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Record No. 5043

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Clerk, Supreme Court of Appeals

In the Supreme Court of Appeals of Virginia at Richmond

MAE C. THOMS

v.

ARLEEN DOWDY

FROM THE CORPORATION COURT OF THE CITY OF LYNCHBURG

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. 5043

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 19th day of June, 1959.

MAE C. THOMS, Plaintiff in Error,

against

ARLEEN DOWDY, Defendant in Error.

From the Corporation Court of the City of Lynchburg

Upon the petition of Mae C. Thoms a writ of error and *supersedeas* is awarded her to a judgment rendered by the Corporation Court of the City of Lynchburg on the 22nd day of January, 1959, in a certain motion for judgment then therein depending wherein Arleen Dowdy was plaintiff and the petitioner was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of twenty thousand dollars, with condition as the law directs.

RECORD

* * * * *

page 13 } Virginia:

At Lynchburg Corporation Court, January 22nd, 1959.

* * * * *

This day came the parties by their attorneys, and the jury sworn on yesterday for the trial of this case, appeared as directed by the court, and the said jury having heard the evidence and argument of counsel, and having received the instructions of the court, were sent to their room to consult and consider of their verdict, and after some time returned into court and presented their verdict, written on a blank sheet of paper, in the words and figures following, to-wit, "We the jury find for the plaintiff, Arleen Dowdy, and fix her damages at $18,000.00. Frank Cheatham, Foreman." Thereupon the defendant by her attorneys moved the court to set aside said verdict upon the ground that it is contrary to the law and the evidence and is excessive, for admitting evidence over the objection of the defendant, for failure to admit evidence presented by the defendant, for giving instructions for the plaintiff over the objection of the defendant, and for failure to give instructions offered by the defendant, and the said motion being argued by counsel, the court doth overrule the same, and the said defendant by her attorneys excepted. It is therefore considered by the court that the said plaintiff, Arleen Dowdy, recover against the said defendant, Mae C. Thoms, the said sum of $18,000.00, the amount of the damages by the jury aforesaid in their verdict ascertained and assessed, with legal interest thereon from this day until paid, and her costs by her about her motion for judgment in this behalf expended.

At the instance of the defendant by her attorneys, who intimated her intention to apply for a writ of error and *supersedeas,* the court doth order that execution of the foregoing judgment be suspended for ninety days from this day, upon condition that the said defendant or some one for her give a proper suspending bond in the penalty of $500.00, conditioned according to law, with surety approved by the clerk of this court.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Notice is hereby given, pursuant to Rule 5:1, Section 4, of the Rules of the Supreme Court of Appeals of Virginia, that Mae C. Thoms, the defendant in the above action, hereby appeals to the Supreme Court of Appeals of Virginia from the final judgment entered in this action on January 22, 1959.

Pursuant to the aforesaid Rule, the aforesaid defendant makes this, her assignments of error, and alleges that the Court erred as follows:

1. The Court erred in improperly determining the method of ascertaining the frontage required for a residence district as set out in Section 46.1-1 (24) of the Code of Virginia.
2. The Court erred in giving Instruction 1-A offered by the plaintiff on the ground that the residence district was improperly determined, and the maximum speed limit should have been 35 miles per hour.
3. The Court erred in refusing to give Instructions A and B offered by the defendant as the jury should have determined whether the plaintiff was a guest or a paying passenger.
4. The Court erred in refusing to set aside the verdict of the jury and grant a new trial on the ground that the verdict of the jury was excessive.

WILLIAM W. SWEENEY
925 Church Street
Lynchburg, Virginia,
Of Counsel for the
Defendant, Mae C. Thoms.

February 25, 1959.

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page 34 }

* * * * *

Filed Feb. 25, 1959.

H. H. M., Clk.

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Dr. C. E. Keefer.

ASSIGNMENT OF CROSS-ERROR.

To: H. H. Martin, Clerk of the Corporation Court for the City of Lynchburg, Virginia.

TAKE NOTICE, that pursuant to Rule 5:1, §4 of the Rules of the Supreme Court of Appeals of Virginia, the plaintiff, Arleen Dowdy, by counsel, files her assignment of cross-error to the ruling of the Court in the case of Arleen Dowdy *v.* Mae C. Thoms, on this the 10th day of March, 1959, and assigns error as follows:

(1) The refusal to grant plaintiff's instruction No. 1 on the ground that there was no evidence of contributory negligence as a matter of law.

(2) The granting of defendant's instruction No. A-1 on the same ground that there was no evidence of contributory negligence.

(3) The granting of defendant's instruction No. C-1 on the ground that there was no evidence on which to base it.

(4) The granting of defendant's instruction No. J-1 on the ground that there was no evidence of contributory negligence.

WM. ROSENBERGER, JR.,
Attorney for Plaintiff
407 First Colony Life Bldg.,
Lynchburg, Va.

Filed Mar. 10, 1959.

H. H. MARTIN, Clerk.

* * * * *

page 4 } DR. C. E. KEEFER,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Rosenberger:

Q. You are Dr. C. E. Keefer?

A. Yes, sir.

Q. Doctor, what specialty do you practice medicine in?

A. Practice in orthopedic surgery which has to do with the diseases and injuries of bones and joints.

Dr. C. E. Keefer.

Q. How long have you been an orthopedic surgeon?
A. Since 1935.
Q. And where did you go to medical school?
A. University of Virginia.
Q. And you finished medical school and your training and where have you been practicing medicine since?
A. In Lynchburg.
Q. Now, Doctor, will you tell us when and where you saw Mrs. Arleen Dowdy, the plaintiff in this case, in July of last year?
A. I saw her at the Lynchburg General Hospital.
Q. That was on what day in July?
A. July 22nd.
Q. What did you find her condition to be at the time you saw her?
page 5 } A. The patient had been in an automobile accident which had resulted in injury to her head, her left shoulder and to her right knee. Examination revealed lacerations over the left eyebrow. She had abrasions in the scalp above that area. By abrasions we mean that the skin had been brush-burned and she had a rawness of the skin that doesn't go all the way through. There was no bony tenderness under the laceration or under the abrased area. Her pupils reacted equally to light, no bleeding from the ears or nose which would indicate possible skull fracture—didn't have any bleeding. Her chest cage was negative. In testing for bony injuries her shoulders and arms were negative except for laceration behind the left shoulder approximately an inch or an inch and a half in width and when it was explored it was found to be approximately four inches deep. You could run your finger down in this wound and rub the rib cage and it would have the same sensation as rubbing your finger over a washboard. I found no foreign bodies and apparently no defect in the rib cage. Breathing normal and no pain with breathing. Abdomen was negative. Pelvis and lower extremities were all negative except for an abrasion over the left knee that begins where the skin was raw but doesn't go all the way through. The right knee did have a discolored area, which was extremely tender. Crepitus could be felt and a small fragment of bone could be felt and this was seen on x-ray, a piece of bone about the size of your thumb-
page 6 } nail, about sixteenth of an inch in thickness.

Her treatment: The laceration of her eye was closed. This puncture wound in the back after being explored was packed with Furacin gauze which is an antibiotic like

Dr. C. E. Keefer.

penicillin which is about ten times as strong. This was put into the wound to prevent infection and the wound was not closed to give drainage.

The leg was enclosed by application of a long leg walking cast. This extended from the hip all the way down to the ankle. The weight bearing surface in this instance is not involved. It is more a ligament attachment and muscle attachment that is involved so all we need to do is to prevent her from moving the knee but she can still walk on it. This was applied and she was admitted to the hospital. She remained in the hospital until the 24th and was allowed to go home and the rest of her treatment was from the office.

Q. Now, Doctor, when you checked her right knee at the hospital on admission what, if anything, did you do about x-raying the right knee?

A. It was x-rayed and showed this fragment that we mentioned.

Q. Where was that fragment, off of what part of her leg?

A. That is off of what we call the medial condyle page 7 } —that is on the inside of your knee.

Q. Could you take this chart here and show the jury what part of the bone was fractured?

A. This (referring to a large picture of two human skeletons, one showing a front view and one showing a rear view) was the patient's right knee which was involved, which is this knee here. This shows the ligament structures. This little piece of bone was knocked off of this area right here. This is what we call the condyle where the bone comes down and gets bigger at the joint. This is the medial condyle and this is the external condyle and this section was knocked off here in this area.

Q. What part is that medial condyle attached to, to what leg bone?

A. It is the femur.

Q. And what is the part that comes up below that that joins into the femur—what is this part that comes up?

A. This is the tibia and this is the patella, the knee cap, this little bone right here.

Q. Doctor, you said you had involved here ligaments and tendons. Can you on that chart point out the ligaments and tendons that were involved in this thing?

A. Well now, your ligaments and tendons are here. The reason I am showing the left knee is because the ligaments have been left in here for illustrative purposes.

page 8 } Actually the break is on the condyle. These ligaments are attached to this area. The muscles come down in the leg and are attached to the other end. As you can see, there is no weight bearing and that is the reason they are allowed to walk on it. It is immobilized so they won't continue to move it and tear down the new bone as it forms. If they tear it down it ends up by this not healing.

Q. What happens to the ligaments that are attached to the fragment that is chipped off?

A. They all heal back in position.

Q. And that was the purpose of putting on the long leg cast so as to hold those in position?

A. Well, that is right. This small fragment would heal back and it is immobilized so your ligaments would also heal.

Q. Now, Doctor, if you will go back and take your seat. After you got her home from the hospital with that long leg cast on what was your prescribed treatment for her? Was she to remain in bed or not?

A. No. She was allowed up on her leg.

Q. What was the purpose of getting her up?

A. In any illness or accident we like for the patient to get up as soon as possible and they are instructed within a day or two to begin moving their feet and legs so that the blood doesn't lie in the extremities slowing down and beginning to form clots. Then when the patient gets up a little page 9 } the clots break aloose and go to their lungs or heart and if it is big enough it will be fatal, so to prevent this type of accident we like for them to move around as quickly as possible and get them up and have them move around if we possibly can for that reason.

Q. Now, Doctor, when you first saw her in the hospital did you make any memorandum of any treatment to the right thumb?

A. No, we did not.

Q. Was there any complaint of any lacerations on the left breast?

A. No, there is no mention of that in the notes.

Q. You didn't make any memorandum of that?

A. No, sir.

Q. All right, when is the next time you saw her?

A. I saw her the next time on July 25th. She came to the office at that time.

Q. You had her come in with the cast on?

A. That is right.

Q. All right, what did you find then?

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A. Well, we found that the forehead was healing satisfactory, including the abrasion and laceration over her eyebrow, pupils still reacting normally. She had some discoloration, of course, of her head. The Furacin gauze put down into this puncture wound in the shoulder area was
page 10 } removed and a new one was reapplied. Four of the five stitches were removed from the left eyebrow. She was given her first tetanus toxoid. That is to prevent lockjaw. She was given that shot. She was put on a diet and the necessary vitamins to build her up and help her to lose weight. She came back on the 26th for re-dressing.

Q. Excuse me, but before you get away from the 25th, when you took that Furacin wick out did you put another one in?

A. That is right.

Q. You inserted another?

A. That is right.

Q. When you put it in in the first place did you put it in without any stitches or how did you do it?

A. Well, of course, the area is deadened with local anesthetic so she doesn't hurt and then the wound was packed and partially closed when this wick was put in.

Q. What do you mean by partially closed?

A. We closed it in this instance about a half and the reason we don't close it is because in this kind of a wound there is going to be a certain amount of exudation drainage and that will just pocket up, so we leave it open so this material can drain out.

Q. How do you close up a wound partially? Do you sew it up or clamp it up?

A. Sew it up.

page 11 } Q. You sew it?

A. That is right.

Q. When you took the wick out on the 25th in your office and put another one back in what did you do then?

A. You mean were any stitches removed?

Q. Yes, sir.

A. The only stitches removed were from her eyebrow.

Q. All right now, then when was the next time you saw her?

A. We saw her the next day, on the 26th, when this was re-dressed and on the 28th we re-dressed it with a new wick inserted each time. She had very little drainage on the 28th. Healing seemed to be satisfactory.

Q. All right, when is the next time you saw her?

A. The next time I saw her was on July 31st and the same procedure was followed. There was no evidence of infection.

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Q. Was she complaining then of her thumb or did you make any memorandum of it?

A. We didn't make any memorandum of it at that time.

Q. Then when did you next see her?

A. Saw her next on August 2nd and the same procedure was followed. On August 5th, at that time, the wound was mostly healed under the left shoulder.

The next time we saw her was on August 13th. At
page 12 } that time the shoulder wound did not require any
additional treatment. The cast was bivalved so the knee could be inspected. Still had tenderness at the fracture site. The cast was simply reapplied and she was told to return again in three weeks.

Q. Will you please explain what you mean by bivalving the cast? Of course, some of us know what that means but all of us don't.

A. By bivalving the cast we mean we split it in half on each side so roughly you have half of the cast in front and half in back. It is then strapped on and worn by the patient for an indefinite period. In other words, the leg can be inspected and the cast put back on and we continue whatever treatment is indicated.

Q. Now, did you have a reason for putting this cast back on her at this particular time because of the condition of the knee?

A. Yes. She was *still* tender at the fracture site, which would mean the wound was incompletely healed. She was tender enough, I though, to wear it another three weeks and by that time we hoped it would be healed up; that the union would be complete.

Q. What union do you mean?

A. This has to do with that fragment broken off of the medial condyle of the femur.

page 13 } Q. In other words, that hadn't healed back?

A. No, it was still tender, which would indicate it hadn't healed back.

Q. All right, sir—now then, when is the next time you saw her?

A. The next time we saw her was on September 3rd, 1958. The patient was complaining of periodic headaches occasionally, still confined to the injured side of her head; complaining of tenderness in this area. Has some discomfort in her right shoulder if she lies on it at night. Examination of the right shoulder showed normal range of motion and no pain. Examination of her right knee still showed a little tenderness at

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the fracture area. Her motions—she was able to straight leg raise very well. In other words, she can extend her knee and raise the leg off of the examining table. We felt that she was ready to start on exercise program, use hot towels on her knee every hour—go through her exercises, and her diet and vitamins were continued, plus drugs to help control her appetite.

The next time we saw her was on September 13th. At this time she felt very well. She was complaining more of her sore right thumb now than any place. We apparently had looked at this before but we felt this was a sprain. She was not having any pain in her shoulder, although she still was uncomfortable if she would turn on it at night—felt

page 14 } that her knee was better. Examination of the knee still showed some swelling and discoloration. No tenderness. Extension was normal and she was beginning to improve in flexion of the knee—that is, bending the knee backward.

Q. How did she walk?

A. Don't have any notes on walking—let me see here—she walked with a mild limp and a sensation of something was slipping in her knee—has a numb feeling in the contused area, over the injured area of her shoulder. Her shoulder motions were normal and no pain. She has a healed scar and a little tender in this area. Right thumb, mild swelling with discoloration of the metacarpal phalangeal joint. That is the first joint here. She had a little tenderness. Motion was limited mildly. We felt that this represented a sprain of the metacarpal phalangeal joint of the right thumb. The cast on the right leg was discontinued. She was continued with hot soaks and her exercise program. She was continued on what we consider a general supportive program, diet and medicine to restrict appetite and so forth.

The next time we saw her was on October 4th. She was complaining of more pain in her knee during the past week than she had been having. Examination of the knee still showed a little swelling. Still had a numb feeling where the contused area was over the medial side. This time I felt there was a little local heat and a little induration and

page 15 } she had local tenderness. Extensions part of the motions normal. Ligament stability normal and no discomfort by testing. By that we mean that the knee is extended and the lateral ligaments on the knee are tested and

hers were normal. She is walking fairly normally. We felt that the reason for her discomfort was because she was developing a secondary inflammatory process.

Q. Why was she developing that process?

A. Why?

Q. I mean where was she developing it?

A. In the right knee.

Q. What do you call that process?

A. This is a synovitis.

Q. Will you tell the jury what synovitis is?

A. That is in the arthritic family group of diseases, inflammation of the lining of your knee joint. As I say, it is in the arthritic family group.

Q. What did you find about the thumb?

A. She still had mild swelling and still had some tenderness. Motion was essentially normal with some discomfort. The left shoulder area puncture wound healed satisfactorily —no local heat. There was some tenderness over the posterior rib cage with some induration in this area (indicating). Deep breathing produced no discomfort. Did have discomfort if she coughed. Shoulder motion normal with little page 16 } discomfort. We thought an inflammatory process is now involving the lining of the bones in the rib cage just the same as we felt there was synovitis in the knee. In other words, these are complicated types of things you have after injuries. She would sit for awhile and would tend to stiffen and get sore.

Her treatment program now is enlarged to take care of this secondary inflammatory process which fits into the arthritic family group and specific medicine is used for it and I used gold. She was started on gold treatment at that time.

We don't have any mention there of examination for foci infection but later on we will show that she had two diseased teeth removed and two more to be pulled. We looked around for any infection to see if that might add to the injury and prolong the recovery and also tend to produce these secondary inflammatory reactions.

Q. When you spoke of the induration in the back what do you mean?

A. That is a thickness you can feel with your hand.

Q. Feel some thickness of the back there?

A. With your fingers, yes.

Q. At the point she had the puncture wound?

A. No, this is down over the rib cage. The puncture wound

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was up higher and this is down over the rib cage
page 17 } which was damaged at the time.

Q. Is that the point you could reach your fingers down into when her back was opened up?

A. Approximately.

Q. When that penetrating or puncture wound was made into that point what did it go through in getting there? We know it goes through the skin but what else did it go through?

A. The subcutaneous tissue or fatty tissues. It did not penetrate the fascia which is over the rib cage.

By Mr. Frost:

Q. You say it did not penetrate that?

A. No, it did not.

By Mr. Rosenberger:

Q. What was the thickness you felt in October after this thing happened in July?

A. This is an elevation of the periosteum of the ribs. The periosteum is the lining around the bone structure and has the power to make new bone. It is what makes them heal up when you break them.

Q. Will you point on that chart to the jury where you refer to the rib cage and where the swelling of the periosteum was? You can use that pointer there.

A. This view is with your patient's back to you. You can see the shoulder blade here. This other patient is facing you.

Of course, you can see your rib cage now. These
page 18 } bones are all bound together with material like this

(indicating the knee shown on the chart which shows the tendons and ligaments etc). We call that fascia material. They have, of course, muscle attachments and that is all bound into this area. Now, I could put my finger down into this and run it up and down and could feel those ribs like a washboard. It was tender in here now because of the trauma in here.

Q. What do you mean by trauma in here?

A. Well, injury. When you have an injury you get some bleeding between the lining of the bone and the bone itself so that the blood raises this lining up. This lining then has the power to make new bone and before that blood can be reabsorbed underneath it it lays down a little layer of new bone on top of it so that if you could get an x-ray at just the right angle you could show this little thin layer of new bone on top of the boney structure. We now have a reaction

similar to a broken bone and as a result it takes longer to get well than if you have simple soft tissue damage such as cutting into the skin and the subcutaneous tissue. She is still tender in this area here.

Q. You say with this type of injury it reacts as if there had been a broken rib?

A. Well, when you get traumatic periostitis it gives you much the same type of reaction as for a fracture only to a lesser degree. You have reaction of bony structure page 19 } to injury as compared to skin or soft tissue injury

Q. Doctor, what did you start doing on October 4th for that periostitis and synovitis, the synovitis in the knee and the periostitis in the rib cage?

A. She was already under diet we use with arthritic patients. That usually helps them lose weight so we put her on that in the beginning. She was already on vitamins and so forth which we use so we added gold at this time and we also checked her for infection, her teeth.

Q. What was the condition of her right thumb on October 4th?

A. Right thumb shows mild swelling. She has tenderness over the joint generally. Motion was normal, or fairly normal with some discomfort.

Q. What was the next time you saw her?

A. The next time we saw her was October 21st, 1958. She complained of discomfort in the right knee and leg. During the preceding week she had a burning sensation in the knee. This time there was still mild swelling in the right knee, still tender along the medial side of the knee.

Q. What did you attribute the tenderness in that knee to at that time?

A. We feel that we are dealing now with an inflammatory type of reaction. Examination of the posterior rib cage shows she still has discomfort in this area, has tenderness page 20 } and mild induration. Certain motions of her arm while normal produce discomfort. The deep breathing produced a little discomfort and we felt this was due to fasciitis and periostitis of the rib cage. She was still stiff and sore when she would get up in the morning or after sitting awhile. Complaining of shooting type of pain in left side of her head. Still has little tenderness in this area. Laceration can still be seen on close inspection. We feel that this continued tenderness along side of her scalp represented a periostitis, which is a normal bone reaction to trauma along the left side of the skull. Treatment program remains same

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except we are increasing gold because of continued discomfort in these areas.

The next time we see her is on November 4th. At this time she complained some of dizziness, discomfort behind the puncture wound and a tender spot noticed particularly if she leans back against anything such as riding in a car or sitting in a chair and leaning back. Still has discomfort in knee at times and a burning sensation along the injured area in her knee. Morning stiffness and soreness is very little. Examination of the knee shows she still has some swelling—moderate synovial thickening. General tenderness posteriorly. Ligament structures normal. No discomfort on testing examination. Again we thought this still represented synovitis of the right knee.

page 21 } Q. That is the first time you spoke of synovial thickening. What do you mean by the use of the term "synovial thickening in the right knee"?

A. Synovial membrane lines the entire knee joint and you can by palpating or feeling with your fingers detect a thickness of the structures so that is what that means.

Q. Is that the first time you had been able to feel it and notice the actual thickening?

A. In a general way, yes. It had never been localized before.

Q. Now, what did you find about the left shoulder or rib cage?

A. Doesn't have any tenderness over the wound itself. Again her motions are normal and no pain. Was tenderness over the region of the ninth rib in the border of the extensor muscle group.

Q. How do you account for that tenderness down in that area? Is that again periostitis?

A. Yes, that is right.

Q. You say it goes along the border of the extensor muscle group?

A. This is described in the rib cage down to the muscle group. There were no masses palpable. In other words, I wes wondering then maybe in examination I could have missed some foreign body in the deep puncture wound she had and

page 22 } was no evidence of it by tissue reaction. She has a pulling sensation with motion and some discomfort with motion in the shoulder.

Q. When you speak of a foreign body what do you mean, Doctor?

A. Well, with the puncture wound partially closing material from the car or clothing can be carried in.

Q. You reexamined to see if there might be something in there?

A. Well, she continued to complain. You have a wound you can't see down in and all you can do is feel down in it and possibly you might miss something so I was trying to check on myself to be sure whether we had missed something or not and there was no soft tissue reaction to indicate there was anything in there.

Q. Have you seen foreign bodies in places where there is no tissue reaction?

Mr. Frost: If your Honor please, I object to that question. It has nothing to do with this case at all.

The Court: What is the pertinency of it?

Mr. Rosenberger: He was checking for it and couldn't find it by feeling and even though he had no reaction he was still checking to see if he could palpate it.

The Court: What has that to do with this case?

page 23 } He didn't find any.

Mr. Rosenberger: I am asking if it could be there even if he couldn't find it.

The Court: That is awfully remote. You must prove your case with reasonable certainty. I don't think it is pertinent. I sustain the objection.

By Mr. Rosenberger:

Q. Doctor, when was the next time you saw her? This was November 4th we have been talking about.

A. The next time we saw her was November 18th.

Q. What did you find then?

A. Feeling very well except for soreness in the back and complains much the same about when she is sleeping or leans her back against anything. Still has some ache and soreness in the knee. Examination of her knee shows mild swelling—no local heat. A mild synovial thickening—tender now over the patella, which is a different area.

Q. Where is the patella?

A. The patella is the knee cap. No tenderness over the medial condyle area, the injured area. With motion she has discomfort referred to the knee cap or patella. Again ligament stability was normal and no discomfort with testing. Posterior rib cage, no swelling, no tenderness and discomfort center is over the posterior rib cage below the scapula. Does

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page 24 } have mild induration feeling in this area. In other words, feel a little thickening in this area possibly seven inches from the puncture wound. The swelling of the puncture wound has moved closer up to the shoulder joint.

Q. And you could feel that?

A. That is right. Deep breathing produced a tight feeling. Excursion of the shoulder seems slightly less than on the good right side. She has some limitation of motion in the back. She has sixty-five per cent on hyperextension and fifty per cent side to side, and no pain on bending forward.

Q. You say there was a sixty-five per cent limitation in motion on hyperextension. Which way was that?

A. Bending backwards.

Q. As against normal extending back she could only do it sixty-five per cent?

A. That is right.

Q. What was the side to side limitation?

A. Fifty per cent.

Q. In other words, she could only bend half way?

A. That is right. Flexion is bending forward to touch the floor. That was normal with no pain.

Her treatment program was increased in gold again. We feel when we examine and find changing spots of soreness that is additional evidence of this complicating disease called synovitis and fasciitis which has a tendency to migrate around.

page 25 } We next saw her on January 3rd, 1959.

Q. What did you find then?

A. We feel she is doing very well. Still has tenderness over the puncture wound if she leans against it. She has a sensation that something is pushing through.

Examination of the left eyebrow shows a one-half inch laceration or healed scar extending from the left eyebrow. She has tenderness in this area. She has headaches fairly constantly and had very little before her accident.

Right knee has swelling. She felt she was unable to bend down completely or to stoop down. She was tender anteriorly over the knee joint. She has general discomfort and an indurated feeling along the medial side of the knee. Ligament stability is normal again and no discomfort with testing.

The left shoulder area shows a one and one-half inch scar at the posterior corner of the axilla. There is no induration in this area. She is still mildly tender over the posterior rib cage with very little induration, which I thought was due to

Dr. C. E. Keefer.

scarring, and periostitis which we have already talked about.

Motion is normal but she has some discomfort if she does work with her hands over her head.

Her treatment program is continued with increasing her gold. She is having trouble with her weight. Actually instead of losing weight this time she had gained weight page 26 } and we put her on another type of pill which will help her lose weight again.

The last time we saw her was on January 19th, 1959. She is still complaining of tenderness in the puncture wound area. She has discomfort when she leans back against a chair or when riding in a car. She also complains of discomfort in this area when she does certain work such as ironing and after a hard day's work. She complains of soreness in the forehead above the laceration. She still has headaches. She had an especially bad one the night before she was examined. She is still having soreness in the knee and discomfort going up and down steps. Has two tender spots over the knee at this time.

We questioned her again in regard to unconsciousness. She advised she was dazed or knocked out for a few minutes at the time of the accident. She recalled no bleeding from the nose or ears to indicate skull fracture.

The morning stiffness and soreness is lessening. She stiffens up after resting, however.

She called attention to a rash or chafing on the inside of her leg which she had never had before. The exact cause of this we were unable to determine. Sometimes colloidal gold will produce skin irritation, although this didn't look like gold irritation, and the medicine was stopped.

Q. You stopped her from taking the medicine?

page 27 } A. That is right.

She is complaining of discomfort in her right thumb and calls attention to a small bump or knot on the outside which has discomfort with motion.

Rechecking her again for infection we found she had had two teeth pulled and had two more to be pulled. We think the teeth will tend to aggravate the complicated synovitis.

The left eyebrow still shows a one-half inch laceration visible from across the room. It is not visible when she wears glasses. She is still tender over the scalp and forehead above the laceration with some induration due to traumatic periostitis.

She still has a mild swelling of the knee. She has a little local heat again. Tender along the anterior margin of the medial condyle.

Dr. C. E. Keefer.

Q. What do you mean when you say she has a little local heat?

A. The extremities are examined each time for local heat which would indicate an inflammatory process. We do that by palpation. Sensation in her hand is compared to sensation on the opposite or good hand and the same with the knee or whatever may be injured in the patient.

Q. In other words, you can feel more heat in the bad knee than you can in the good knee?

A. That is right. She was tender over the patella
page 28 } tendon and tender generally over the knee posteriorly. Motions were normal. By normal I mean there was no discomfort on testing. The essential motions were normal, however, for complete testing, for instance, in flexion she comes back seventy degrees as compared to being able to bend the good knee back fifty degrees, which is actually twenty degrees loss of flexion in the forced position but from a practical standpoint this is not too important because you wouldn't be using that particular last twenty degrees unless you were in a squatting position all the time.

Right thumb still shows some swelling. Has general tenderness with limitation of motion and a pulling sensation with motion.

Left side of the chest wall still has a one and one-half inch scar posteriorly with no tenderness. Tender over posterior rib cage in the region of the ninth rib which is down approximately seven inches from the puncture wound. Induration is questionable. It seems to be disappearing. Motion to the shoulder normal with mild discomfort in the posterior rib cage area. Dorsal spine is negative. Deep breathing produces no discomfort. Breath sounds are normal. Flexion is essentially normal with pulling sensation.

We x-rayed her thumb at this time. This revealed what we call a chipped fracture, which is a small piece of bone about
the size of a pin head, that was pulled aloose. We
page 29 } call these fragments. You can have them in your ankle and so forth. In an injury the ligament structure sometimes pulls up a small section of the periosteum and, as a matter of fact, sometimes the original x-rays do not show this and then this little piece of bone pulls up has the power to make new bone so after a period of time you can see this little flake of bone where you wouldn't see it on the original x-ray. This was pulled up at the base of the thumb. She also has some arthritic spurring in the thumb.

Her rib cage was also x-rayed to be sure we hadn't missed

anything and that was negative.

The right knee was x-rayed. This shows a small chip of bone to be in a satisfactory position.

Q. What did you find to be the condition of the right knee? What did the lateral view of the x-ray show?

A. The lateral view was negative except for mild spurring of the patella.

Q. What do you mean by that?

A. This is an arthritic change that takes place in the knee cap.

Q. Now, Doctor, will you explain to us what caused the arthritic condition of spurring in the thumb and right knee?

A. Well, the spurring part in the patella and in the thumb are bony changes that take place over a long period of time.

page 30 } This means that she had an arthritic tendency going on for some time, even though she may not have been conscious of it or complained about it.

Q. What, if any, connection did it have with the accident?

A. Well, if this condition exists then these people are more prone to develop arthritis after they are hurt and their recovery is usually delayed as compared to someone who doesn't have the arthritic change.

Q. You had not noticed any spurring in the thumb before your examination of January 19th?

A. No, we didn't get an x-ray of her thumb before that time and the spurring is something you couldn't palpate, couldn't feel. You can see it on your x-ray but these bony changes are so slow we know that is something that would develop over years and not in a few months.

Q. Now, does the fact that there is limitation in the motion of the joint when the joint is kept still have anything to do with the arthritic process changes? Would the fact you had her knee immobilized in a cast have anything to do with that?

A. No, I don't think that would have anything to do with it except when people have dormant arthritis it can flare up after an injury. As a matter of fact, rest in a cast sometime helps it and sometimes they do that for acute arthritis, so that wouldn't aggravate the arthritic condition.

page 31 } Q. Where is the spurring in the thumb with relation to where you found the little chips off of the right thumb?

A. The chip is off of the first joint here. The spurring is up in the next joint.

Dr. C. E. Keefer.

Q. Is there any limitation in the motion of the thumb?

A. Mild limitation of motion.

Q. Is that limitation in the motion of the joint due to where the chip was or where the arthritis was?

A. Primarily at the injured joint.

Q. In other words, the injured joint of the thumb is causing limitation of motion, in your opinion?

A. That is right, and I believe this was more of a synovitis reaction than it was from this small chip.

Q. Now, what does the synovitis reaction you find in the knee and in the thumb come from?

A. We think that is a secondary inflammatory process in the arthritic family group of diseases that is complicating her injuries.

Q. What produced that in her particular case?

A. Trauma.

Q. When you say trauma do you mean the injury she got in this accident?

A. Yes, sir.

Q. And that is the synovitis you find in the knee and in the thumb?

page 32 } A. That is right.

Q. Now, when you say that that synovitis she has in the knee and in the thumb is in the arthritic group of diseases will you tell us what stage of arthritis is the synovitis?

A. It is the primary or early stage.

Q. Primary or early stage?

A. That is right.

Q. Doctor, how long do you think you are going to need to treat her?

A. It is difficult to estimate because these patients do not follow any set pattern. In other words, if you break your arm or your leg we can tell you within a couple of weeks how long it is going to take to get well but this varies so it is impossible to estimate very accurately how long it is going to take. It will probably take three or four more months treatment.

Q. Can you tell the jury with any reasonable degree of probability that she will be all right in three to four months?

A. You cannot guarantee it.

Q. Can you tell the court and jury whether or not she will have any permanent disability from this synovitis?

A. I don't think so.

Dr. C. E. Keefer.

Q. If she is predisposed to arthritis will that be a complicating factor?

page 33 } A. Yes.

Q. Now, Doctor, you took x-rays which you have described and you brought your x-ray box here to show those pictures but I notice you have a different sort of connection on it?

A. Yes, it calls for a ground wire and none of these sockets have the right connection.

Q. You can't hook it up?

A. No.

Q. How much is your bill for services to date?

A. Three hundred twenty-seven dollars and twenty-five cents.

Q. Can you give us an estimate with a reasonable degree of certainty of what your bill is going to be for future treatment? I don't mean you will guarantee it won't be any more but what you can say with a reasonable degree of certainty it will be.

A. We tried to estimate that and it will be between fifty and sixty dollars.

Q. Do you tell this lady that is all it will be or that is your best estimate?

A. That is an estimate.

Mr. Rosenberger: You may examine.

page 34 } CROSS EXAMINATION.

By Mr. Frost:

Q. Does that bill include your attendance this morning?

A. Yes, sir.

Q. How much do you deduct for your attendance this morning from your bill?

A. Fifty dollars.

Q. Fifty dollars?

A. Yes, sir.

Q. That would make your bill then $277.25 for services?

A. I will take your arithmetic.

Mr. Frost: If your Honor please, I would like to ask the court to instruct the jury to disregard that $50.00.

The Court: Yes, sir. Members of the jury, disregard anything put in his bill for testifying. The actual medical

Dr. C. E. Keefer.

expense for treatment is proper but you should allow nothing for testifying.

By Mr. Frost:

Q. Doctor, if you don't mind, will you come around and stand up in front of the jury. I don't know how you can do it with your hand but I want the jury to see where this particular injury was in the back, the puncture wound. If I put my hand on your back will you tell me when I have touched the place where the puncture wound was?

page 35 } A. Could I show it on you?

Q. Yes, show it on me.

Mr. Rosenberger: Why not show it on the lady? She is the one that had the puncture wound.

Note: The planitiff comes around and stands in front of the jury beside the witness.

By Mr. Frost:

Q. Point out on her where it was.

A. The wound was right here where I am pointing.

Q. I would like to get this in the record. Will you describe that?

A. It is an inch and a half long.

Q. Can you explain where it is?

A. It is at the posterior corner of the axilla.

Q. Putting that in layman's talk is that just below the back of the upper arm on her chest?

A. I guess that would be it.

Q. What do you call this, the back or what?

A. This is the back.

Q. Could you describe it in every day language?

A. This is her posterior rib cage. It is part of her back.

Q. Would you say it is the left side of her back below the left arm? Is that a good enough description?

A. Yes.

page 36 } Q. Doctor, you have treated Mrs. Dowdy before?

A. No.

Q. Has she ever given you a history of being in any other accident?

A. No, sir.

Q. You have not called in any other doctor yourself?

A. No, sir.

Dr. C. E. Keefer.

Q. She went to the hospital on July 22nd and you have seen her at your office after she was permitted to go home on July 24th?

A. I saw her first in the office on July the 25th.

Q. She came to your office on July the 25th and then on all of these other different dates on through July, August and September—In other words, she was able to get around?

A. Yes, she could get around.

Q. If she hadn't had the knee trouble she could have gotten around without any difficulty at all?

A. Yes.

Q. Do you know how she came to your office, whether in an automobile or how?

A. No, I never did see her come in. I assumed that she was coming in an automobile.

Q. So if it had not been for the cast as far as her other injuries were concerned she was able to walk around and go any place she wanted to, was she not?

page 37 } A. Yes, sir.

Q. Do you happen to know she went to work on September 29th?

A. I believe we have that in the record here.

Q. Do you know the nature of her work?

A. No, I do not.

Q. Do you happen to know that she did not miss any time from work after she started up to the present time?

A. No, sir.

Q. You say you do not know it or you do know it?

A. I do know she went back to work. I didn't know whether she had missed any time or not. I believe we said in here one time that she had worked regularly but I don't know that she hadn't missed any time at all.

Q. Now, you saw her, I believe, three times in August and then in September twice. She was continually improving all the time, was she not?

A. Yes, sir.

Q. Then in October I believe you saw her once, twice in November and you saw her in January. You did not see her any in December. That is correct, isn't it?

A. That is correct.

Q. When is the last time you saw her?

A. January 19th.

Dr. C. E. Keefer.

Q. That is this week?
page 38 } A. Within the last week.
Q. She came for evaluation then. She didn't come for any treatment, did she?
A. That was Monday of this week.
Q. That was the time she came for you to examine her so you could testify this morning?
A. That is right.
Q. Doctor, what is Mrs. Dowdy's weight?
A. Her weight on January 19th, 1959 was two hundred twenty-three pounds.
Q. Two hundred twenty-three pounds?
A. Yes, sir.
Q. Do you happen to know what her height is?
A. No, sir.
Q. She weighs two hundred and twenty-three pounds. She is decidedly overweight, is she not?
A. Yes, sir.
Q. And that overweight has nothing to do with the accident, has it?
A. No, I wouldn't think so.
Q. But that does delay her recovery. Is that right?
A. The overweight, of course, throws additional strain on her knee so it tends to delay her recovery but also as important as the overweight is the type of food we think tends to irritate the inflammatory processes too.
page 39 } Q. You have tried to get her to fall off, have you not?
A. Yes, sir.
Q. And you have not been too successful, have you?
A. She lost five and a half pounds in the last two weeks but over the whole period she hasn't taken off too much weight.
Q. You said something about her teeth. Did she have infected teeth when you examined her at first? I think you stated something about two had been removed and two more to go.
A. Yes, sir. The record does not show when we looked at her teeth the first time. The record does show when we began to question her again in regard to her diseased teeth and she had two pulled.
Q. Was that two pulled during the time she was under your care?
A. Yes, sir.
Q. And then you recommended two more to be pulled?
A. Her dentist did.

Dr. C. E. Keefer.

Q. As a matter of fact, decayed teeth affect your whole body, do they not, the poison from the teeth? Doesn't that affect these areas you have been describing?

A. Yes, that is right.

Q. And that is the reason you tried to get her to take them out. If she would take the other two out she would

page 40 } be that much better off, wouldn't she?

A. That is right.

Q. Let me clear up one thing.—

A. I would like to say this—My record reveals that in examining her teeth they looked all right to me but as she continued to complain then we thought she should have dental consultation so it wasn't until after the first of the year that she saw her dentist and had two teeth extracted. In other words, looking at her teeth I couldn't tell anything wrong but after she continued to complain we thought we should get a dental consultation.

Q. That could have been the cause of the complaints, the infection from the teeth, could it not?

A. Not the cause. We think that would tend to aggravate it.

Q. In other words, the weight condition and the teeth condition would aggravate and prolong the improvement you would normally expect?

A. Yes, sir.

Q. Now, when she came to see you on January 3rd I believe she told you at that time she was doing very well. I believe that is what you said?

A. That is right.

Q. At that time you found her motions were normal. Is that correct?

page 41 } A. Well, she felt very well. She had some complaints in the various areas. Let me see here again—on examination of the eye she still complained of tenderness in that area. I believe the shoulder motions were normal. We didn't put her through the range of motions for her knee at that time. We don't do that every time, nor did we look at her thumb at that particular time.

Q. You did x-ray her on the 19th. Now the x-rays show normal healing. In other words, the broken places have healed. Is that right?

A. Hasn't healed completely but is healing, yes.

Q. In other words, it is satisfactory, in your opinion?

Dr. C. E. Keefer.

A. Yes, sir, what you would expect.

Q. Now, the spurring on the thumb and the knee you state is an arthritic condition which comes over a long period of time?

A. That is right.

Q. It affects us all, does it not? It can affect us all whether we are in an accident or not in an accident?

A. Yes, sir.

Q. Of course, you didn't take x-rays of any portions of her body to see if she had spurring in other parts of her body that were not involved in the accident?

A. No.

Q. Do you know her age?

page 42 } A. She was forty-seven when she came in to the hospital.

Q. From about forty-five on we all probably don't feel, from the arthritic standpoint, the way we did when we were younger. That is correct, isn't it?

A. No, I don't think so. I see a lot of people who from an arthritic standpoint don't seem to have any symptoms. There is a large percentage who seem to feel a little old at that time but not everyone.

Q. Of course, spurring at that time is not as pronounced as it is later and would escape the average person's notice at that time?

A. I think that is true.

Q. Although the spurring itself it a result of a right long period of time of arthritic changes?

A. That is right.

Q. Doctor, as far as your examination of the 19th, which I understand was not for treatment purposes but to get some idea about her condition so you could come and testify this morning, as far as you could find from your observations—that is, what you could find yourself, she had practically recovered, hasn't she?

A. No, she hasn't practically recovered. She is moving along. She still has some active arthritic processes that we call synovitis but she is getting better and it should clear up all right.

page 43 } Q. You don't think there is going to be any permanent disability?

A. No, I don't believe so.

Q. Did you make any notation of the thumb injury when you first examined her?

A. No, sir.

Q. She made no complaint of any thumb injury at that time?

A. I can't say that. We didn't put any notation about it. Sometimes when you have got multiple injuries like she had a minor type injury like the thumb they don't complain about it at the time. They may get over that in the next two or three days so that is not put down on the original thing and you don't make any note about it. At any rate, it didn't reach the importance of the other things until later on.

Q. You do consider that a minor type injury?

A. This is what we would call a sprain fracture because it is a small flake of bone pulled aloose by your ligaments and attachments and it is treated the same as a sprain rather than a break.

Mr. Frost: No other questions.

The Court: Gentlemen, we will take a recess about seven minutes and the jurors may retire to the jury room.

(Recess).

page 44 } RE-DIRECT EXAMINATION.

By Mr. Rosenberger:

Q. Dr. Keefer, Mr. Frost stated to you that you had said that she returned to work on September 28th, 1958. That is what your records show?

A. Yes, sir.

Q. You don't actually know she actually went back to work on September 22nd, do you?

A. No, sir.

Q. Doctor, do you know when her teeth became infected?

A. No, I do not.

Q. When you examined them they appeared to be all right as far as you could tell?

A. That is right.

Q. Now, Mr. Frost in referring to your examination—and if you will refer to your examination of January 3rd—said he understood you to say that the lady said she was all right. What were her complaints on January 3rd?

A. We asked her how she felt and the patient said she felt she was doing very well. She still had some tenderness in the puncture wound area when she leaned back against a seat. She had a sensation something was pushing through her back.

Dr. C. E. Keefer.

Q. You said that the fracture had not healed completely. What fracture do you refer to?

page 45 } A. Fracture of the medial condyle of the femur.

Q. In other words, that bone is not completely healed?

A. That is right.

Q. Do you know when it is going to be completely healed?

A. No, sir.

Q. Now, on January 19th I understood Mr. Frost to say you didn't prescribe for her but on that date what did you do about the gold shots?

A. Her treatment program was reviewed and continued but the gold was stopped temporarily because of this rash she had. It didn't look like gold rash but we stopped it anyway.

Q. What were you giving the gold for?

A. That is for this complicating synovitis and periostitis.

Q. You had to stop it on January 19th?

A. Yes, sir, that is right.

Q. Do you know when you can start it again?

A. No, I do not.

Q. What other treatment do you have for that synovitis and periostitis?

A. She is not on any specific other treatment at present time.

Q. That is the main treatment for that?

A. That is right.

Q. And you don't know when you are going to be

page 46 } able to start her back on the gold?

A. That is right.

Q. What was the weight of the cast on her right leg? Do you know?

A. No, we didn't weigh it.

Q. Could you give the jury an estimate of its weight?

Mr. Frost: We object to this. He is going into something not developed on cross examination.

The Court: Objection sustained.

By Mr. Rosenberger:

Q. Mr. Frost asked you if she hadn't practically recovered from the injury and I understood you to say no?

A. That is right.

William Massie Warwick.

Q. Can you tell us when she is going to be recovered?
A. Not for sure, no, sir.

Mr. Rosenberger: That is all.

RE-CROSS EXAMINATION.

By Mr. Frost:
Q. Doctor, you still agree with what you said when I was asking you questions that you do not believe there will be any permanent disability to Mrs. Dowdy?
A. That is right.

• • • • •

page 78 } WILLIAM MASSIE WARWICK,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Rosenberger:
Q. Will you please state your name?
A. William M. Warwick.
Q. What is your business or profession?
A. Surveyor.
Q. Where have you been surveying?
A. You mean in connection with this particular case?
Q. No, how long have you been a surveyor?
A. Since 1951.
Q. Have you been surveying in the City of Lynchburg during that time?
A. Since 1954.
Q. Are you familiar with Pierce Street in the City of Lynchburg in the area between 13th and 14th and 15th Streets?
A. Yes, sir.
Q. Can you tell us what use is made of seventy-five per cent of the property fronting on Pierce Street and extending from 13th Street toward 14th Street? I want to know the distances for about 300 feet.

By the Court:
Q. We want to know if it is occupied, whether
page 79 } vacant lots or lots with buildings on them.
A. There may be a few vacant lots and a few

William Massie Warwick.

buildings occupied by businesses but mainly I would say it is residential.

By Mr. Rosenberger:

Q. The property fronting 300 feet on Pierce Street east of 13th Street is occupied what?

By the Court:

Q. Is as much as seventy-five per cent of the total frontage from 14th Street toward 13th Street occupied and in use?

A. From my observations I would say it is residential.

Q. I didn't ask you that. I asked you was it occupied?

A. Yes.

Q. In other words, it ain't just vacant lots?

A. No, sir.

Q. But seventy-five per cent of the total frontage on both sides of the street for 300 feet from 13th Street going toward 14th Street is actually occupied by buildings?

A. Yes, sir.

Q. What are those buildings used for?

A. Residences, seventy-five per cent residences.

Q. A store there?

A. There is a store on the corner of Pierce and 13th Streets.

Q. Is that fronting on Pierce between 13th and
page 80 } 14th?

A. Yes, sir.

Q. Is there a church there?

A. Yes, sir.

Q. But seventy-five per cent of the total frontage is occupied by buildings in use for both residences and stores or other purposes?

A. Yes, sir.

Q. But the greater part in use is for residences?

A. Yes, sir.

Q. Is that right?

A. That is correct.

By Mr. Rosenberger:

Q. And I understood you to say that seventy-five per cent of it was used as residences?

A. Yes, sir, counting both sides of the street.

William Massie Warwick.

Q. Now, Mr. Warwick, you are an expert, I know, and I am willing to pay whatever your charges are for what you testify to.

The Court: Do you want to ask him any more questions?
Mr. Rosenberger: Mr. Frost, do you want to introduce your plat?
Mr. Frost: No, sir, but I do want to ask him some questions in regard to the questions you asked him.
page 81 } The Court: Mr. Rosenberger, do you want to ask him any more questions?
Mr. Rosenberger: No, sir, not now.

CROSS EXAMINATION.

By Mr. Frost:
Q. You have never at any time measured the distance between 13th and 14th Streets on Pierce Street, have you?
A. No, sir.
Q. You don't know the size of the yards occupied by these dwellings or the number of feet occupied by each dwelling on the lot and the number of feet unoccupied by the dwellings?
A. I am not familiar with the actual measurements of the frontages of the lots.
Q. Judge Martin asked you about a store on the southeast corner. You said something about a church. There is a vacant lot next to the church, isn't it?
A. I couldn't testify about that.
Q. You couldn't say whether it is or isn't?
A. No, sir.
Q. You wouldn't deny there is a vacant lot?
A. No, sir, I would not deny it.
Q. In other words, the testimony you have given the court so far is based on guess. Is that right?
page 82 } A. It is based on my observations in the field as to the number of houses and business establishments on Pierce Street.
Q. You are basing your answers on the fact that in the field you see a certain number of houses and a store and a church?
A. Yes, sir.
Q. But I understand you did not measure the frontages to see actually how much frontage is occupied by the building and how much is not occupied by the building?

William Massie Warwick.

A. No, sir, I did not actually make an accurate field measurement of the lots.

Q. You cannot say actually seventy-five per cent of the frontage is occupied by residences or residences and business?

A. No, sir, not by actual measurement.

By Mr. Rosenberger:

Q. You say not by actual measurements but based on your knowledge in the field, and when you say in the field you mean from being out there?

A. I would say out of eight houses two of them would be business. That would mean seventy-five per cent residence, just counting the number of residences and businesses on Pierce Street.

page 83 } By Mr. Frost:

Q. The court asked you what frontage. You don't know how much of a lot the house occupies, do you?

A. No, sir.

Q. What you are going by is the structures you see looking up and down the street, the dwelling houses, but you do not know what the actual frontage is as to whether the actual building is occupied and uses as much as seventy-five per cent of the actual frontage in the block. You do not know that?

A. I do not know that.

By the Court:

Q. Maybe the court better clear that question. Where a lot is sixty feet frontage and there is on that lot a residence forty feet wide the sixty foot frontage is occupied for residence use. You understand that?

A. Yes, sir.

Q. In other words this law don't mean that a house has got to touch a house but a citizen owns a lot sixty feet wide, he builds a forty foot house in the center of the sixty foot lot, and that sixty foot lot is occupied for residential use by his forty foot house. Do you understand that?

A. Yes, sir.

Q. Now, are you in a position to say that at least seventy-five per cent of the frontage on each side of Pierce

page 84 } Street for 300 feet from 13th Street going toward 14th Street is so occupied and used either for residences or buildings in use for business purposes?

William Massie Warwick.

A. No, sir, because I didn't make any field measurements of those lots.
Q. You cannot tell?
A. No, sir.

By Mr. Rosenberger:
Q. Mr. Warwick, are you willing at lunch time to go out there and measure and come back and tell us?
A. Yes, sir.
Q. Will you do it?
A. Yes, sir.

The Court: I suggest he follow the statute and know what he is going to do.
Mr. Frost: If your Honor please, I would like for the jury to retire while we argue this matter because I think the court has misconstrued the wording of the statute.
The Court: Let the jury retire.

(Jury out).

The Court: (After reading the statute) Now, I rule that that does not mean that those buildings be jammed
page 85 } one to the side of the other and that if you own a sixty-foot lot fronting on that street and put a building on it that lot is occupied by the building and it is included within it. Now, what is your point?
Mr. Frost: My point is that I disagree with the Court in that the wording said "is occupied by dwellings," not a building lot, but by dwellings or by dwellings and buildings in use for business purposes. As I interpret it, subject to the Court's ruling on that, by the terminology "dwellings" it means the actual building and it means they have got to be enough to go in there to make up the seventy-five per cent.
The Court: In other words, to make the seventy-five per cent they have got to touch side by side and no areaway in between, nothing in between them?
Mr. Frost: No, sir.
The Court: Enough space between so there wouldn't be seventy-five per cent on one side if you don't count the lots but count only the buildings, then it is not within the purview of the law?
Mr. Frost: My contention is this: Take Mr. Floyd Knight's

house out there, now Villa Maria, which occupies a small portion of a lot which has 300 feet or more of
page 86 } frontage, you would say, according to your idea, that, is occupied by dwellings?

The Court: Yes, sir, no doubt about it.

Mr. Frost: I want to except to the ruling of the court.

The Court: If the total frontage in a block is divided into three lots with dwellings on them with one man having a hundred foot frontage, another a hundred and fifty foot front and another has a hundred foot but on each of those lots there is a dwelling in use as a dwelling that entire side of the street is occupied for dwelling use. In other words, the land that is appurtenant to the dwelling is occupied by the dwelling although the dwelling don't actually sit on half of it.

Mr. Frost: I except to the ruling of the court.

The Court: The court is glad to have you except.

I understand the surveyor is going out during recess to make some measurements. Give him a verbatim copy of the law. Copy it verbatim.

Bring the jury in.

* * * * *

page 135 } MISS OLEANDA SCOTT,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Rosenberger:

Q. You are Miss Oleanda Scott?

A. That is right.

Q. And you live on Fillmore Street in Lynchburg?

A. I do now.

Q. Were you driving the DeSoto automobile on July 22nd when you were in collision with a station wagon driven by Mrs. Thoms?

A. Yes.

Q. Tell the jury what happened, where you were going, and what street you were driving on.

A. I was driving on 13th Street going toward town. I was heading toward Court Street.

Q. You were on 13th Street headed toward down town?

A. Yes.

Oleanda Scott.

Q. Now, when you got up to Pierce Street what did you do?

A. I slowed down and looked both ways and didn't see nothing coming so I went on.

Q. Then what happened?

A. I don't exactly remember what happened.

page 136 } Everything happened just too fast.

Q. How fast were you driving when you went into the intersection?

A. I would say between 18 and 25.

Q. Do you have any idea how fast Mrs. Thoms was going?

A. I believe it was over 25 from the way she knocked me.

Q. Where were you knocked?

A. Well, my head—I couldn't hardly remember or think anything after she hit my car.

Q. Do you know who got you out of your car?

A. No, I don't remember that.

Q. Where did they take you? You know where they took you?

A. They took me to the hospital.

Q. Do you remember a Mrs. Thaxton helping you at the scene, holding your head?

A. No, I don't remember that.

Q. When did you first know that she had helped you?

A. I don't remember that. I was kind of dazed and couldn't remember.

Q. Now, what happened to your automobile? Were you able to get it fixed up?

A. No, it was a total loss.

Q. What kind of automobile was it?

page 137 } A. A 1950 DeSoto.

Mr. Rosenberger: You may examine.

CROSS EXAMINATION.

By Mr. Frost:

Q. Miss Scott, as you approached the intersection of Pierce Street you were driving north toward town on 13th. As you approached Pierce Street did you come to practically a stop before you entered Pierce Street?

A. Before I went into Pierce Street I slowed down at the corner.

Oleanda Scott.

Q. Had you gotten past the Hamilton grocery building? Had you gotten even with the curb line on Pierce Street?

A. What do you mean?

Q. When you slowed down—What I am trying to get at is when you slowed down what speed did you slow down to? How many miles per hour were you going? Had you practically stopped?

A. Almost, I would say.

Q. Almost stopped. Now did that occur when you were at the curb line of Pierce Street before you had gotten actually into Pierce Street?

A. At the curb.

Q. And could you see all the way down to 14th Street?

A. You mean 13th?

page 138 } Q. You were on 13th. You say you almost stopped. Now when you stopped you looked to see if any traffic was coming?

A. I looked on each side.

Q. Where you stopped you could see down to 14th Street, couldn't you, practically when you looked to the right?

A. I looked to the right and left. On Pierce Street I looked right and left.

Q. You were practically in Pierce Street when you did your looking, weren't you?

A. No, it was when I slowed down at the corner there.

Q. The corner is where Pierce Street joins 13th, isn't it?

A. Yes, sir.

Q. Then you looked to your right. Couldn't you see down to 14th Street when you were looking?

A. Yes, I could see on both sides.

Q. I mean you could see all the way down to 14th and Pierce when you got to the corner of 13th and Pierce, couldn't you?

A. Yes, I could see down that way.

Q. You could see all the way down to 14th and you saw no cars in that block?

A. No.

Q. Then you started up again to cross the intersection and don't remember anything else that happened. Is

page 139 } that right?

A. No, I don't.

Q. Then you never did see Mrs. Thoms at all until it was all over, did you?

A. No, I didn't see her.

Q. So you have no idea about what speed she was making.

You didn't have an opportunity to judge any speed. You didn't see her until everything was all over. Isn't that right?

A. That is right.

Mr. Frost: That is all.

* * * * *

page 148 }

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WILLIAM MASSIE WARWICK,
recalled, testifies as follows:

DIRECT EXAMINATION.

By Mr. Rosenberger:

Q. Mr. Warwick, since you appeared here this morning have you been out to 13th and Pierce Streets in the City of Lynchburg?

A. Yes, sir.

Q. Will you tell us from your measurements out there what the percentage of the total frontage on Pierce Street is, extending east from 13th Street in the direction of 14th Street, what percentage of the frontage that is occupied by buildings in use for business and dwellings?

The Court: Mr. Rosenberger, we are not con-
page 149 } cerned with that. It is for a distance of 300 feet on each side.

By Mr. Rosenberger:

Q. Extending along Pierce Street for 300 feet.

A. Starting at the intersection of 13th Street, going back in the direction of 14th Street on Pierce Street for 300 feet—Mr. Rosenberger, can I give you these actual distances?

Q. Yes, sir.

A. I will give the actual distances and let the court figure the percentage.

The Court: The court don't figure anything. That is what you do. You can give the actual distances and then your own figures.

William Massie Warwick.

By Mr. Rosenberger:

Q. Will you give us those distances?

A. The first 82-1/2 feet on Pierce Street on the west side, or south side—

Q. We are dealing with 13th as running north and south and Pierce Street running east and west.

A. Well, this is on the south side. The first 82-1/2 feet is occupied by a store on the ground floor with living quarters on the second floor. The next 41-1/4 feet is occupied by a church. The next 41-1/4 feet is occupied by a

page 150 } residence.

Q. Is that a quarter or a half?

A. 41.25. The next 41.25 feet is occupied by a residence. The next 41.25 feet is occupied by a residence and the last 82-1/2 feet is occupied by a residence.

Now, on the north side, beginning at the intersection of 13th Street, going east, the first 82-1/2 feet is occupied by a residence. The next 55 feet is occupied by a residence. 27-1/2 feet occupied by a residence. The next 32 feet is occupied by a residence. The next 25.5 feet occupied by a residence. 29.5 feet occupied by a residence and the last 75 feet is occupied by a building, and after inspection we found it to be a meeting house for a church. It was a frame building on the corner and it has church pews inside.

Q. Give us the total of how much.

A. 330 feet on each side.

By the Court:

Q. Now, those buildings on each side of the street, when you said occupied by residence you mean the building on that lot was used as a residence?

A. Yes, sir.

Q. Now, is the whole footage, say for instance on the south side, 82.5 feet, occupied by a store with residents with living quarters above. That means that lot on which the store and residence sits?

page 151 } A. Yes, sir.

Q. Is there some alleyway or an areaway on the side of the store, or does the store cover the entire 82.5 feet?

A. The store is 40.7 feet fronting on Pierce Street.

Q. This 82.5 feet, is that appurtenant to and part of the property occupied by the store?

A. Yes, sir.

William Massie Warwick.

Q. Is that true of each of these distances, that they are appurtenant to the dwelling or building that is on them?

A. Yes, sir.

Q. Now, can you tell us whether, beginning at 13th Street and running toward 14th Street along Pierce Street, seventy-five or more per centum of the total frontage on both sides of that street for a distance of 300 feet, running from 13th toward 14th, is occupied by dwellings or by dwellings and buildings in use for business purposes—that is, occupied by either dwellings or dwellings and buildings in use for business purposes?

A. On the south side of Pierce Street, starting at 13th Street and running toward 14th Street for 300 feet, that 300 feet is occupied by seventy-three per cent residences.

Mr. Rosenberger: The question is residences or buildings used for business purposes.

The Court: I reckon he is going to tell us if there is any business.

page 152 } Q. Counting both the dwellings and buildings used for business purposes I want to know whether seventy-five per cent of the frontage there is in use by buildings occupied by dwellings or dwellings and buildings used for business purposes, whether collectively all of that is as much as seventy-five per cent of the 300 foot frontage. I will ask you this: Are there any vacant lots on that side of the street that don't have any buildings on them?

A. No, sir.

Q. Any vacant lots on the other side of the street that don't have any buildings on them?

A. No, sir.

Q. Then can you tell us whether seventy-five per cent of the 300 foot frontage on the south side of Pierce Street, beginning at 13th and going toward 14th, the total frontage for a distance of 300 feet or more is occupied by dwellings or by dwellings and buildings in use for business purposes?

A. It is one hundred per cent so occupied.

Q. What about the other side?

A. On the north side it is one hundred per cent occupied by dwellings or dwellings and business.

Q. In other words, the entire block contains no vacant lots but every lot has got a building on it and the ground

William Massie Warwick.

on which the building has to sit or its use is curtilage in connection with the building?

page 153 } A. Yes, sir.

By Mr. Rosenberger:

Q. Now then, Mr. Warwick, on the south side of the street what is the per cent used for or occupied by business and residence?

The Court: I don't get the importance of that or the materiality?

Mr. Rosenberger: I am trying to get the percentage occupied. You have got in there just one church of 41-1/4 feet. I know mathematically that isn't as much as twenty-five per cent but you have got 41-1/4 feet occupied by a church which I take it would be neither a dwelling or a building for business use so I want him to take into consideration that 41-1/4 feet.

By the Court:

Q. Leaving the church out, have you still got left seventy-five per cent of the 300 feet occupied by dwellings or by buildings in use for business purposes?

A. How about the store on the corner?

By Mr. Rosenberger:

Q. Include the store. Apparently that is what you don't understand.

By the Court:

Q. Just leaving out the church property would

page 154 } that leave seventy-five per cent?

A. No, sir, it would leave seventy-three per cent.

By Mr. Rosenberger:

Q. You said seventy-three per cent was for the residents. You haven't added back the 82-1/2 feet for the store.

The Court: The court would be inclined to hold the church as business use. People are coming back and forth to it on Sunday and different nights and days during the week.

The Witness: Eighty-six per cent.

Arleen Dowdy.

By Mr. Rosenberger:

Q. Eighty-six per cent of it on the south side of Pierce Street for 300 feet east of 13th Street is used for business or occupied for business and residence use. Now give me the percentage on the north side of the street.

The Court: I don't follow you.

The Witness: One hundred per cent is occupied by dwellings or buildings in use for business purposes.

The Court: What more do you want?

Mr. Rosenberger: I didn't understand him to say that on the north side.

The Witness: Eighty-six per cent, excluding the church.

page 155 } By the Court:

Q. One hundred per cent on the other side of the street?

A. One hundred per cent on the other side.

Q. No church on the other side?

A. There is a church on the other side but it is one hundred per cent used for residences and businesses on the north side of the street.

Q. Is there a church on the north side?

A. There is a church on the north side.

Q. Is there a church on the south side?

A. Yes, sir.

Q. Excluding the church on each side of the street would it be seventy-five per cent used for residences and business together?

A. Eighty-six per cent on the south side.

Q. What about the north side?

A. Eighty-five per cent on the north side.

Mr. Rosenberger: No more questions.

* * * * *

page 156 } MRS. ARLEEN DOWDY,

having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Rosenberger:

Q. You are Mrs. Arleen Dowdy and you are the plaintiff in this case, are you not?

A. Yes, sir.

Arleen Dowdy.

Q. Mrs. Dowdy, on July 22nd, 1958 where were you working?

A. Blue Buckle.

Q. Had you made any arrangements with Mrs. Thoms before that day to ride with her?

A. Yes, I had.

Q. How did you make those arrangements, and when?

A. Well, I asked her could I ride with her and she said yes, she thought there would be room. I said "What will you charge?" She said, "I can't charge you anything but the rest of them give me bus fare."

Q. How much did you give her a week?

A. I paid her 20c a day. I only rode in the afternoons.

Q. You only rode in the afternoon. Now, did you usually pay her when you got in the automobile or when you got out?

page 157 } A. When I got out.

Q. Now, did you see any of these other people pay her?

A. Yes, I have seen them pay her.

Q. Who have you seen pay?

A. Well, I saw Mrs. Hahn pay her and I think I have seen Mrs. Banton pay her one time.

Q. See anybody else pay her?

A. Thelma Brooks paid her one time and I seen her.

Q. Now, if somebody didn't pay Mrs. Thoms what did she say?

A. Well, she didn't like it much. She kind of fussed about it.

Q. She would fuss about it?

A. Yes.

Q. When she collected money would she stop fussing?

A. I never did know when she collected it from the others, the ones she was talking about, but evidently she did.

Q. Now, on this day that you were riding with her, the day she had the wreck, you didn't pay her when you got in the car?

A. No, sir.

Q. And you didn't get to the end of the run so you didn't pay her then?

A. No, sir.

page 158 } By the Court:

Q. Did you pay at the end of each trip or end of the week?

A. Paid at the end of each trip.

By Mr. Rosenberger:
Q. And how much did you pay?
A. Twenty cents each time.
Q. That is the same amount you had paid for bus fare?
A. Yes.

By the Court:
Q. How long had that been going on before this accident? How long had you been riding with her and paying her 20¢ per trip?
A. I had been paying her 20¢ each trip and paying her every time I rode.
Q. Give me an idea in weeks or months how long this had been going on.
A. I had been riding about a month and a half or maybe a little over.

By Mr. Rosenberger:
Q. Now, Mrs. Dowdy, what time did you people stop work?
A. 4:00 o'clock.
Q. What part of the factory do you work in?
A. I work over in the back end.
page 159 } Q. Now, at 4:00 o'clock when you stopped where did you go?
A. Well, we had to go to the clock and line up and punch out and then we had to walk all the way across the building to the street.
Q. How far across the building is it would you say?
A. Almost a city block through there.
Q. When you would get to the street what street was that?
A. Kemper Street. We crossed Kemper Street and would go up some steps into the parking lot. Then we would get in the station wagon to go out of the parking lot onto Buchanan and turned left at 14th and Buchanan but that day instead of going on down Buchanan she turned up 14th one block and then turned left into Pierce.
Q. How did she happen that day to turn right and go up 14th Street instead of continuing up Buchanan?
A. Well, cars were lined up all the way to 14th and also back down behind us. She had to go between the lines of traffic to get into 14th Street.

Arleen Dowdy.

Q. Which route did she usually go when she went home?
A. Well, she had been through Pierce Street once or twice but usually she went out Buchanan.
Q. When you crossed Buchanan was all the traffic going toward 12th Street on Buchanan?
page 160 } A. Toward 12th.
Q. When you got to 12th what did you run into?
A. Usually traffic going both ways there.
Q. Is there any traffic control at 12th and Buchanan?
A. Yes, sir, a traffic light.
Q. How about at Pierce and 12th?
A. None there.
Q. Now, on this day Mrs. Thoms was driving along up 14th Street and was she having anything to say?
A. No. She never started talking until she got on Pierce and she was telling the girls in the back about some argument they had over in the shop that day over the work.
Q. Who was she telling that to?
A. To Mrs. Johnson and Mrs. Banton.
Q. And what was the argument they had had at the shop?
A. Some of the girls said she was getting the best work. I think she was a little upset over it.
Q. Who was she?
A. Mrs. Thoms.
Q. Now, as you rode along 14th Street in the direction of Pierce and from 14th and Pierce toward 13th Street could you give us your idea or your estimation of the speed that she was traveling?
A. Well, it seemed to me that we were going
page 161 } around 35.
Q. You thought you were going around 35 miles an hour?
A. It seemed like we were. I didn't look at the speedometer.
Q. Now, Mrs. Dowdy, where would she go after she crossed 12th Street if she continued out Pierce?
A. Go out to Park Avenue.
Q. To get to Park Avenue which way would she turn?
A. When she reached Park Avenue she would turn down Park Avenue toward the park.
Q. Like she would be going toward Fort Hill?
A. Yes.
Q. And I believe she was going to pick up Mrs. Brooks?
A. Yes, sir.

Arleen Dowdy.

Q. Tell us what happened when you got to 13th and Pierce Streets.

A. Well, I wasn't paying too much attention to what was happening except I was looking straight ahead but I didn't see anything at all until I think I looked down at the floor and when I looked back this car was crossing the street and we went right into it and I don't remember anything after that for a few minutes afterwards.

Q. When you did remember something where were you?

A. Sitting in the front seat of the station wagon. I was sitting with my back like this to the steering
page 162 } wheel, half way turned.

Q. What had happened to your back?

A. Well, we don't know what went in it but it seemed that the gear shift lever was the thing that went in my back because it had blood on it.

By the Court:

Q. Do I understand as you were coming along Pierce Street approaching 13th that you were looking straight ahead?

A. I had been looking straight ahead and I kind of looked down.

Q. You looked down and then when you looked up what did you see?

A. This car was in front of us and we were pretty close to it. The car looked like to me it might have been just about going out of the intersection. I couldn't tell exactly. I was so scared at the time I couldn't tell exactly.

By Mr. Rosenberger:

Q. You say the other car looked like it was about to go out of the intersection?

A. That is the way it looked to me.

Q. And you say there was blood on the gear shift lever?

A. Yes.

Q. Where is that gear shift lever?

A. It is under the steering wheel but sticks out about that far past the steering wheel (indicating about four
page 163 } inches), the handle of it.

Q. Did you have any blood on you anywhere?

A. Well, my head was bleeding and they said my back bled a very little. I couldn't tell about that. I was hurting so bad all over I couldn't tell where I was hurt.

Q. Where did you hurt?

A. All over, my eye and my hands. I couldn't use either

hand. I couldn't use this thumb and this one I couldn't move at all. I did not know what was wrong with it. I didn't know about the hole in my back until they put a man up in there to help me out after they had fixed my legs up.

Q. You couldn't get out?

A. No.

Q. How did they fix your legs up?

A. Well, they run out of splints so they put this leg in a splint and the other was bruised so bad they thought maybe that was broke too so they tied that one to the one that had the splint on it.

Q. Did Mrs. Thoms say anything to you while you were still in the car?

A. You mean before she got out?

Q. Yes.

A. When I got my senses back she said "My God, I'll never get out of this."

Q. Then what did she say to you?

page 164 } A. Well, after the police had gotten there she came around to my side of the station wagon and she said, "I told them I was going 18 to 20 miles an hour and you tell them the same thing."

Q. Now, after you got over to the hospital do you remember talking to Mrs. Thoms?

A. Let me see—it seems to me I dimly remember her saying she would keep my billfold for me.

Q. Do you remember any conversation that she had with you about the speed limit at the hospital, not the speed limit but the speed she was going at the time of the accident?

A. No, I don't remember that.

Q. Now, Mrs. Dowdy, when you got out from work that day was there traffic in all those streets or not?

A. Yes. Campbell Avenue was closed at that time and that made much more traffic over there.

Q. The traffic that would normally go east out Campbell Avenue what street did that go out on at that time?

A. That traffic used Kemper Street.

Q. Then the traffic that would be going west, what street did that use?

A. They were using Buchanan.

Q. And your factory was Blue Buckle Overall Company. What other factories are there in that neighborhood?

Arleen Dowdy.

A. N & W Overall Company and the Loft Build-
page 165 } ing.

Q. Was there any traffic in Pierce Street that you saw as you went on toward 13th?

A. No. I didn't see any traffic in there.

Q. Didn't see any?

A. No.

Q. And you were getting around the traffic when you left Buchanan?

A. Yes.

Q. The doctor has told us about putting that cast on you and then letting you out of the hospital in two days. After you got home what did they have to do? Could you get up and down by yourself?

A. No, sir, my two kids stayed there with me. They would pull me up so I could get up on my leg. They would slide me out of the bed until I could get on the good leg. They would help me lift the other one off the bed and I could stand straight.

Q. When you first got home were you able to use your right-hand?

A. No.

Q. What was wrong with that?

A. They said my thumb was jammed. I didn't know what was wrong with it.

Q. Then what was wrong with using your left arm?

A. Well, the hole in my back was what kept me
page 166 } from using that. I couldn't use it on account of
the muscles in the back. I reckon it was nearly two weeks before I could use that arm good.

Q. After they had you stand on the floor with that cast on your right leg could you sit down in a chair?

A. No. I guess it was about two weeks before I could get where I could sit and slide way down and they had to prop the leg up all the time. I couldn't have it down on the floor at all. The cast was too long.

Q. During this time were you able to go to the bathroom?

A. I used a bedpan for two weeks.

Q. Now, after the doctor put the cast on how long was it before he cut the cast?

A. Three weeks.

Q. Then how much longer did you have to keep the cast on?

A. I had it on three weeks but I had to take it off and use

hot towels every hour and put it back on. I had to do that in bed.

Q. How often would you have to use the hot towels?

A. Every hour.

Q. What happened to your forehead and your face?

A. Well, it was cut. I had a cut down on this eyebrow and then I had some lacerations here on my forehead. The skin was kind of cut up there and I had one or two

page 167 } cuts in my head.

Q. Do you have any trouble with your head at all?

A. Yes, I have pretty bad headaches.

Q. Did you have headaches before?

A. Well, just normal headaches.

Q. How do these differ from what you had before?

A. Well, they are more severe and they only hit in that one side and start just like a pain strikes in there and then I have a headache.

Q. Now then, the doctor has told us about you coming back over there for treatment and you did at home what he told you to do?

A. Yes.

Q. And his record indicates you went back to work on September the 29th but you went back to work before that, didn't you?

A. Yes, I went back to work on the 22nd.

Q. You were away from work then exactly eight weeks?

A. Eight weeks.

Q. How much did you make a week?

A. Well, I averaged $1.17 an hour by their average.

Q. And you worked how many hours?

A. Eight hours a day.

Q. That would be $46.80 a week. Is that correct?

A. Yes, sir.

page 168 } Q. And you were away eight weeks?

A. Yes, sir.

Q. That is a total of $374.40. That is what I get. Is that approximately correct?

A. Yes, sir.

Q. Now, after you started back to work when you are working tell the court and jury what you do, what kind of work you do.

A. Well, I run a flat bed machine. It is like any other sewing machine at home except it runs by electricity and we have a knee press that raises the foot pedal up, the one

on top of the machine to hold the goods. You have to use that knee constantly, all the time, and then your foot, you move that all day long too.

Q. You say you have to use that knee constantly. Which knee do you use?

A. My right knee, the broken one.

Q. That is the one that was broken?

A. Yes, sir.

Q. How about your right hand and thumb?

A. Well, most work I can do with that. Now, I had to turn down some this week that I couldn't do.

Q. Why was that?

A. Well, there are little bands that are short and you have to punch the ends in with your fingers and I

page 169 } can't do that.

Q. Why couldn't you punch them in?

A. You have to use your thumb and this finger and I couldn't push them in there and get them straight.

Q. Can you bend down both thumbs the same distance?

A. No. I can lay one down but this one I can't get any further than that.

Q. Is there any difference in the size of the thumbs?

A. Yes, sir. You can see this one is smooth and this one here has a knot on it right there.

Q. Where is that knot with reference to where the doctor spoke of having that fracture?

A. That is where it is, right in there.

Q. How does your back affect you now?

A. Well, it bothers me when I get nervous and then if I lean against anything there is a boring sensation, it feels like something is boring a hole in my back.

Q. How does it affect you when you are standing?

A. Well, it doesn't bother me too much when I am standing but I can't do any ironing to amount to anything. I can iron four or five pieces and then I have to rest.

Q. How does it affect you when you lie in bed on it?

A. Well it looks like it makes me kind of short winded at times. I have to turn over.

Q. How does your knee do now?

page 170 } A. Well, that is still swelling and still hurts.

Q. Can you go up and down steps as good as you could before?

A. No, not properly. I can go up and down but I have to turn kind of sideways.

Arleen Dowdy.

Q. What happened to you that caused you to be taken off the gold shots?

A. I broke out.

Q. Did you have any breaking out before?

A. No. I broke out all the way down to my ankles.

Q. How does your thumb feel?

A. Well, it is still sore. He told me at first that a jammed thumb took two months to heal. After it didn't heal in two months I asked him again about it and he said "Well, maybe it is going to take a little longer" and then the other day he took an x-ray and he found out it had been broken.

Q. How much was your hospital bill?

A. That was $46.15.

Q. How much for your drugs?

A. $14.55.

Q. The doctor spoke of the number of times you had to drive back and forth to his office for treatment. Who brought you back and forth?

A. Well, my husband had to get off from work at times to carry me. Then my daughter carried me some-
page 171 } times and then my sister-in-law carried me one time.

Q. Did you keep any record of the number of times or the cost of it?

A. Well, no. My husband carried me most of the time. My daughter only carried me twice, I believe. My sister-in-law carried me once.

Q. Did you know before this morning that the fracture in your knee had not completely healed yet?

A. No, I didn't know it hadn't healed.

Q. Are you trying to do the best you can?

A. I certainly am.

Q. Now, have you missed any time from work since you went back to work on September 22nd?

A. Well, I have been out two or three days.

Q. Do you try to go to work every day?

A. I try to. I wouldn't have went back as soon as I did because I really wasn't able but my husband's work was cut and I had to go back.

Q. How many children do you have?

A. Two.

Q. You and your husband depend on your earnings as well as his?

A. Yes. I have three children but two of them are dependents.

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Q. Now, when you had to turn down that work
page 172 } over there, some kind of sewing, what did your supervisor have to say?

A. She said "It is all right." You see it is not my regular job because we are all doing different things. This is new work entirely to everybody and we are doing different things so she says "Well, I will get somebody else to do that and you can do some other job that you can do."

Q. Using your knee every day on that lever could you tell the jury approximately how many times an hour you use the knee or how many times a minute?

A. Well, we have to move our knees just about every two seconds.

Q. You get to the end of the day and is the right knee and the left knee the same size?

A. No, sir.

Q. What is the difference?

A. My right knee is always swollen. It never has gone completely down. Usually by night it is worse.

Q. Dr. Keefer spoke of the fact you had some arthritic spurs in your patella or knee cap and also in one of the joints on your thumb. Had you ever had any pain from any arthritis before?

A. No, sir, I never had any rheumatism.

Q. I didn't ask you about rheumatism. Did you ever have any arthritis pains?

A. No, sir.

page 173 } Q. You were in an automobile accident some years ago, weren't you?

A. Yes, sir.

Q. Where was that?

A. In Dearington. I can't remember what the names of the streets were out there.

Q. How were you hurt then?

A. Well, I just got a black eye out of it and a piece of glass cut a little place in my leg.

Q. Some question was asked here if Dr. Keefer had been your doctor in that first accident. Had he?

A. No, sir, I didn't have any doctor then. I wasn't hurt bad enough to have a doctor.

Q. You didn't go to a doctor at that time?

A. No, sir.

Mr. Rosenberger: You may examine.

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CROSS EXAMINATION.

By Mr. Sweeney:

Q. Mrs. Dowdy, getting back to the time of the accident on July 22nd, 1958, I believe you would ordinarily pay for the ride when you got out, that is, at the end of each trip?

A. That is right.

Q. And you rode only in the afternoons?

page 174 } A. Yes.

Q. Were there occasions you rode in the morning?

A. I think I got her to pick me up twice when my husband was sick and I paid her 40¢ those afternoons for both of those times.

Q. There was no written contract or agreement between you and Mrs. Thoms about paying for your ride, was it?

A. No.

Q. You had volunteered to pay the amount that you paid her?

A. Yes, sir. She said I could pay her bus fare and I paid the bus fare.

Q. She was doing you a favor in permitting you to ride with her under the circumstances?

A. Yes.

Q. Mrs. Dowdy, I believe you said there were times when people rode and didn't pay Mrs. Thoms and you went on further to say that Mrs. Thoms didn't seem to like that, so there were times to your knowledge when people would ride with you all that no money was actually paid. Is that right?

A. Well, there wasn't but one time that I know of and I didn't know they didn't pay then because you see they go on past me. I get out first.

Q. Who was that who didn't pay?

A. Mrs. Banton. She let hers go over until

page 175 } Monday to pay. She was fussing and said she owed her an extra dollar.

Q. You know whether or not Mrs. Banton ever paid that?

A. No, sir, I do not.

Q. Do you drive a car, Mrs. Dowdy?

A. Well, I have had two learner's permits but I gave it up. I wouldn't drive.

Q. On the day of the accident I believe you were sitting in

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the front seat of the car next to Mrs. Thoms, the driver. Is that right?

A. Yes.

Q. You testified that as the car in which you were riding approached 13th Street you were not looking at the speedometer?

A. That is correct.

Q. So you don't actually know exactly how fast the Thoms car was going as you approached 13th Street?

A. No, I don't know but I know we were going faster than she said.

Q. Have you made any tests?

A. I have rode that fast and I have rode at 18 miles an hour and I know exactly what 18 miles is and it is not very fast.

Q. Did you make any protest to either Mrs. Thoms or any of the other women in the car?

page 176 } A. No, I thought she knew what she was doing.

Q. Did you feel perfectly safe with Mrs. Thoms?

A. Well, not exactly.

Q. You had been riding with her approximately a month and a half?

A. Yes. At that time I didn't feel exactly safe because I felt she was going a little too fast for that corner.

Q. You didn't say anything to anybody about that?

A. Oh no.

Q. Did you look down 13th Street to your left as the Thoms car approached 13th?

A. No, I never paid any attention to it.

Q. Where was the Scott car when you first saw it?

A. My glasses usually get full of lint when I am working and I looked down and I started to take them off to clean them and I raised my head up and the car was right in front of us but it looked to me she was going to get out of the intersection before we got there.

Q. You don't know anything about the speed of the Scott car, do you?

A. No.

Q. As a matter of fact I believe you said you first were looking ahead of you and then you looked down at the floor. Is that correct?

page 177 } A. Yes, and then I looked back and saw the car right in front of us.

Q. Do you remember whether or not Mrs. Thoms' car had

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a manual gear shift or whether it had an automatic gear shift?

A. I don't know what a gear shift is, an automatic gear shift. I know it just has a gear shift.

Q. Do you know whether there was a gear shift lever on the right side of the steering column of the Thoms car?

A. Sure it was. It went in my back. I ought to know.

Q. Do you know whether or not that gear shift lever was up in second gear or whether it was down in high gear?

A. I couldn't tell you.

Q. You don't know about that?

A. No.

Q. Mrs. Dowdy, you have testified that there was a lot of traffic on Buchanan Street?

A. Yes, sir.

Q. By going one block out of the way Mrs. Thoms could avoid some of that traffic, couldn't she?

A. Yes.

Q. And it made sense for her to do it, didn't it?

A. Yes. We didn't mind which way she went.

Q. You had no objection about which way she went?

A. No, I didn't object to where she went.

page 178 } Q. You all weren't in any particular hurry that day, were you?

A. No, just wanted to get home. I wasn't in any hurry.

Q. Mrs. Dowdy, you testified, did you not, in the police court following this accident?

A. Yes, I did.

Q. Isn't it a fact you testified under oath in that trial that Mrs. Thoms was not going any faster than 15 to 18 miles an hour?

A. No, I didn't. I said all I knew about it was what she said she was going. I said "I think she was going faster than that." That is what I said exactly.

Q. Isn't it true that Mrs. Thoms in your presence in the police court said that she was going 15 to 18 miles per hour?

A. That is what she told the court.

Q. And isn't it true you did not disagree with that when you testified?

A. I wasn't supposed to disagree with her. I just told him my view.

Q. You did not say that she was going any faster than 15 or 18 miles an hour, did you?

A. I told the Judge this: I said "She said she was going

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page 179 } 15 or 18 miles an hour and that is all I know about it except I think she was going faster."

That is exactly what I told the Judge.

Q. Did you tell him how much faster?

A. No.

Q. Do you recall what type of machine you were working on at the time the accident happened, what type of sewing machine?

A. Well, at the time the accident occurred I was running a double-needle Singer. I think it was a Singer.

Q. I believe you sit down on that operation?

A. You sit down at all of the machines.

Q. You sit down on the operation that you perform now?

A. Yes.

Q. What type of operation are you doing now?

A. I am running a single-needle machine now.

Q. Are you turning flaps over there?

A. No. I am working on the flies. I saw down the flies. That is my regular job but I do a dozen others.

Q. And you go to work what time in the morning now?

A. 7:30.

Q. How long do you have for lunch?

A. Half an hour.

Q. And you get off at 4:00?

A. Yes, sir.

page 180 } Q. Have you been working regularly since this accident occurred?

A. Well, I have lost two or three days since then.

Q. But for the most part you have been working regularly over there?

A. I had to.

Q. You have been working regular?

A. I had to work.

Q. And in your work you do have to use both of your hands and your feet on the machine?

A. I certainly do.

Q. As a matter of fact, Mrs. Dowdy, if your leg was giving you too much trouble you would have just had to stop working on the machine and stayed off, wouldn't you?

A. I have to get up and go to the dressing room pretty often.

Q. As I understand your testimony, you actually use the right knee, the one that was injured, in the operation of the machine?

A. Yes, I use the outside of the knee. It was chipped on the inside. They put me a rubber cushion on this knee presser.

Q. Approximately what is your height, Mrs. Dowdy?

A. Five foot four inches, I think. I am not sure.

Q. And how much do you weigh now?

A. I don't know whether 223 or 224, something page 181 } like that.

* * * * *

page 191 } MRS. MAE C. THOMS,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Frost:

Q. You are Mrs. Mae C. Thoms, the defendant in this action?

A. Yes, sir.

Q. Where do you live, Mrs. Thoms?

A. I live on the Leesville Road.

Q. Where do you work?

A. I work at Blue Buckle Overall Factory.

Q. Where were you working in 1958?

A. Blue Buckle Overall Factory.

Q. Mrs. Thoms, will you tell us what arrangements you had with these people who were riding with you? They testified they were paying you some money. What was the situation?

A. It wasn't any arrangement. They asked me if they could ride and I said they could. They said they would pay me the bus fare they had been paying others that they rode with.

Q. When you talk so fast I can't understand you. Did you say there were no arrangements?

A. No arrangements were made.

Q. What else did you say?

page 192 } A. They were willing to give me bus fare that they had been paying the others that they rode with.

Q. Did you make any charge of any kind?

A. No, sir, I did not.

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By the Court:
Q. Did you accept the bus fare?
A. I accepted the bus fare to help cover the expenses.

By Mr. Frost:
Q. Did you have the same arrangement with Mrs. Dowdy that you have just told us about? What was the arrangement you had with Mrs. Dowdy? Was it the same as the rest of them?
A. The same thing.
Q. When did Mrs. Dowdy pay you?
A. She usually gave me her money when she got out of the car in the afternoon.
Q. That was her custom?
A. That is right.
Q. Did she ever pay you anything for the ride on July 22nd, 1958?
A. No, sir, she never paid for that ride at all.
Q. I think Mrs. Dowdy has explained the operation of the machine she works on. Did you work on the same type machine?
A. I do now but I didn't then.
Q. Does that type machine require manipula-
page 193 } tion with your right knee?
A. Yes, sir.
Q. And what is the function of that pedal or whatever you hit?
A. It is to raise the presser foot on your machine up and down.
Q. That is so you can get the material under it?
A. To get the material under it.
Q. How did you get power to the machine?
A. It has electric power.
Q. Do you work that by your foot?
A. You put your foot on the pedal and sit still and it takes over.
Q. You feed the cloth with your hand?
A. That is right.
Q. On this particular day was there any argument at the shop in regard to you getting the best work and somebody else not getting the best work? There has been some testimony about that.
A. There was no argument that I recall.
Q. You do not recall any argument?
A. No, sir.

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Q. Do they ring a bell when it is 4:00 o'clock? How do you know it is 4:00 o'clock, does everybody look at the
page 194 } clock?

A. No, they ring a bell.

Q. They ring a bell and you don't change any clothes or anything?

A. No, sir.

Q. You just get in line?

A. Just get in line.

Q. What happens after that?

A. You punch the clock.

Q. What did you do after you punched the clock?

A. Well I came on out and went across to the car.

Q. Were the other ladies in the car when you got there?

A. No, because I had the car locked.

Q. Were they waiting to get in?

A. I can't recall whether they were there or not but all of them got in.

Q. How were they seated, Mrs. Thoms?

A. Mrs. Dowdy was in the front seat with me and then Mrs. Banton was behind me on the rear and Mrs. Johnson was on the right rear.

Q. This was a station wagon, I believe it has been testified to. Is that correct?

A. That is right.

Q. Now, which way did you proceed home that day?

A. I came out of the parking lot and I had to go about three or four feet on Buchanan Street and turned
page 195 } up to my right and went up 14th Street, turned left and proceeded out Pierce Street.

Q. Had you been that way before?

A. Yes, sir, I go that way quite often to miss a lot of the traffic.

Q. Do you have the same passengers every time you go that way?

A. Sometimes I didn't have anyone in the car but my own self and sometimes I had first one passenger and then another.

Q. Have you gone that particular way with these same ladies in the car?

A. Yes, sir, I have.

Q. Now, what was your route, assuming you had passed 13th Street? Which way would you have gone?

A. Straight across 12th on Pierce to Park Avenue, out Park

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Avenue to Fort Avenue and straight out Fort Avenue home.

Q. Was there any reason for you going by Park Avenue and Fort Avenue?

A. Well, I usually picked up this girl friend of mine that worked in the shoe factory.

Q. You would pick her up at that particular corner and then go out Fort Avenue going home?

A. That is right.

Q. Now, on the day in question was there any
page 196 } conversation in the automobile at that time?

A. I can't recall any.

Q. Were you looking in front of you?

A. When I approached near the corner I looked to my left and didn't see anything coming. I turned to look to my right. Then when I looked back the other car was right on me.

Q. What speed were you traveling that day?

A. As far as I can remember somewhere between 15 and 18 miles an hour.

Q. Do you know what gear your car was in?

A. Well, not exactly but I thought I had it in second gear.

Q. What is the position of the lever when your car is in second gear?

By the Court:

Q. I didn't catch your answer. You were asked if it was in second gear and I didn't hear your answer.

A. As far as I can recall I still had it in second gear.

Q. Are you certain of that? Do you know what gear it was in?

A. No. When the car stopped it was in second gear.

Q. But at the time of the accident and immediately before do you know what gear it was in?

page 197 } A. I had it in second gear.

Q. It was in second gear?

A. Yes, sir.

By Mr. Frost:

Q. Why do you say it was in second gear? Is there anything to recall that to your mind?

A. Well, the second gear sits up and high gear is back.

Q. Can you explain that a little better? Is this gear shift lever on the steering wheel where you change from low, to second and then to high?

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A. You pull it back this way to low, you push it up to second, and then drop back like this to high.

Q. Second gear is up and high is down?

A. Yes, sir.

Q. Mrs. Dowdy was sitting beside you?

A. Yes, sir.

Q. She has testified that she was under the impression that the gear shift lever went in her back. Do you know what happened to her back at the time of the accident?

A. Well, something hit her back. I can't say whether it was the gear shift lever or what.

Q. She said there was some blood on the gear shift lever. Do you recall seeing that?

A. No, I don't recall seeing that

page 198 } Q. At the time of the impact how were the occupants of the automobile thrown?

A. Well, they were thrown more to the left.

Q. In other words, Mrs. Dowdy was to your right and she was thrown to your left?

A. She was thrown to my left. My car was thrown to my right.

Q. Did you see how that puncture wound was made?

A. No, sir, I didn't see it.

Q. Were there any complaints of any kind about the operation of your car that day?

A. Not a word.

Q. Were you on your right-hand side of the street or on the left-hand side of the street or in the center?

A. I was on the right-hand side of the street.

Q. After the accident was over did you look at the front portion of your car to see if it was bent in either direction?

A. Yes. It was shoved to my right.

Q. Was anything on the frame to show any damage to the left or right?

A. My bumper. It was turned kind of around on the right-hand front wheel.

Q. Was Mrs. Dowdy unconscious?

A. That I couldn't say.

page 199 } Q. Did she talk with you in the car?

A. She talked with me in the car and she gave me her billfold and her glasses.

Q. Mrs. Thoms, I understand that you say you got to the corner and looked to your left and didn't see anything and then looked to your right. Have you been there to see how

far back you could see, to see what distance you could see on 13th Street?

A. Yes, sir, I have been back and I will say 30 feet back in the street I can see down about 30 feet into 13th Street.

Q. Was there any traffic on Pierce Street between your car and 12th Street that you recall?

A. No, sir.

Q. Now, it has been testified to, or at least we asked Mrs. Johnson and Mrs. Dowdy about their testimony in the police court at the traffic hearing. Will you please tell us what Mrs. Johnson testified to?

A. They all said that they didn't think I was going any faster than what I said.

Q. They both said that?

A. They both said that.

Q. And what had you testified?

A. I said between 15 and 18 miles an hour.

page 200 } Q. I think Mrs. Johnson, and maybe Mrs. Dowdy, testified that you told them—I think Mrs. Johnson said you came to her home and she testified that you said that she should say you were going 15 to 18 miles an hour. Is that correct?

A. No, sir, that is not correct.

Q. Did you make any statement to Mrs. Dowdy telling her what to say your speed was?

A. No, sir.

Mr. Frost: I believe that is all.

CROSS EXAMINATION.

By Mr. Rosenberger:

Q. Mrs. Thoms, these ladies all paid you like they testified, didn't they?

A. They didn't give me any money at all on that day.

Q. I didn't ask you about that day. I said they all paid you according to the way they testified, some a dollar a week and some $2.00 a week and some 20¢ a ride?

A. Maybe sometimes they wouldn't pay me right then but would do it later.

Q. Mrs. Dowdy paid you every time she rode with you?

A. Yes, sir.

Q. And she paid you when you got her home?

A. Yes, sir.

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Q. And this day you were riding her and you expected her to pay you when you got her home?

page 201 } A. No, I didn't expect it. I never expect money from other people.

Q. You say that you collected money so as to cover your expenses. You would have been right disappointed if nobody had paid you, wouldn't you?

A. No, I would not.

Q. You would not?

A. No, sir.

Q. You always collected from Mrs. Johnson the last of the week?

A. Sometimes it would go over to the next week.

Q. But she paid you?

A. Yes.

Q. And Mrs. Brooks always paid you, did she not?

A. No.

Q. Mrs. Banton always paid you?

A. No, sir.

Q. Mrs. Hahn always paid you?

A. Yes, she always paid me.

Q. Now, Mrs. Thelma Brooks said here she owed you some money now so she hasn't paid you everything she owed you. Is that correct?

A. I can't consider she owes me any money. I take a lot of those people to the store to get groceries and I never ask them for one dime.

page 202 } Q. Now, the officer said that this collision occurred at 4:05. You admit that is about the right time?

A. It was between 4:06 and 4:10.

Q. He said he got the call at 4:06 so if he got the call at 4:06 then it must have happened before that time?

A. I couldn't tell you exactly what time it was when we wrecked.

Q. Now, you had to walk close to a block to get out of the factory, didn't you?

A. No, sir, not me.

Q. How far did you have to walk?

A. I didn't walk half as far as across this room.

Q. How about Mrs. Johnson and Mrs. Dowdy, how far did they walk?

A. They walked farther than I did.

Q. How much farther?

A. I would say maybe three times as far as I did.

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Q. Would you say they walked about a block to get out of the factory?

A. No, because the factory is not a block wide nor a block long.

Q. Then from Kemper Street up to Buchanan Street, how far did you walk?

A. About half a block.

Q. When you got in the car you pulled out into
page 203 } Buchanan Street. The street was full of traffic then, wasn't it?

A. Yes, sir. There were some cars coming.

Q. Normally if Buchanan Street hadn't been blocked you would have gone on west on Buchanan over to 12th Street, passed under the traffic light and kept on straight because that would have been the closest way?

A. It would have been the closest way but I never went that way that day.

Q. You said you didn't usually go up 14th Street?

A. I said I often go out 14th Street and across that way.

Q. Did you go two blocks out of the way every day?

A. Not every day but I did it to miss all the traffic.

Q. Were you trying to miss traffic?

A. No, not exactly to miss it but I just don't like to drive in a lot of traffic.

Q. How many factories let out there at that time?

A. It is three.

Q. Which three?

A. The Loft Building, the N & W Overall Factory and the Blue Buckle Overall Factory.

Q. Now, traffic comes up 14th Street from Kemper Street, doesn't it?

A. No, sir.

Q. Where is Blue Buckle located?

page 204 } A. Blue Buckle is located near the corner of 14th and Kemper Streets.

Q. Where is the Loft Building located?

A. Between 13th and 14th.

Q. On what street?

A. It is off the street.

Q. Off of what street?

A. Off of Kemper Street.

Q. Now, traffic comes up 13th Street from Kemper, does it not?

A. Yes, sir.

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Q. And traffic also comes up 13th Street from Blue Buckle, doesn't it?

A. No, sir, because you can't go but one way on Kemper Street.

Q. If you go west on Buchanan from 14th to 13th then you turn right and come up 13th?

A. Yes, sir, you can.

Q. As a matter of fact, that is where Miss Scott had to come, wasn't it?

A. Yes.

Q. Then traffic would come out of there from the Loft Building, would cross Kemper Street, which is a one-way street, and go north along 13th Street going up to Pierce Street?

page 205 } A. Yes.

Q. You knew that those factories let out at that time, didn't you?

A. Sure.

Q. And you knew that 13th Street coming from Kemper Street would have traffic on it coming north in your direction, didn't you?

A. Not too much traffic on 13th Street.

Q. But there is some with all those cars out there, isn't it?

A. Yes, there is some.

Q. You told me that those coming from the Loft Building go up 13th Street?

A. I said there was only one-way traffic on Kemper Street and they have to go east on Kemper Street.

Q. If you come right out and cross Kemper Street at 13th you can go straight across and straight on north?

A. The parking lot is not straight across.

Q. The parking lot there at the Lynchburg Transit is where a lot of them park, isn't it?

A. They don't park in the transit parking lot.

Q. As you were driving along don't you recall that you were talking to these people about the argument you had with girls about you getting the best work?

A. I never had an argument with the girls that

page 206 } I work with.

Q. Didn't you say they were arguing about you getting the best work?

A. No, sir.

Q. What was that discussion about the work?

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A. It wasn't anything at all about the work that I can recall.

Q. You always say "As I can recall." Can't you recall it?

A. Well, there wasn't nothing at all said about no work.

Q. After you got up to Pierce Street you were going to travel along Pierce Street to 12th, cross 12th and then go over to Fort Avenue or Park Avenue and then go and pick up Mrs. Brooks. She is the girl you call your girl friend?

A. That is right.

Q. I understood the officer to say that from 14th Street over to 13th Street along Pierce that Pierce Street is perfectly flat. Do you agree with that?

A. Pierce Street is flat.

Q. Then the surveyor said from 14th Street to 13th Street is a distance of 330 feet. You heard him say that. Now, you were driving a 1956 Chevrolet station wagon, weren't you?

A. Yes, sir.

page 207 } Q. You mean to tell the court that you drove that Chevrolet station wagon on level ground 330 feet in second gear?

A. I have drove it further than that in second gear.

Q. Did you do it that day?

A. I most certainly did.

Q. Is that why you figure you were going 15 to 18 miles an hour?

A. No, I never drive fast.

Q. You never go over 15 to 18 miles an hour?

A. Very seldom do I ever go over that in the city limits.

Q. You have to drive on Fort Avenue going home?

A. Yes, sir.

Q. And you never drove much over 15 to 18 miles an hour on Fort Avenue?

A. No, sir.

Q. You ever drive on Rivermont Avenue?

A. No, I have never been on Rivermont Avenue going home.

Q. How much damage did it do to your Chevrolet?

A. I do not know.

Q. Didn't you say in the police court it did over $900.00 damage to it?

A. The papers stated that.

page 208 } Q. Could you ever drive it again?

A. I didn't want to.

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Q. You traded it in, didn't you?
A. I sold it.
Q. You got a brand new Chevrolet station wagon, didn't you?
A. No, sir.
Q. Does this picture, Plaintiff's Exhibit No. 1, show the damage to your automobile?
A. Yes, sir.
Q. And it shows your automobile parked right into the side of that DeSoto?
A. In the front.
Q. And that picture shows your hood folded straight on up in the air and right on back?
A. No, it was curved.
Q. It was curved up?
A. When I hit my brakes that throwed the front end of my car down.
Q. And the front end went down and went into the side of the DeSoto?
A. Struck in the side.
Q. Is that other damage shown in that picture, the fender down over the wheel?
A. Yes.

page 209 } Q. The impact you speak of continued on into the side of her car like it is shown in this picture, Exhibit No. 2, didn't it?
A. It is not exactly touching her car but it is right up close to it.
Q. Right up against it and it shows the DeSoto against the fire plug. That is where they were after it was over?
A. I don't know exactly where they were.
Q. Was the motor driven back in your car against the dashboard?
A. I couldn't tell you that.
Q. How much actually did it cost to fix the car?
A. I do not know. I didn't have it fixed.
Q. How much was it estimated the cost would be to have it fixed?

Mr. Frost: If your Honor please, that is hearsay and we object to it.
The Court: You are not seeking to recover any damages for the automobiles. She can describe the damage done to the car but the price of fixing it I rule is immaterial in this case.

Mae C. Thoms.

By Mr. Rosenberger:

Q. Mrs. Thoms, did you see the blood on the end of that gear shift lever?

A. No, sir, I did not.

page 210 } Q. Assuming that Mrs. Johnson's back went onto the gear shift lever her back could have knocked that lever up into second gear?

A. Beg pardon, it wasn't Mrs. Johnson.

Q. I sometimes make mistakes but don't like to admit it. It was Mrs. Dowdy.

A. If the gear shift lever had been in high gear it couldn't have hit her back.

Q. But her back had a hole in it?

A. If the car had been in high gear it couldn't have hit her back. It would have been down too low.

Q. Was there anything else you found that went in this lady's back?

A. Nothing that I can figure out.

Q. You didn't have any gear shift or any hand brake right in the middle of the car like the old models used to have, did you?

A. It wasn't an old model car.

Q. I say you didn't have anything like that in the middle of the car?

A. Why should I?

Q. I assume it didn't have it in the middle of the floor. Is that right?

A. Yes.

Q. Now, didn't you go over to see Mrs. Johnson

page 211 } before you went to police court?

A. I carried Mrs. Johnson's check to her.

Q. When you went to see Mrs. Johnson didn't you say "I told the policeman I was going 18 to 20 and you tell them the same thing"?

A. No, sir, I didn't tell them that. That wasn't discussed.

Q. Now, while Mrs. Dowdy was still in the automobile at the scene of the accident didn't you say "Tell them I was going 18 to 20"?

A. I never said one word to her about that except to ask her how she was hurt.

Q. Did you use the expression "My God, I will never get out of this"?

A. No, sir, I never did.

Q. You didn't use that expression?

A. No, sir.

Mae C. Thoms.

Q. And you still maintain you were just going 15 to 18 miles an hour and that is the speed you always drive?
A. I usually drive that way in town.

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Has counsel for the defendant any objection to Instruction No. 1?
Mr. Frost: Counsel for the defendant objects to Instruction No. 1 for the following reasons:

Section 4 provides that the speed limit is 25 miles an hour and we object to that portion of the instruction on the ground that the test for determining the proper frontage on Pierce Street between 13th Street and 14th Street was, in our opinion, not the proper test for frontage provided for by statute. Further, we have plead contributory negligence and I think there is evidence on which a jury *cound* find that the plaintiff was guilty of contributory negligence and this instructions fails to provide for that principle.
The Court: Does counsel for the plaintiff care to reply to those objections?
Mr. Rosenberger: The area in which this collision occurred is a residential and business district within the meaning of the Code and the evidence in this case
page 217 } shows as a matter of law that the plaintiff is not guilty of contributory negligence.
The Court: The question of speed applicable to the defendant was one of the matters we considered yesterday afternoon. If this was a residential area the maximum speed would be 25 miles an hour. If it was not a residential area or district and not a business district the maximum rate of speed would be 35 miles per hour. There is no issue or claim that the area was a business district. The sole matter is whether or not this was a resident district. The statute defines a resident district as: "The territory contiguous to a highway not comprising a business district where seventy-five percentum or more of the total frontage, on both sides of the highway, for a distance of 300 feet or more is occupied by dwellings or by dwellings and buildings in use for business *pruposes.*"

It is the Court's opinion that in counting the frontage occupied by a building there should be counted not merely the number of feet of land upon which the building sits but all the rest of the frontage of the city lot upon which the building is located and which land is used as appurtenant to the building in and about the use and enjoyment of the building, land that is a part of the curtilage of the building.

page 218 }

Now, for a whole city block of more than 300 feet upon which the defendant was traveling in approaching the point of collision the evidence, and all of the evidence, the same being simply that testified to by the surveyor, Mr. Warwick, is to the effect that more than seventy-five per cent of that entire block of more than 300 feet was occupied by buildings used for residence or residence and business purposes, in such count giving credit to the entire frontage of the city lots upon which the buildings were located. That being the Court's opinion, and all of the evidence being to that effect, I think it is proper for the court to determine whether or not this was a residence area and I determined that it was and that the speed applicable is a maximum of 25 miles per hour.

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page 221 }

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The Court: Have defense counsel any objection to Instruction 1-A now being offered on behalf of the plaintiff other than the former objection as to telling the jury that the maximum speed was 25 miles per hour?

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page 223 }

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The Court: The Court thinks that Instruction 1-A is a correct statement of the law and it will be given.

Mr. Frost: The defendant, by counsel, objects and excepts to the ruling of the Court in giving Instruction 1-A on the grounds that the Court has held that 25 miles an hour is the speed limit and in our opinion the speed limit is 35 miles an hour as the frontage on Pierce Street should be con-

fined to the portion of the street actually occupied by dwellings and buildings and that the lots appurtenant thereto should not be included as dwellings or as buildings occupied as dwellings or businesses.

page 224 } *Plaintiff's Instruction 1-A (Granted)*:

"The Court instructs the jury that at the time and place that this collision occurred, it was the duty of the defendant, Mae C. Thoms, to use reasonable care to perform each and all of the following duties:

"1. To drive the automobile in a careful and prudent manner so as to keep the same under proper control;
"2. To keep a reasonable and proper lookout for the other motor vehicles using the street so as to avoid colliding with the same;
"3. To drive the motor vehicle so as not to exceed a reasonable speed under the circumstances and traffic conditions existing, regardless of the speed limit; and
"4. To drive the motor vehicle at a speed not to exceed 25 miles per hour under any circumstances.

"The Court further instructs the jury that if you believe from a preponderance of the evidence that the defendant, Mae C. Thoms, failed to perform any one or more of her duties and that such failure was a proximate cause of the collision, and that Arleen Dowdy was free of contributory negligence, then you shall return a verdict in favor of the plaintiff, Arleen Dowdy, against the defendant, Mae C. Thoms."

* * * * *

page 228 } *Plaintiff's Instruction No. 5 (Granted)*:

"The Court instructs the jury that if you believe from a preponderance of the evidence that the motor vehicle operated by the defendant, Mae C. Thoms, was traveling at an unlawful rate of speed at the time and place that this collision occurred, then she forfeited any right of way which she might otherwise have had."

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Has the plaintiff any objection to Instruction A?

Mr. Rosenberger: The plaintiff, by counsel, objects to Instruction A on the ground that the evidence shows as a matter of law that Arleen Dowdy was a paying passenger in the automobile and therefore the issue is solely whether Mae C. Thoms exercised reasonable care and we are not controlled by the issue of gross negligence in this case as she was not a guest in that car.

The Court: Do defense counsel care to reply to that objection?

Mr. Frost: The defendant, by counsel, replies that the testimony shows that Arleen Dowdy, the plaintiff, page 232 } had no agreement or contract with the defendant; that it was a voluntary payment of twenty cents a day; that it was the custom of the plaintiff at the end of a trip to make the payment which was, in our opinion, a gift and on this particular ride she was not being transported for pay and that the guest statute would apply in regard to the liability.

The Court: This is one of the matters that was informally discussed and considered by the court and counsel yesterday afternoon. The Court has subsequently given further consideration to the matter and is of opinion from the facts in this particular case, which briefly are:

The defendant lived on Leesville Road in Campbell County some eight or ten miles from Lynchburg and worked in the manufacturing plant in Lynchburg which operated five days a week. There also lived in the same community in which the defendant lived a number of other ladies who also worked in the same manufacturing plant in Lynchburg. There was formerly a bus operating between Leesville and Lynchburg, the fare each way on same being twenty cents. page 233 } That bus was discontinued. For some time it had been the practice of the defendant to transport with herself in her station wagon a number of other ladies who lived *who lived* in her community and also worked in Lynchburg. I believe there were about five of them. Some of the other ladies only rode one way per day while others rode both ways to and from Lynchburg. All of them paid to the defendant for their transportation at the rate of twenty cents each trip either to or from Lynchburg. Some of them paid at the end of the work week on Friday for the whole week's transportation. A month and a half, or more, prior to this accident the plaintiff became one of the persons so transported by the defendant. She, however, was transported

only from Lynchburg to Leesville and she paid twenty cents at the end of that trip each day.

In the light of such cases as *Davis against Williams,* 194 Va., 541, and *Gammon against Hyde,* 199 Va. 918, the Court is of opinion that it is immaterial whether there was any contract relative to such transportation or not and that even though such payment as above mentioned was page 234 } voluntary, nevertheless the person being so transported under the above mentioned arrangement and custom is not a guest but is a passenger and that the law applicable to the care owed by the defendant to those ladies being transported was that of reasonable or ordinary care and that those ladies who were being so transported were not guests of the defendant.

The Court refuses Instruction A.

Mr. Frost: The defendant, by counsel, objects and excepts to the ruling of the court in refusing Instruction A. Counsel neglected in his statement supporting the giving of the instruction to say that it was at least a jury question and this instruction leaves the determination of that to the jury.

The Court: That last objection having just been raised, the Court is of opinion in this particular case that all of the evidence is to the effect that the person being transported by the defendant to or from work did pay or agree to pay the said twenty cents per trip and since all the evidence is to that effect the Court believes that it should give its page 235 } instructions predicated upon that being the fact and not give to the jury one or more instructions for them to determine such facts. I adhere to my former ruling that the Instruction A is refused.

Mr. Frost: The defendant, by counsel, objects and excepts to the ruling of the Court for the reasons stated above.

Defendant's Instruction A (Refused):

"The Court instructs the jury that the mere fact that an accident occurred and that the plaintiff, Arleen Dowdy, was injured in the accident places no responsibility on anyone and raises no presumption of negligence. For the plaintiff to recover, Arleen Dowdy, herself, must have been free of negligence which contributed as a proximate cause to the accident, and if you believe from a preponderance of the evidence that Arleen Dowdy was a guest, then she must prove by a preponderance of the evidence that the driver of the automobile operated it in such a manner as to show a nutter disregard of prudence amounting to complete neglect of the safety of Arleen Dowdy. If the plaintiff fails to prove her case,

or even though she prove it, yet if it further appears that Arleen Dowdy, herself, was guilty of negligence
page 236 } proximately contributing to her injuries, the plaintiff cannot recover, and you must find for the defendant, Mae C. Thoms."

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The Court: Has plaintiff any objection to Instruction B?

Mr. Rosenberger: Plaintiff objects to Instruction B because it embodies the theory that the plaintiff was a guest. The Court has already ruled the plaintiff was not a guest.

The Court: Instruction B is refused.

Mr. Frost: The defendant, by counsel, objects and excepts to the ruling of the Court in refusing to give Instruction B on the ground that the issue should be left to the jury.

page 238 } *Defendant's Instruction B (Refused)*:

"The Court instructs the jury that if you believe from a preponderance of the evidence that Arleen Dowdy was a guest in the automobile of the defendant, Mae C. Thoms, at the time of the accident, then the said Mae C. Thoms would not be liable to the said plaintiff unless you further believe from a preponderance of the evidence that the said Mae C. Thoms operated her automobile in such a manner as to show an utter disregard of prudence amountnig to complete neglect of the safety of Arleen Dowdy."

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Mr. Frost: If your Honor please, the defendant, by counsel, moves the Court to set aside the verdict of the jury on the following grounds:

(1) For admitting evidence over the objection of the defendant;

(2) For failure to admit evidence presented by the defendant;

(3) For error of the Court in giving instructions for the plaintiff over objection of the defendant;

page 252 } (4) For error of the Court in failing to give instructions offered by the defendant;

(5) Because the verdict is contrary to the law and the evidence; and

(6) Because of the excessive verdict.

The Court: Would you like to be heard?

Mr. Frost: I would like to enlarge that motion on the following ground: I think the Court has considered several points very carefully that I have raised in the case, particularly the one about the speed limit, and I have no authority at this time to offer on that. As a matter of fact, I don't know of any authority at all on that subject. I am not limiting my objection just to that but I mention that particular point.

The Court: Do you wish to be heard in reply, Mr. Rosenberger?

Mr. Rosenberger: I think your Honor has been very patient and has considered this matter very thoroughly from all viewpoints and I think Mr. Frost's motion

page 253 } apparently is from an old form he is reading from and some of those matters don't apply to this case. I think you have considered all of them, particularly whether or not the plaintiff was a guest or passenger, and you gave it very thorough consideration and gave practically all of the instructions that they asked except those dealing with the guest theory. We followed the case of *Davis* v. *Williams* and the case of *Gammon* v. *Hyde* in 199 Va. and I don't know of anything more I could add. I think the Supreme Court has really ruled on this case from beginning to end so I don't think I can add anything to what your Honor has already said.

The Court: Gentlemen, if you don't wish to be heard further the Court will pass on the motion now.

Mr. Frost: I would like to be heard.

The Court: I am ready now. I have other matters to be heard but I will give you an opportunity to argue your motion. You have only stated the grounds of your motion. You haven't argued it.

Mr. Frost: As far as the excessive verdict is

page 254 } concerned, the testimony shows that the plaintiff had no permanent injury; that the expenses would be around $750.00; that the doctor anticipated it would probably be two or three months before she fully recovered, and

in view of the fact she has missed only eight weeks actual total disability and had been able to follow her employment from September 22nd up until now except for two or three days absence, I would say that fact alone establishes a situation where an $18,000.00 verdict is way over and above any reasonable verdict. That is all I have to say.

The Court: Do you wish to reply, Mr. Rosenberger?

Mr. Rosenberger: As far as excessive verdict is concerned, your Honor, the evidence is sufficient to justify that verdict and more and there is nothing in that verdict to indicate that the jury was biased or prejudiced or misunderstood the Court's instructions, and in light of the doctor's testimony of the fact that this bone has not healed, the difficulty she is still having in her back, difficulty with her thumb, page 255 } the synovitis in the knee and in the rib cage and in the thumb; the fact that they had to stop giving her the medicine that they use to treat this for, and the fact that the doctor can't say—he thinks she is going to be all right but can't say when—I think that there is nothing here that your Honor could say that the jury was prejudiced or biased or that there was fraud or misunderstanding of the Court's instructions, and that is the rule, I believe, that controls.

The Court: Gentlemen, the Court feels that it has in effect passed upon all features of the motion to set aside the verdict heretofore except the contention that the amount of the verdict is excessive.

The Court feels that an $18,000.00 verdict on the evidence in this case is certainly a large verdict but my understanding of the law is that upon the question of setting aside a verdict the Court does not consider what it would have done if it were a juror. Now, the Court feels that if the verdict was induced in any way by any bias, prejudice or undue influence, or any extraneous matter, I would set it aside but coun- page 256 } sel suggests nothing of that sort but simply says it is too big for the injuries according to the evidence. Now, that is altogether a jury question. The verdict is free from any bias or any extraneous matter and no prejudice is alleged or shown. No matter how big it may be, though larger than the Court would give if I were a juror, I have no right to set the verdict aside. As I understand, the mere size of the verdict alone is no ground to set it aside.

Now, in this day and time the Court knows that a dollar has got mighty little purchasing value. As one of my fellow judges expresses it, twenty years ago you could take a ten-dollar bill to the grocery store and get a bushel basket of

groceries. Now you take the same amount of money to the grocery store and they put everything you get in a paper bag. That has something to do with the amount you allow. I feel that the amount is large but I can not say that it was induced by any improper consideration of the evidence. The compensation for the pain and suffering and what this woman has been through and what she is likely to go through is for the jury to determine. They have determined page 257 } what the Court thinks is a large amount but it was for the jury's determination and I can not say it is an excessive verdict. The motion is overruled.

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A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

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

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

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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