert Davis Hamilton.

A. Yes, sir.

Mr. Meade: That is all.

* * * * *

ROBERT DAVIS HAMILTON,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.
By Mr. John Carter:

* * * * *

Q. I believe you are employed by Dan River Mills?
A. That is right.
page 83 } Q. How long have you been employed by Dan River Mills?
A. Twenty-some years.
Q. Mr. Hamilton, I believe the date of this accident was Christmas day?
A. That is right.
Q. Where were you and Mrs. Hamilton and the baby going?
A. We were going over to town to look at the Christmas decorations.
Q. And you left your home on Halifax Street?
A. Yes, we left our home on Halifax Street.
Q. And after you left you proceeded down North Main Street hill?
A. That is right.
Q. What happened then?
A. I was going on down North Main hill and I come to the bottom of the hill at the stop light and I come to a complete stop and all at once a car run in behind me with full force knocking me back, then forward and the back of my head hit the center post of the car.
Q. How much do you recall about the accident after the initial impact?
A. Not any.
Q. How severe was the first impact?
A. It was severe. When I went back and hit the
page 84 } steering wheel and then hit the post that is when I went out.

Robert Davis Hamilton.

Q. Do you recall how hard a lick was struck to your automobile, or could you determine that?

A. It was full force.

Q. Approximately how much damage was done to your automobile?

A. A little over $200.00.

Q. Was any damage done to the inside of the automobile?

A. Yes, sir, it was. The car seat was broken and the steering wheel was bent or cracked. In other words, it was cracked and bent.

Q. You say the car seat was bent. What part of that was damaged?

A. The latch on the seat that you adjust the seat with.

Q. Where you adjust it backward or forward according to the driver's length of legs?

A. Yes, sir, that is right.

Q. What do you recall after the accident happened?

A. After the accident happened I burst out crying and then went out and the next thing I remember they was taking me out of the car putting me on the stretcher and I kind of come to myself a little bit when I was in the ambulance.

Q. Was that the ambulance crew taking you out of the car?

A. That was the ambulance crew taking me out.

page 85 } Q. Then what happened?

A. Then they put me in the ambulance and I kind of come to myself a little bit and went on out again. They brought me to the emergency room and then I kind of come to myself again then.

Q. The emergency room where?

A. At Memorial Hospital.

Q. When you regained consciousness at the emergency room what was wrong with you then? What sensation did you have?

A. My head and my back and my shoulders were hurting. I was suffering with them. I couldn't move my neck at all.

Q. Who attended you there?

A. Dr. Pritchett.

Q. Did he in any way manipulate your body to determine the extent of the injury?

A. Yes, sir, he examined my neck but he couldn't move it. He examined my back.

Q. Did he give you anything then for the pain?

A. Well, I got the medicine for pain but I can't recall

Robert Davis Hamilton.

whether they gave it to me downstairs or not but I know I got it upstairs. It was a hypodermic for the pain.

Q. They took you upstairs after you were examined in the emergency room?

A. That is right.

page 86 } Q. If you will, just tell us what your experiences were in the hospital there. How long were you in the hospital on your first stay?

A. I was in the hospital the first time approximately eighteen or nineteen days. When they gave me the hypodermic to ease me when I got upstairs I dozed on off but I had to call back some time during the morning for something else to ease me. I was still suffering bad.

Q. Was that before or after daylight?

A. That was during the morning, I would say approximately, I guess, some time after midnight. It was maybe 1:00 or 2:00 o'clock. After they gave me that I went on to sleep. Then I woke up again at daylight and I was still suffering and I had to call a nurse in there and she gave me another hypodermic.

Q. Were you able to get out of the bed at that point?

A. I was not able to get out of the bed. I couldn't even go to the lavatory at all. I couldn't sit up in bed. In other words I couldn't move my neck no way for five or six days or maybe a little longer.

Q. When you tried to get up or sit up what sort of sensation did you have?

A. I would just have to get right back on my back and my neck and head was hurting and hurting bad. I was suffering and I had to lay back down. I couldn't sit up.

page 87 } Q. Were you spitting up any blood?

A. Yes, sir, I spit up blood for two or three days.

Q. When did you first start to feel some improvement?

A. It was way over two weeks.

Q. What sort of treatment was Dr. Pritchett giving you at that time while you were in the hospital?

A. Well, they were carrying me downstairs on the stretcher to take this treatment, hot pads they call it and then they would bring me back. Before I would go down there they would put the light on my back and then would carry me downstairs and would treat me with these hot packs and then carry me back upstairs and they would give me the light but during all that time I was still taking hypodermics and pills. I averaged during that time anywhere from three to four

hypodermics a day for pain and either five or six different kinds of pills. That went on for around two weeks or a little over.

Q. Now, at the end of about eighteen or nineteen days the doctor released you from the hospital?

A. Beg pardon?

Q. I say did the doctor release you from the hospital after about eighteen or nineteen days?

A. Yes, sir, he released me from the hospital.

Q. What did he instruct you to do then?

A. Told me to go home, continue this medicine that they had gave me at the hospital. They gave it to me,
page 88 } these pills, and he gave me some tablets for pain and he told me to use hot pads and hot water bottles on my back and on my neck. I went to Dr. Pritchett the following day after I come back home and I couldn't drive my car. I had to have someone else drive my car for me. It went on like that for about a week and when I would leave his office I continued with my hot pads and hot water bottle but I couldn't sleep at night.

Q. Why was it you couldn't sleep?

A. I was hurting so bad.

Q. And how long did you stay at home?

A. I stayed at home around a week.

Q. Then what did Dr. Pritchett do?

A. He sent me back to the hospital and I went through the same procedure I did before with the hypodermics and medicine and also with the lights every day and going downstairs to take these hot pads.

Q. How long did you stay in the hospital the second time?

A. It was around ten or eleven days.

Q. And when did the doctor release you from the hospital?

A. I don't remember the date.

Q. What were his instructions when he released you?

A. He told me to continue what I was doing at home, using hot pads and a hot water bottle and the pills he
page 89 } left there that I had taken from the hospital and I did that and I still couldn't sleep at night. After I went home the second time I would get up during the night and go to the living room, go to the kitchen and sit there and smoke. Sometimes I would lay back down around 3:00 or 4:00 o'clock.

Q. Now, were you seeing the doctor at all during that period?

Robert Davis Hamilton.

A. I was going to Dr. Pritchett all during that time and he was applying this light to the back of my neck and then he would apply it to my back and then he would apply it to my shoulders.

Q. How soon was it that Dr. Pritchett permitted you to go back to work?

A. I asked him about me going back to work about the 15th day of March. I knew I wasn't able to go to work but I knew I had to go back to work. I knew I had to pay for my house and I had my wife and two kids to support. I wasn't able to go back to work when I did go back and when I did I didn't have the same job I had before so they told me I would have to be laid off.

Q. Let me ask you this. Were you laid off because of the quality of your work or what was the reason you were laid off?

A. It was because the job had played out. They had cut the job off and I called Mr. Lawson, the overseer,
page 90 } asking him would he give me a job and he said he would.

Q. And how long did it take you to get the job that you have now?

A. About a week or two weeks, something like that.

Q. A week or two weeks after the doctor said you could go back to work. Now what does this job in the carding room do?

A. I run cards. I have an average of approximately sixty or sixty-nine cards to run. These laps hang on the cards. We have to go into a room to get the laps to hang them and they weigh approximately fifty pounds or a little more.

Q. What is a lap?

A. A lap is a roll of cotton, a big roll of cotton. It has a steel pin that runs through it that you have to grab up on both ends to hang up on a card but when you get ready to hang this lap you have to reach up. It is six laps to a truck. It is over your head. You have to reach way up to get this lap and lay it on your shoulder and then make a turn and hang it on your hanger on both sides of the card. In others words I will say you have sixty cards and you will have to lay them twice and hang them twice.

Q. And this entails picking these laps up and putting them up into a machine?

A. You get your laps off of your card first. There are two stands like this with lap stands on both ends.
page 91 } You reach up and get this lap and then lay it down. There are seventeen cards to a line. There

are seventeen laps. When that lap gets low enough that you can rehang it then you go get a truck of laps which holds six to a truck. You have to bring the truck in and reach over your head, pick these laps up and hang them back on the same cards you are running.

Q. And you say they weigh about fifty or sixty pounds?

A. A little over fifty pounds.

Q. How does your work affect your back and neck?

A. Well, in this lifting, you reach down to pick up this lap and it hurts me in my back. When I reach up and get those laps, pick up eighteen laps in less than ten minutes time, you can realize how much work you have got there and it really hurts my back but I knew I had to do it.

* * * * *

page 92 }

* * * * *

Q. Did you ever experience any trouble with your back before this accident?

A. Not to my knowing I never have.

Q. Do you know how you injured your back?

A. If I ever did injure my back it was when I was a kid and I don't remember it. I could have fell but I don't remember it if I did. It hasn't ever bothered me. I didn't know I had any back trouble.

Q. You knew nothing about it before this?

A. No, I never did. I have lifted heavy machinery in the mill before. I have had jobs in maintenance work, jobs that require lifting and it never bothered me. In fact, at times I pulled extra shifts.

Q. During the second war were you in the service then?

A. Yes, I was in the navy.

Q. What was your rating in the navy?

A. Seaman First Class.

Q. Were you striking for Gunner's Mate?

page 93 } A. Yes, sir, I was.

Q. Did that entail any lifting and bending and so forth?

A. Yes, sir, I was attached to a five-inch gun. I was a shot shell man and ejector and a power loader. Your powder is rotated. If I ain't mistaken it is three men. You rotate it. I would catch the hot shells that come out and you would

Robert Davis Hamilton.

pick up this ejector which I would say weighed fifty or sixty pounds or more and would pick that up and put it in the chamber and this fellow would use the powder, and you would rotate. You would pick up so many and then you would rotate.

Q. In other words, one man would ram the projectile into the gun, the other man would put the powder behind it, and then when the gun went off another man would be there to catch the hot shell when it came out?

A. That is correct.

Q. Did you have any trouble in the navy with this back of yours?

A. No.

Q. Now, I believe on March 17th Dr. Pritchett permitted you to go back to work. Now, when did you next see Dr. Pritchett after that?

A. I went to see Dr. Pritchett after that in June. I was asked by lawyer Meade to go to see Dr. Kinser.

Q. And after you saw Dr. Kinser why did you go back to Dr. Pritchett?

page 94 } A. Because Dr. Kinser said I needed further treatment.

Q. Has Dr. Pritchett been treating you since that time?

A. Dr. Pritchett has treated me since that time and treated me in July, if I ain't mistaken, and then he was going on his vacation in August and I went to him in September and then I have been to him this month.

Q. What sort of treatment does he give you when you go?

A. He gives me the lights on my back of my neck and on my shoulder.

Q. Are you trying any home remedies or following any instructions at home that the doctor gives you?

A. Yes, sir, I still use my hot water bottle on the back of my neck when it really gets to hurting. I use it on my back too.

Q. How much did you weigh when you had this accident?

A. I weighed between 184 and 185 pounds.

Q. How much do you weigh today?

A. I weighed about three weeks ago and I weighed 156 pounds but I don't believe I weigh that much now.

Q. From December 25th to some time about the middle of September you had lost from 184 or 185 to 156 pounds. Now, during what period did you lose most of that weight?

A. I lost most of this weight, I would say, around June, starting around June right after I went back to work.

Robert Davis Hamilton.

Q. Let me ask you this: Have you been dieting
page 95 } or have you been trying to lose any weight.
A. No, I have not. I have been taking pills to see if I can't gain some weight.

* * * * *

By Mr. Carter:
Q. How have you been sleeping lately?
A. Well, I don't sleep. I come home from work at 12:00 and I never get to bed before 1:30 or 2:00 o'clock and then I am always jumping out of bed around 5:30 or 6:00 o'clock. I am always up by that time.
Q. Why is that?
A. I just can't sleep. My neck bothers me and my shoulders bother me and I just stay nervous and can't sleep.
Q. You say your nerves are frayed?
A. That is right.
Q. Are you still having any pain?
A. Yes, sir, I have pain. I still have pain in the back of my neck and in my shoulders and I have some in my back. They don't all hurt at one time but I do have them in my neck and shoulders now.

* * * * *

page 97 }

* * * * *

CROSS EXAMINATION.

By Mr. Meade:
Q. Mr. Hamilton, are you sure that you didn't suffer an injury while you were in the navy to your back?
A. No.
Q. You are not sure?
A. Not as I know of.

page 98 }

* * * * *

A. If my memory is right I told you I might have fell off of

Robert Davis Hamilton.

a porch or something when I was a kid. I do not remember and I haven't heard my mother or father or them say I had but I am saying I might have fell off and I could have and not remember it when I was a kid.

Q. Now, you say you didn't have any trouble with your back up until Christmas, December 25th?

A. No, I never had any trouble with my back.

* * * * *

page 103 }

* * * * *

Q. But you went back to work around the 1st of April?

A. That is right.

Q. Now, you have worked continuously ever since the 1st of April, haven't you?

A. That is right.

Q. You haven't asked off?

A. Some weeks during that time we would run four and five days. We have just went back on five and five and a half days in the last few weeks.

Q. I mean you worked every day that was available to you to work?

A. That is right. I had to work.

Q. Now, have you asked for a single day off on account of pain, suffering or your condition?

A. No, I did not. I wasn't able to ask off.

Q. Have you asked for any time off?

page 104 } A. No, I haven't because I knew I had to work.

Q. So you have worked steadily ever since you went back to work around the first of April up to the present time and are still working?

A. I am still working. I am not able to work, if that is what you want to know, but I have got to work. I've got a wife and two kids and a house to pay for and somebody has got to work.

Q. Does your wife work?

A. My wife was working during the time I was in the hospital. She was on two and three or three and a half days up until about last month when they went back on five days a week.

Q. And she has been working steadily ever since the accident?

A. No.

Q. I mean the days that were available to her, two or three days a week and four or five days a week?

A. That is right, she is working her job.

Q. What is she, an inspector?

A. She is in the inspection room.

Q. How tall are you, Mr. Hamilton? What is your height?

A. I would say around five foot six or five foot seven.

* * * * *

page 106 }

* * * * *

MRS. H. W. DINWIDDIE,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Meade:

* * * * *

page 107 }

* * * * *

Q. And you and your husband were coming over to visit your mother during Christmas day?

A. That is right.

Q. Now, Mrs. Dinwiddie, what kind of an automobile was your husband driving?

A. A '54 Buick.

Q. Were you on the front seat with him?

A. Yes, sir.

Q. Will you tell the court and jury in just a few words exactly what happened just before the accident, leading down to the time of the impact and the degree of the impact on the Hamilton car?

* * * * *

page 108 }

* * * * *

Mrs. H. W. Dinwiddie.

Q. Answer the question.

A. We were coming down North Main Street hill and had gotten down as far as the last service station on the right and my husband said "We don't have any brakes." I got over to the edge of the seat to see what was going to happen and his foot was on the brake pedal. He then told me for the second time "We just don't have no brakes" and about that time we hit the back end of Mr. Hamilton's car.

* * * * *

Q. In the course of your car coming down the street toward the Hamilton car after your husband started putting on the brakes did it slow down?

A. Yes, sir.

page 109 } Q. To what degree did it slow down?

A. I don't know what degree. I know that it did slow down and I thought we would stop.

Q. Then did the car start up again?

A. Yes, sir.

Q. Then did it slow down again before he hit?

A. It did, yes, sir.

Mr. John Carter: I would think Mr. Meade is leading his witness and we are beginning to try the case all over again. Mr. Meade is doing what the court told him he couldn't do.

The Court: The objection is sustained.

By Mr. Meade:

Q. I ask you if during that time you made any attempt to get out of the car?

A. No, sir.

Q. Why?

A. Because I thought we would stop.

Q. Did your husband's car strike the rear end of the Hamilton car with great force?

A. I wouldn't say with great force. We struck the rear end of the car.

Q. What happened to you?

A. Well, I hit down over on the edge of the seat and my knee hit the dashboard and I got a fractured knee.

page 110 }

* * * * *

CROSS EXAMINATION.

By Mr. Charles Carter:

Q. Mrs. Dinwiddie, you state that your husband's car did not strike the Hamilton vehicle with great force but it was with sufficient force to fracture your knee, wasn't it?

A. Well, you see I had gotten over on the edge of the seat and it hit the dashboard. I failed to brace myself.

Q. You failed to brace yourself and it fractured your knee?

A. That is right.

Q. You knew you were going to hit?

A. No, I did not know we were going to hit. I thought we would stop.

* * * * *

page 111 } HARVEY WILLIAM DINWIDDIE,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Meade:

Q. You are Mr. Harvey William Dinwiddie?

A. Yes, sir.

Q. You live in Lynchburg?

A. Yes, sir.

Q. What is your business, Mr. Dinwiddie?

A. I am a carpenter.

Q. Were you driving your 1954 Buick car on Christmas day when it was in collision with the rear end of Mr. Hamilton's car?

A. Yes, sir.

Q. Did you apply your brakes as you approached the Hamilton car?

A. Yes, sir.

Q. What reaction did you get?

A. Well, it came in my mind something was happening to them, they wasn't operating properly.

Q. Did they slow your car down or stop it?

A. It slowed it down to a certain extent, yes, sir.

Q. Then what happened?

Harvey William Dinwiddie.

A. Well it felt like it was holding almost
page 112 } sufficiently enough to stop it but it was failing to have proper effect.

Q. Then did it pick up again?

A. Yes, sir.

Q. Just before you struck the Hamilton car what was your car doing?

A. Beg pardon?

Q. Just before your car struck the rear end of the Hamilton car what was your car doing? How was it proceeding along the street? Was it proceeding fast?

A. No, it had slowed down.

Q. Did it appear it was going to stop before it struck?

A. Yes. I had the feeling that the brakes were sufficient to stop.

Mr. Charles Carter: We object to Mr. Meade leading his own witness.

The Court: The questions are leading.

By Mr. Meade:

Q. Will you tell the court and jury exactly what happened? Tell us briefly when you came down Main Street your speed before you started to touch your brakes and what happened from then on down.

A. As we came into Danville and came on down North Main hill we were driving at a normal rate of speed and when I touched the brakes it felt like it wasn't having the proper effect and it slowed the car down some. I could
page 113 } tell it was some brakes there but it didn't stop the car and it wasn't anything to be excited about because I thought it was going to stop and I told my wife a couple of times we didn't have any brakes. That is about all I know.

Mr. Meade: That is all.

CROSS EXAMINATION.

By Mr. John Carter:

Q. Mr. Dinwiddie, in order to help Mr. Meade along in showing how slight the force was because your brakes weren't operating the police officers tested your brakes after the accident, did they not?

A. Yes, sir.

Harvey William Dinwiddie.

Q. And the police found nothing wrong with them and you had your automobile taken to the shop and your brakes were tested then and they found nothing wrong with them and they have not been repaired since that accident, have they?

A. Well, just recently they have been relined but not immediately after the accident.

Q. Some eight or nine months before you had any work done on those brakes?

A. That is true.

Q. You didn't get excited about it when you were going down the hill there?

A. No, sir.

page 114 } RE-DIRECT EXAMINATION.

By Mr. Meade:

Q. Mr. Dinwiddie, had your brakes given you any trouble up to the time you put them on going down that hill?

A. No, sir.

Mr. John Carter: We object.

Mr. Meade: If your Honor please, Mr. Carter has brought in the question about the policeman and the brakes.

The Court: Go ahead.

By Mr. Meade:

Q. Had you had any trouble with your brakes before going down North Main Street?

A. No, sir.

Q. And will you repeat again in two or three words the trouble you had with those brakes?

A. Repeat what?

Q. The trouble you had with them there on that hill.

A. Well, when I first applied the brakes it came to my mind that something had happened to them. Then later I could tell they were having some effect. What was wrong with them I don't know. I don't know if it was the road condition or the brakes or what it was.

Q. After it was over you did have your brakes tested?

A. Yes, sir, they were tested.

page 115 } Q. And you were advised nothing was wrong with them?

A. Wasn't any repairs necessary to be made on the brakes at the shop, no, sir.

Harvey William Dinwiddie.

By Mr. John Carter:

Q. How much damage was done to your automobile in the accident?

A. Something over $480.00. I don't remember the exact amount.

Q. About $480.00 damage to your automobile. Do you consider that a slight impact?

A. Well, it was mostly to the grill. It didn't damage the radiator or the chassis. It was the grill, fenders, lights and tires.

Q. And the bumper?

A. And the bumper.

Q. That is what hit Mr. Hamilton's car. The bumper was damaged and had to be repaired because that was the part that hit Mr. Hamilton's car, wasn't it?

A. Beg pardon?

Q. I say the bumper on your automobile was damaged and had to be repaired. Is that correct?

A. Yes, had to have a new one.

Q. And that is where your car first came in contact with Mr. Hamilton's car. Is that correct?

A. Yes.

page 116 } Q. And you had to have a new bumper because it hit with so much force?

A. Yes.

Mr. Carter: That is all.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

Page

Writ of Error and *Supersedeas* Awarded 1

Record 2

Instructions 2, 5

Order—July 7, 1958 4

Motion of Defendant 7

Judgment—October 30, 1958 8

Notice of Appeal and Assignments of Error 9

Witnesses: (Including Narrative Statements)

C. B. Stowe 9

Doris B. Hamilton 10

Robert Davis Hamilton 11, 58

Harvey Williams Dinwiddie 12, 69

Mrs. H. W. Dinwiddie 13, 67

Dr. Prentice Kinser, Jr. 13, 35

Dr. Drake Pritchett 15, 19

Mrs. R. D. Hamilton 52

Incidents of Trial 18

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.

CLERK
SUPREME COURT OF APPEALS
RECEIVED
JUL 30 1959
RECEIVED
RICHMOND, VIRGINIA