Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Virginia

201 VA 905

Record No. 5068

In the Supreme Court of Appeals of Virginia at Richmond

VIRA S. BAKER

v.

DAVID M. MARCUS

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

RULE 5:12—BRIEFS.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5068

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 9th day of September, 1959.

VIRA S. BAKER, Plaintiff in Error,

against

DAVID M. MARCUS, Defendant in Error.

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

Upon the petition of Vira S. Baker a writ of error and *supersedeas* was awarded her by the Chief Justice of the Supreme Court of Appeals on September 8, 1959, to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 20th day of March, 1959, in a certain motion for judgment then therein depending wherein David M. Marcus 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 Court of Law and Chancery in the penalty of eight thousand dollars, with condition as the law directs.

RECORD

• • • • •

page 5 }

• • • • •

OPINION.

In the instant case plaintiff seeks to recover compensatory damages for loss of property and personal injuries sustained in an accident allegedly caused by defendant's negligent operation of an automobile. Additionally he requests punitive damages by reason of defendant's alleged voluntary intoxication at the time. Defendant has filed a demurrer to the motion for judgment; she contends that punitive damages are never recoverable in such an action.

In *Bragg* v. *Commonwealth*, 133 Va. 645 the court said, p. 649:

"The words 'intoxicated' and 'drunk' are synonymous. Words and Phrases, Vol. 4, p. 3734.

"Black's Law Dictionary defines 'intoxication' as the mental and physical condition produced by drinking excessive quantities of alcoholic liquors."

In *United Construction Workers* v. *Laburnum*, 194 Va. 872, 895, the court approved an instruction that punitive damages might be allowed if the jury believed that the defendant acted "in a manner so wanton or reckless as to manifest a willful disregard for the rights of others."

In *Wright* v. *Everett*, 197 Va. 608, 613, the court indicated that punitive damages might be recovered when a
page 6 } plaintiff has been damaged by the defendant's "criminal indifference to his obligation."

Certainly anyone who operates an automobile on a public highway while in a drunken condition is acting "with criminal indifference to his obligation" to those who are lawfully thereon; such a driver must be held to "manifest a willful disregard for the rights of others."

From an annotation entitled "Intoxication of automobile driver as a basis for awarding punitive damages" in 3 A. L. R. (2d) 212, it would appear that most jurisdictions allow recovery of punitive damages in such cases.

Such a recovery was denied by the District Court of Appeal, 1st District, Division 2, of California in *Strauss* v. *Buckley*, 20 Cal. App. (2d) 7, 65 Pac. (2d) 1352; and by the Circuit

Court of Appeals of the District of Columbia in *Giddings* v. *Zellan* 160 F. (2d) 585, applying the law of Maryland, on the basis that drunken driving is an offense for which punishment may be imposed in a criminal prosecution. The Strauss case was criticized in *Miller* v. *Blanton,* (Ark.) 219 S. W. (2d) 293, 3 A. L. R (2d) 203, wherein punitive damages were assessed against an intoxicated driver of an automobile. It was stated by the court, p. 206:

"The majority rule in this country is at variance with the reasoning upon which the California court, in the Strauss case, based its opinion. The general rule is that the fact that the act complained of is a violation of the criminal laws will not bar recovery of punitive damages by the injured party."

It is the opinion of this court that punitive damages may be recovered in a proper case by a person who has page 7 } been injured by the negligence of a drunken driver of an automobile. I do not believe that such recovery is barred in Virginia by reason of the fact that the defendant may be punished criminally for his offense. A person committing an assault may be punished criminally for his offense; nevertheless, in Virginia, the injured party may recover punitive damages if the assault is of a wanton nature or manifests a willful disregard of the rights of the assaulted person. *Borland* v. *Barrett,* 76 Va. 128; *Bannister* v. *Mitchell,* 127 Va. 578; *Baker* v. *Carrington,* 138 Va. 22; *Friedman* v. *Jordan,* 166 Va. 65.

For the reasons stated the demurrer filed by the defendant herein will be overruled.

* * * * *

page 21 }

In the Court of Law and Chancery of the City of Norfolk, on the 20th day of March, 1959.

* * * * *

ORDER.

This day came the parties in person and by counsel, and thereupon came a jury, to-wit; Carlton E. Macon, Edward M. Albright, B. E. Twine, Anne V. Jarrell, William E. Winslow, Spencer A. Coleman, and Robert D. Nichols, who having been duly sworn the truth to speak upon the issue joined and having heard the evidence and argument of counsel returned verdicts in the following words and figures, "We

the Jury find for the Plaintiff and fix his damages at $3,000.00," "and we find for the plaintiff punitive damages and fix this damage at $4,000.00," whereupon the defendant moved the Court to set aside that portion of the verdict that allowed punitive damages, and in the alternative moved the Court for a new trial on that portion of the verdict that allowed punitive damages, on the grounds (1) that there was no evidence that the defendant was guilty of any misconduct justifying such an award, (2) that in any event the amount allowed or awarded as punitive damages was excessive, (3) that under the law of this State punitive damages may not be awarded in automobile tort cases on the ground of intoxication of the driver nor under the circumstances alleged, and (4) that the Court erred in overruling defendant's Demurrer, defendant's Motion to Strike, defendant's motions to strike the plaintiff's evidence as to punitive damages, made at the conclusion of plaintiff's evidence and at the con-
page 22 } clusion of all the evidence, which motions after having been fully heard and maturely considered by the Court are overruled, to which action of the Court the defendant, by counsel, objects and excepts.

Whereupon it is considered by the Court that the plaintiff recover of the said defendant the sum of $3,000.00 damages with interest thereon to be computed after the rate of six per centum per annum from the 20th day of March, 1959, until paid. It is further considered by the Court that the plaintiff recover of the said defendant the sum of $4,000.00 punitive damages with interest thereon at six per centum per annum from March 20th, 1959 until paid, together with his costs about his suit in this behalf expended. To all of which action of the Court the defendant, by counsel, objects and excepts.

A Copy—Teste:

W. L. PRIEUR, JR., Clerk
By L. M. CALVERT, Deputy Clerk.

page 23 }

• • • • •

NOTICE OF APPEAL.

Vira S. Baker, defendant, is aggrieved by a certain judgment of the Court of Law and Chancery for the City of Nor-

folk, Virginia, entered March 20, 1959, in the above-entitled action at law, and hereby files her Notice of Appeal and intention to apply to the Supreme Court of the State of Virginia for a writ of error

ASSIGNMENT OF ERROR.

Defendant, Vira S. Baker, assigns the following error:

1. The Court erred in overruling defendant's Demurrer to plaintiff's Motion for Judgment and in overruling defendant's Motion to Strike those elements of plaintiff's Motion for Judgment relative to punitive damages.

2. The Court erred in overruling defendant's motion, at the conclusion of plaintiff's evidence, that the plaintiff's evidence as to punitive damages be struck, and in overruling defendant's motion, at the conclusion of all of the evidence, that the plaintiff's evidence as to punitive damages be

page 24 } struck.

3. The Court erred in granting instruction P-7 over defendant's objection.

4. The Court erred in overruling defendant's motion to set aside that portion of the verdict that awarded plaintiff punitive damages and in failing to enter up a judgment for the defendant on said portion of the verdict.

5. The Court erred in overruling defendant's motion for a new trial on that portion of the verdict that awarded plaintiff punitive damages.

VIRA S. BAKER
By E. PAGE PRESTON
Of Counsel.

Filed 5-14-59.

L. M. CALVERT, D. C.

• • • • •

page 3 } (The reporter was sworn; a jury was examined on *voir dire,* empaneled and sworn; the witnesses were sworn and separated on motion by Mr. Fine, and the following occurred in the Judge's chambers, in the absence of the jury:)

Mr. E. P. Preston: Your Honor, we had previously filed

a demurrer in this case and it was argued before Your Honor in regard to the punitive damages element which has been prayed.

The Court: I didn't remember. What did I do?

Mr. E. P. Preston: At that time you overruled the demurrer. No order has been entered and we should like the record to show that the demurrer has been overruled and that exceptions have been duly noted to the ruling of the Court.

The Court: Yes.

Mr E. P. Preston: In addition, I should like to move to strike those elements of the motion for judgment referring to punitive damages.

The Court: Well, I will overrule you on your motion to strike.

Mr. E. P. Preston: And I take exception to the ruling of the Court on that.

The Court: Maybe we had better write out this order.

Mr. Fine: I thought I had an order in this page 4 } case.

Mr. E. P. Preston: There is a written order. I beg your pardon. I didn't have a copy of that in my file.

The Court: You have noted your exception.

Mr. E. P. Preston: We have noted our exception. Does it state in there that exceptions are duly noted?

The Court: To which action of the Court defendant objects and excepts, yes.

(Back in the courtroom, in the presence of the jury, opening statements were made by counsel, and the following evidence was introduced:)

* * * * *

page 19 } OFFICER JOSEPH PUPO,

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

Examined by Mr. Fine:

Q. You are Officer Joseph Pupo?

A. Yes, sir.

Q. Would you state you age, your residence and your occupation, please, sir?

A. I am 31 years of age and I live at 1438 East Ocean View

Officer Joseph Pupo.

Avenue; and I am accident investigator to the Norfolk Police Department.

Q. How long have you been a member of the Norfolk Police Department?

A. Four and a half years, right close to it.

Q. On August 1, 1958, did you or not visit the scene of a collision in the vicinity of Burroughs'?

A. I did.

Q. Approximately what time did you arrive there?

A. The exact time that I arrived I don't know.

Q. Can you give us the approximate time?

A. Well, the approximate time of the accident is 7:00 P.M.; but the time that I arrived I couldn't truthfully tell you.

By the Court:

Q. On August 1st, at 7:00 P.M., it was com-
page 20 } pletely light, wasn't it?

A. Well, it was dusk, Your Honor.

By Mr. Fine:

Q. When you arrived there, would you say that you arrived there after 8:00 or between 7:00 and 8:00? Is that a fair statement?

A. Oh, I—between—I would say within a matter—I am usually there approximately five or ten minutes, fifteen minutes, at the most, when I am called.

Q. So between 7:00 and 8:00 would certainly be fair?

A. That is right.

Q. All right, sir. Had the cars been moved when you arrived there?

A. No, sir. They were still in the same position.

Q. Come down here a minute, please. (Counsel indicating table on which compass directions were shown)

A. This (indicating) would be Granby Street here.

Q. Running north and south?

A. That is right.

Q. The automobile of the plaintiff, David Marcus, was going in what direction? Do you know?

A. He was going northbound on Granby Street.

Q. Where was the other car going?

A. Going northbound, also.

Q. Now take the cars and indicate where they
page 21 } were, please, sir, and use your own language—

Officer Joseph Pupo.

By the Court:

Q. Was there a cross street there?
A. No, sir, there is not a cross street there, Your Honor. There is a driveway which—

The Court: Right.

By Mr. Fine:
Q. Is that on the west or east?
A. The driveway is on the west. Now, when I arrived there, the Marcus car was sitting—the Baker car was in this position here (placing model car). Now, the exact position I don't know but it was sitting right in this vicinity. This is closed here. Over on this side of the street is a furniture store parking lot. When I arrived the cars were in some similar position to this. Now, the exact position I couldn't truthfully remember but when I arrived Mr. Marcus' car—we had to push it.

By the Court:
Q. The light car is Mr. Marcus' car?
A. Yes, sir, the light car is Mr. Marcus' car. It could have been swung around because we forced his car off Granby Street into that position there. We blocked Burroughs' driveway completely, just to clear the road, and we moved Miss Baker's car onto the Robert Morris furniture Store just to clear the road.

page 22 } By Mr. Fine:
Q. Take that seat, please, sir. Did you talk to Mrs. Baker, the driver of the other car?
A. I did.
Q. And would you describe her, please, to His Honor and the members of the jury?
A. Miss Baker was injured at the time, and Officer Cochrane was there also, and I asked Officer Cochrane if he would not take Miss Baker to the hospital and then to bring her back to the Third Precinct; when I was through investigating the accident I would go directly to the Third Precinct.
Q. Did you take her to the Third Precinct?
A. Yes, sir. She was taken to the Third Precinct.
Q. What was her condition with regard to drinking?
A. She had been drinking quite heavily.

Officer Joseph Pupo.

Q. State whether or not her drinking affected her ability to drive an automobile.

Mr. E. P. Preston: Just a minute. Your Honor, I object to the question.

By the Court:
Q. Describe her condition as to sobriety.
A. It was very bad, Your Honor. She was—she had an odor on her breath. She staggered and she was doing quite a bit of talking and crying at the same time.
Q. You say she was unable to walk?
page 23 } A. She could walk.
Q. She was staggering when she walked?
A. Yes, sir.

By Mr. Fine:
Q. And how did she talk? Was it concise or thick-lipped?
A. I truthfully couldn't answer that.
Q. Well, now, with regard to her driving; you have been a police officer for four years?
A. That is right.
Q. Or going on four years?
A. No, over four years.
Q. Can you tell His Honor and the members of the jury with reasonable certainty whether or not her ability to drive the automobile was affected by her drinking?

Mr. E. P. Preston: I object to the question, Your Honor.
The Court: I sustain the objection. I don't think it is a question peculiarly within the knowledge of an expert. I think all of us are able to put a proper evaluation on a person's ability to drive if he or she had been drinking to the extent that they are staggering.

• • • • •

page 24 } By Mr. Fine:
Q. Now, Mr. Officer, were you present in traffic court when she testified?
A. I was.
Q. Will you tell His Honor and the members of the jury what statements she made with regard to how many drinks she had had?

Officer Joseph Pupo.

* * * * *

page 25 }

* * * * *

A. To the amount, Mr. Fine, I don't remember. I do remember this, that she stated in traffic court and also to me that night that she had been drinking with her brother-in-law or some relative of hers at a garage where he worked. They were having a little party and something of that sort. I—

By Mr. Fine:

Q. Did she tell you how many drinks she had—

A. I—the amount I can't truthfully testify to.

Q. Did you or not find any bottle in her car?

A. There was a bottle in the car. There was a bottle of—there was a bottle of vodka in the car if I am not mistaken.

Q. And—

A. A pint.

Q. Was that full or empty?

A. This accident occurred, Your Honor, in August and it is quite hard to remember all those incidentals.

The Court: Of course it is.

A. (Continuing) I don't—to the amount that
page 26 } was in the bottle or the amount that was consumed I couldn't truthfully testify.

By Mr. Fine:

Q. But some of it had been consumed; it was not full, is that—

A. That is right.

Mr. Fine: Answer these gentlemen.

CROSS EXAMINATION.

By Mr. E. P. Preston:

Q. Officer Pupo, you testified that you smelled an odor on her breath; the odor of what did you smell on her breath?

A. I couldn't—

Officer Joseph Pupo.

Q. From the nose. She had a right bad cut on the nose?
A. She did. She had a cut of the nose and also her left knee was injured.
Q. And she was somewhat hysterical, wasn't she?
A. Yes, sir, she was. She was doing an awful lot of crying.

By a Juror:
Q. How long after the accident before you saw her at the station?
A. Well, she was taken to the emergency room and treated, and whether she was brought back directly to me or the Third Precinct I don't know. But I imagine—I had to wait for the wreckers to tow both vehicles away. Then I immediately went from the scene of the accident to the Third Precinct, which would take approximately five, ten minutes driving. Now, the actual time from the time that she was taken to the General Hospital back to the Third Precinct I don't know.

page 29 } By the Court:
Q. It would have been at least 45 minutes after the accident?
A. 45 minutes, at the most; 45 minutes at the most.

By Mr. Fine:
Q. Then, as I understand it, Inspector Cooper did not see her until 45 minutes later?
A. Inspector Cooper did not see her until she was brought back from the hospital. I had to call him on the air to come to the Third Precinct.
Q. How long was it then before he got there following the accident; approximately, your best judgment on that?
A. Approximately 20, 30 minutes.
Q. After she arrived there?
A. Yes, sir.
Q. And that would be 45 minutes from the time she first arrived and then 20, 25 minutes before he came there?
A. Yes, sir.

* * * * *

page 53 }

* * * * *

Officer Joseph Pupo.

By the Court:
Q. Was it the odor of alcohol?
A. It was odor of alcohol.

By Mr. E. P. Preston:
Q. The odor of alcohol you know?
A. Yes, sir.
Q. Does it smell like beer or whiskey? Could you tell that?
A. Couldn't tell that.
Q. You couldn't tell that?
page 27 } A. No, sir.
Q. You didn't, as a result of this accident, charge her with driving under the influence of alcohol, did you, Officer?
A. No. The reason for that is the fact that I called the inspector; before we do charge a person with driving under the influence—
Q. You didn't charge her—

Mr. Fine: I think he has a right to explain it, if Your Honor please.
The Court: If you asked the question, he has certainly a right to explain.
Mr. E. P. Preston: I am not objecting.
Mr. Fine: You cut him off.
Mr. E. P. Preston: Talking about the inspector.
The Court: He has answered no; the reason he didn't, he called the inspector as far as we can—

A. The reason we didn't charge her, Inspector Cooper was called, and she was a borderline case, what we call borderline case, and she was placed on the docket under reckless driving charge instead of driving under the influence. He is the man that usually is called in on those cases to determine whether her ability to drive has been impaired so much she should be charged with drunk driving or reckless driving.

page 28 } By Mr. E. P. Preston:
Q. Mrs. Baker at the time, you say, was injured, wasn't she?
A. Yes, sir.
Q. She was bleeding?
A. Yes, sir, she certainly was.

Officer J. C. Cochrane.

Mr. E. P. Preston: That is correct.

The Court: So, necessarily, if the ability to drive was impaired by trauma or blow that she received in the accident, that would not be admissible.

Mr. Fine: That is true, sir.

By Mr. Fine:

Q. Was she drunk or sober? Could you tell?

Mr. E. P. Preston: I object. He has answered the question already and he is cross-examining his own witness.

The Court: I think he has covered it. I will allow you to go further into the facts but not whether or not—

Mr. Fine: All right.

By Mr. Fine:

Q. Tell us how she walked, Mr. Officer?

A. She didn't walk. We, myself and another man that was there, who I don't know his identity, I don't know who he was, we semi-carried her over into the police page 56 } car. And I took the car and went on to DePaul Hospital with it.

Q. I ask you if this is not the man.

(Mr. Fine at this point went to the door of the courtroom and opened it.)

Mr. Fine: (At door of courtroom) Mr. Saunders. (A man entered the courtroom.)

By the Court:

Q. Is that the gentleman who assisted you?

A. He looks like the man. I can't say positively it was him. It looks like him; a short heavy-set man.

By Mr. Fine:

Q. How did you all get her in the police car?

A. I had hold of her arms and he picked her legs up. We put her in the car.

Q. Did you take her to the hospital?

A. Yes, I did.

Q. Then after you took her to the hospital, did you take her to the police headquarters?

A. No. Officer Pupo carried on investigation from there on in.

OFFICER J. C. COCHRANE,
called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Fine:

Q. I should like to hand you this (handing to witness) to refresh your memory in connection with the matter. Officer Cochrane, would you state your full name, please, to His Honor and the members of the jury?

A. James C. Cochrane.

Q. Officer Cochrane, did you and Officer Pupo go to the scene on August 1, 1958, in front of Burroughs' in connection with a collision?

A. Yes, sir. I was the first on the scene.

page 54 } Q. I ask you to tell His Honor the condition of the defendant, Mrs. Baker, with regard to sobriety.

Mr. E. P. Preston: Your Honor, I object to the question. I have no objection to his testifying what he saw and noticed but he is asking for an opinion.

The Court: What was the exact question?

Mr. Fine: The question was to tell Your Honor and the members of the jury the condition of her sobriety.

The Court: I will allow it.

By the Court:

Q .What was her condition as to sobriety?

A. When I first observed her she was seated in the front seat of her automobile, which was northbound on Granby Street right directly in front of Burroughs', involved in a front-end collision. She was at the front. Her head was slumped forward, hands were on steering wheel. I raised her head back and she seemed to be in a dazed condition at the time. I could smell alcohol on her person, which I later smelled upon arrival at DePaul Hospital. She seemed to be in a dazed condition at all the time that she was there. As to the amount of alcohol that she approximately that she had consumed, no way I could tell. I could smell alcohol on her person but due to her injuries I couldn't ascertain whether she was drunk or what she was at the time.

page 55 } Q. And do you know whether her ability to drive was impaired or not?

The Court: One moment. That would be whether or not the ability to drive was impaired. The officer says he doesn't know whether the condition he saw was from being dazed from shock or a blow or from alcohol.

Q. From there on?
A. Yes, sir.

Mr. Fine: Thank you, sir.
Mr. E. P. Preston: I have no questions, Your Honor.

page 57 } ROBERT H. SAUNDERS,
called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Fine:
Q. You are Mr. Robert H. Saunders?
A. Yes, sir.
Q. Mr. Saunders, I believe last August 1, 1958, you occupied the premises across the street from Burroughs?
A. Yes, sir.
Q. On Granby Street?
A. Yes, sir.
Q. And did you come out, onto the scene of an accident?
A. Yes, sir.
Q. Did you see it?
A. I heard the impact. We had a telephone right between the doors, the posts of the doors, and I was using the telephone. I heard the impact and rushed right out.
Q. When you heard the impact, what did you see?
A. I saw a car was still in movement from Granby Street into the driveway of Burroughs' Restaurant, and a lady behind the wheel of another car trying to get it started and trying to move away.
Q. Did you see that lady today?
A. Yes. The defendant. (Witness indicating)
page 58 } Q. Tell us what you did.
A. Well, I rushed out. I recognized Mr. Marcus, whom I had known in the past, and I saw his wife crying that the baby is hurt. And I ran over to his car and saw the wife with—

By the Court:
Q. Was the wife in the car with him?
A. Mr. Marcus' car, yes, sir, with an infant, a little girl on the back whom I recognized as Mrs. Marcus, Mr. Marcus' mother, in the back, frantic. And this lady in the car trying to drive away, and her car stalled and I yelled at her "Wait a minute. You have just been in an accident." But she didn't answer me. And about then an officer was there and I think it

was the officer that just walked out. I don't know what his name is.

By Mr. Fine:

Q. All right.

A. And I ran over to the car, trying to get the lady to keep from leaving the scene of the accident.

Q. Let me ask you this, sir: What was her condition, the condition of this lady, with regard to sobriety?

A. I walked up and I told her that she better not drive off. And she became very indignant and used some pretty foul language at me. And I said "You had better come out and let's see your face. You are all bruised up."

page 59 } By the Court:

Q. Excuse me one minute. I realize your reluctance to state the language but it does help us to evaluate the case to—

A. Well, she called me a "fat son of a bitch" if you want to know the exact words, Your Honor, and because I was trying to get her out of the car. I didn't want to use the language in court.

Q. I understand.

A. And I tried to get her out because her face was bleeding. I didn't know whether she was badly hurt or not. And she fought me and she started the car again. So I—fighting with her, I pulled the door of the car open. I reached in and I took the ignition key out. I cut the motor off and pulled the ignition key out. And traffic was piling up. So I turned around to the officer, "What shall we do?" He said "Leave her in there. She isn't too bad. Let's see what we can do with these." And I went back over and saw that the crowd from Burroughs' had come out, were helping them, and traffic was piling up, so I helped the officer clear traffic in front until Officer Pupo came along and then we—

By Mr. Fine:

Q. What was the name of your business across the street?

A. Robert Morris, Incorporated.

page 60 } Q. Mr. Saunders, did you get close to this lady?

A. Yes, sir. I was—I was—she was leaning against the door and we were practically almost in kissing distance, so to speak, we were that close. I was trying to get the keys out so she wouldn't leave the scene of the accident.

was moving; then it stopped. Then this lady tried to drive away from the scene of the accident. And I shouted to her, she better stop because she had just had an acci-
page 62 } dent. She says "No." That is when she called me the names and she started to drive away. And she drove perhaps from here to this desk (indicating), about ten to twelve feet, and I ran up and I was standing there and I was pulling at her, trying to get her to give me the keys so she wouldn't leave the scene of the accident.

By Mr. E. P. Preston:

Q. Her car stopped there?

A. Well, she stopped to look at me and that is when I reached in and I pulled the key out.

Q. And you practically got in a fight with her in order to assist in the situation?

A. That is right.

Q. Did you know Mr. Marcus before this accident?

A. Well, I had gone to school with him when we were kids in high school.

Mr. E. P. Preston: No further questions.

page 63 } G. M. STEPHENSON,

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

Examined by Mr. Fine:

Q. You are Mr. Graham M. Stephenson?

A. Yes, sir.

The Court: Excuse me. I didn't catch the name.

Mr. Fine: Stephenson.

By Mr. Fine:

Q. And you are connected with the Southern Body Works?

A. That is right, sir.

Q. What is your connection with it?

A. I am the owner.

Q. How long have you been in the automobile repair business and an automobile mechanic repairman?

A. Oh, 17 years.

Q. I hand you a bill in the total amount of $434.54 and ask you whether or not all the repairs indicated on this bill are reasonably necessary by reason of a collision?

Robert H. Saunders.

Q. Did you smell any alcohol?
A. Yes, sir. She definitely had the odor of alcohol about her.
Q. Was there any alcohol in the car?
A. I didn't see any at the time.
Q. Did you observe how she walked or how she—
A. Well, when we got her out of the car, trying to move the car out so we could allow traffic to pass through because it was about 7:00 o'clock and it was very heavily trafficked. She—well, she was pretty unsteady. We had to help her out of the car and help her to stand up.
Q. Was she sober or was she drunk?

Mr. E. P. Preston: I object, Your Honor; asking for a conclusion.
The Court: I sustain the objection.
Mr. Fine: I understood a man would have a right to say that would be one—
The Court: Well, I think he can describe it. Under certain conditions I have allowed it but where it is
page 61 } described, I prefer it that way.
Mr. Fine: All right, sir. Answer these gentlemen.

CROSS EXAMINATION.

By Mr. E. P. Preston:
Q. Her car never moved after this accident?
A. I beg your pardon?
Q. The officer testified her car never moved after this accident. That was so, wasn't it?
A. It moved—
Q. It was moving when you saw it, as you looked out?
A. No. She moved it, she tried to move it. That is why I took the keys away from her. She tried to drive away. The officer—
Q. You thought—

Mr. Fine: Let him answer.
The Court: Go ahead.

A. Well, let me describe it again for you. As I saw at first, the car stopped. In other words, one car, Mr. Marcus' car, had swung into the driveway at Burroughs'. This car

Eva Sparr Marcus.

CROSS EXAMINATION.

By Mr. E. P. Preston:

Q. You did the repair work?

A. I did the repair work.

Q. It took you two weeks and two days to repair it?

A. Ordering parts and the things that went along with it, two weeks and two days.

Mr. E. P. Preston: Thank you very much. That is all.

• • • • •

page 67 }

• • • • •

EVA SPARR MARCUS,

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

Examined by Mr. Fine:

Q. Mrs. Marcus, will you state your full name, please, your age, your residence and your occupation?

page 68 } A. Eva Sparr Marcus. I am 56 and I am a housewife.

Q. You are the mother of David, are you not?

A. Yes.

Q. And you were in this automobile on August 1?

A. Yes.

Q. Where were you seated?

A. In the back seat with my granddaughter.

Q. You were going on Granby Street, is that right, and this happened in front of Burroughs'?

A. Yes. We were—

Q. Now, tell us, please, ma'am, just what occurred.

A. We were waiting in the left lane—this says "Left Only"—to go into Burroughs', when the lady hit us from the back and knocked us over into Burroughs' drive, knocked us all the way in there.

Q. Were you standing still at the time she struck you?

A. Yes.

Q. How long had you been standing?

A. Well, it was Friday—

Q. Approximately.

G. M. Stephenson.

A. They were, sir.

Q. Would you be good enough to read the items, please, sir, that were repaired, the damaged—

A. The items that were replaced were the right rear quarter panel, the wheel housing—

page 64 } Mr. E. P. Preston: Your Honor, in order to save time we shall be glad to stipulate—

Mr. Fine: Thank you very much. I think we had better let the jury know where the impact is. I appreciate your wanting to let me do that.

A. (Continuing) The right rear quarter molding, the taillight, back-up light plug, the trunk lid, the right trunk hinge, the rear body panel, the license light cover, the rear bumper, the rear bumper guard and the seat tracks.

By Mr. Fine:

Q. As I understand it, it was $179.69 for the material, $171.85 for the body work and $45 for the painting; and the repairs, seat installed track $18 and towing $12, and $8 for materials, is that right?

for the body work and $45 for the painting; and the repairs, seat installed track $18 and towing $12, and $8 for materials, is that right?

A. That is right, sir.

Q. Making that total. Now, were all of those repairs in the rear of the car?

A. All the repairs were in the rear.

The Court: You mean to introduce that in evidence?

Mr. Fine: I should like to introduce it if you please, sir.

The Court: Plaintiff's Exhibit 2.

(The document referred to was marked Plaintiff's Exhibit 2.)

page 65 } By Mr. Fine:

Q. I should like to ask you, being a repairman, whether or not that car could have been repaired quicker than two weeks; if you had to hire a car, two weeks and two days, was that a reasonable time to take to repair the car?

A. That was a reasonable time.

Colleen Loving Marcus.

the left turn lane to turn into Burrough's, and this car struck us from the rear.

Q. Were you moving or were you standing still?

A. We were still.

Q. How long had you been standing still?

A. Oh, several minutes, waiting for the oncoming traffic.

Q. Did you see the lady driver?

A. No, I did not.

* * * * *

page 72 } By Mr. Fine:

Q. Let me ask you in this way, then, please—and I didn't want to lead you. Following the accident—or before this accident, where were you all going?

A. Where were we going?

Q. Yes.

A. We were going to Burroughs' Drive-In.

* * * * *

page 73 }

* * * * *

By Mr. E. P. Preston:

Q. Mrs. Marcus, what happened to the auto-
page 74 } mobile in which you were sitting after it was hit?

A. To the automobile that I was sitting—

Q. Yes.

The Court: Your automobile or your husband's.

Mr. E. P. Preston: Your husband's automobile.

A. It was towed away after the accident.

By Mr. E. P. Preston:

Q. I mean as soon as it was hit, where did it go? Where did it stop?

A. It pushed us up into the drive of Burroughs' drive.

Q. Burroughs' Drive-In; it wasn't struck by another car, was it?

A. It was struck by another—

Q. It wasn't struck by a car coming south—

A. No.

Q. —on Granby Street, was it?

A. No.

Colleen Loving Marcus.

A. It was Friday evening; the traffic was pretty heavy. We had been there three or four minutes I guess; every bit of that.

Q. All right. Were you able to see this lady or know anything about the lady, or were you—

page 69 } A. No.

Q. —too hurt to—

A. No, I didn't see her.

Mr. Fine: Answer this gentleman.

Mr. E. P. Preston: I have no questions.

• • • • •

COLLEEN LOVING MARCUS,

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

Examined by Mr. Fine:

Q. Will you state your full name, your age, your residence and your occupation, please, ma'am?

A. Colleen Loving Marcus. I am 34; I am housewife.

Q. Where do you live?

A. 283 Sir Oliver Road.

Q. You were in the automobile with your mother-in-law, your husband and your child?

A. Two children.

Q. Two children?

A. Yes.

Q. Where were you seated?

page 70 } A. I was seated in the front seat on my husband's right.

Q. Who else was on the front seat?

A. I had my infant baby in my arms.

Q. How old was the child?

A. Four months old.

Q. You other child was in the back with your mother-in-law?

A. Yes.

Q. This occurred in front of Burroughs' on Granby Street, is that correct?

A. Yes.

Q. Will you tell us, please, how it occurred, briefly, without going into all the details?

A. Well, we were proceeding north on Granby Street in

David M. Marcus.

of the oncoming traffic, obviously, I stopped and waited until that traffic would clear. And it is hard to estimate the interval of time.

By Mr. Fine:

Q. Talk to the jury.

A. But innumerable cars came by, of course; and was waiting for my turn to get through the traffic.

By the Court:

Q. Would you say you waited a matter of minutes rather than seconds?

A. Oh, yes, definitely minutes. And, of course, the other car crashed into the back of us and we were thrown up on the Burroughs' lot. I think part of my car was still on the street and—

By Mr. Fine:

Q. Part in Granby Street and part in the lot?

page 77 } A. Yes. Maybe the rear wheels were—I mean I —I don't know specifically but I mean I know a little bit of it was out on the back and the other part was across. As soon as that happened, of course, my first concern was that my baby had been hurt on the windshield or dashboard, crushed—which was, of course, right scarey at the time. I was pretty upset. And as soon as I ascertained that the child was crying—I mean the injury, I didn't think the injury was too bad at that time.

• • • • •

Q. Did you observe this lady or do you have any comments you want to make about her sobriety or anything else?

A. No, I don't.

Q. You don't want to talk about it?

A. I didn't—

• • • • •

page 86 }

• • • • •

By the Juror:

Q. Had you started your car at the time this other car struck you?

Mr. Fine: I object.

The Court: That would have been admissible if it had happened.

Mr. Fine: But it didn't, if Your Honor please; just something—

The Witness: I am so glad it didn't.

Mr. E. P. Preston: No further questions.

page 75 } DAVID M. MARCUS,

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

Examined by Mr. Fine:

Q. Your name is David Marcus?

A. Yes.

Q. Mr. Marcus, how old are you?

A. Thirty-eight.

Q. Where do you live, David?

A. 283 Sir Oliver Road.

Q. What is your occupation?

A. I work for Globe Iron Construction Company and I run a division department.

Q. How long have you lived in the city?

A. Thirty-six years.

Q. Where are you from?

A. Well, I was born in Arkansas.

Q. You lived here for the past 36 years?

A. Yes, sir.

Q. I am going to refer you specifically to August 1, 1958, around 7:00 o'clock; and you met with a collision, is that right?

A. That is right.

Q. You were in front of Burroughs'?

A. Correct.

Q. Tell us what happened.

page 76 } A. Well, we were waiting in the "Left Only"—

By the Court:

Q. Let's see. You drove up there, you were driving in a northerly direction?

A. Yes. We were proceeding north and—

Q. Go ahead.

A. And we entered the "Left Only" lane and proceeded down to where the driveway of Burroughs' is. And because

VIRA S. BAKER,

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

Examined by Mr. E. P. Preston:

Q. Would you state your name to the Court and to the jury, please?

A. Vira Stevens Baker.

Q. Where do you live, Mrs. Baker?

A. 207 South Blake Road.

Q. Where is that?

A. One block from Mr. Marcus'. It is Cromwell Place, right across from Talbot Park.

Q. Do you work?

A. I am a bank teller at the Seaboard Citizens National Bank.

page 89 } Q. You were driving the automobile that was involved in the accident with Mr. Marcus on August 1, 1958?

A. Yes.

Q. The first thing let's get cleared up, Mrs. Baker: Had you had anything to drink that afternoon prior to the time of this accident?

A. No.

Q. You didn't?

A. Until then. Yes, I had had two drinks.

Q. About what time of the afternoon had you had them?

A. I would say an hour before this wreck happened.

Q. What was it that you had to drink?

A. I had had two drinks of vodka.

Q. What was your physical condition before this accident?

A. Well, I was on vacation, too, but I was going to spend it in the hospital. I was going to the hospital on Monday when this happened on Friday. I had been to Center Shops and bought a few things for the hospital. I had gone into ABC Store, had gotten the pint of vodka, had stepped out to go across to get in my car at Center Shops, when I ran into my brother-in-law, which is with Bruce-Flournoy. I went over with him in the office. We opened the vodka. I took a drink. And just before we left—I left—

page 90 } because he took me to the car; it was raining, it had been raining, and I took another drink just before I left there.

Q. This accident happened on Granby Street, did it not?

A. It did.

Q. And you were driving north on Granby Street—

A. That is right.

David M. Marcus.

A. My engine was running. Oh no, I hadn't started the car.

By the Court:
Q. Was your car moving?
A. Was my car in motion?
Q. Yes.
A. No, it was not.

By the Juror:
Q. The fact that you got across that heavy traffic without being struck, I thought you might have started.
A. We thought that was amazing, too, but they hit us in between the cars at the time.

By the Court:
Q. Your wheels, you turned your wheels, prepared—
A. My wheels were turned toward it.
Q. So when you were hit, you naturally started out?
A. Just naturally shoved me right on through.

page 87 } The Court: All right. You rest?
Mr. Fine: We rest.

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

Mr. E. P. Preston: Your Honor, we move to strike the plaintiff's evidence as to the punitive damage element of the case. We want to reiterate the grounds. We don't think it is a proper element in the case, to begin with. The allegations of the pleadings and the proof itself have not been sufficient to warrant a finding of punitive damages by the jury; and on the further basis that in the case of one driving a car in an intoxicated condition, that is not a situation in which it is proper for a jury to make a finding of punitive damage.
The Court: Overruled.
Mr. E. P. Preston: I take an exception.

* * * * *

page 88 }

* * * * *

Vira S. Baker.

Marcus—I glanced off and when I turned around, naturally the cars I guess had gone, ahead of Mr. Marcus.
page 92 } And I hit Mr. Marcus because I, when I glanced off my car ran into the back end of his car.

By the Court:
Q. As I understand it, you did not see his car prior to the collision?
A. Not prior, no, not his particular car.

By Mr. E. P. Preston:
Q. Enough to know that it was a car?
A. No; that it had stopped and it was there.
Q. But you knew there were cars moving ahead?
A. There was cars moving, yes.

By the Court:
Q. Where were you going, Mrs. Baker?
A. I was going home.
Q. Yes; where is "home"?
A. Well, on Granby, out to South Blake Road. I was right at Burroughs'
Q. You were at Burroughs', you were headed north, am I right?
A. Yes.
Q. And you were going across the bridge? Your home is across the bridge?
A. Yes.

The Court: Go ahead.

page 93 } By Mr. E. P. Preston:
Q. Now, as a result of the collision, Mrs. Baker, were you injured?
A. Yes, My nose—I was completely knocked silly. My knees were jammed up against the dashboard and they were bleeding and so was my nose and I became very hysterical.
Q. Do you remember much about what occurred after the accident?
A. No. I know that I was—as soon as I saw the blood was running down my nose—I was already worried about everything—I just became hysterical, knowing that this had happened. And, well, that is it. I went to the hospital. They bandaged my nose and my knees and then they took me to the precinct until my husband arrived.

Vira S. Baker.

Q. —at the time it happened there at Burroughs' restaurant as has been described here. How did you get onto Granby Street? Did you come—

A. I came down Colonial Place and came out from Delaware Avenue onto Granby Street.

Q. What did you do when you got on Granby Street?

A. Well, of course. I straightened my car out and I saw cars in front of me. But I glanced over to the right. The next thing I knew, I had hit Mr. Marcus.

Q. Well now, the car was directly in front of you; did you—

Mr. Fine: I object to your leading her. You let her testify.

Mr. E. P. Preston: She said there were cars in front of her, Your Honor.

Mr. Fine: Just let her testify.

The Court: So far the question is not leading. Whether it would have been leading I of course have no way of knowing. Go ahead.

page 91

By Mr. E. P. Preston:

Q. The car that was moving north directly in front of you, did you ever notice any directional signal of any kind on that car?

A. No, because I—

Mr. Fine: I object to that. She didn't say that. She said she hit this other car. Now he said "this car moving north."

The Court: I sustain the objection. I didn't catch that.

Mr. E. P. Preston: She said she turned, she saw cars driving ahead of her—

Mr. Fine: And she said she hit this car.

The Court: You haven't said this particular car she struck was moving.

By the Court:

Q. Was it? Did you see it before you struck it?

A. No, sir.

The Court: Go ahead.

By Mr. E. P. Preston:

Q. Was it dark, dusk or what was it?

A. It was dusk. There was cars in front of me but Mr.

Vira S. Baker.

Mr. E. P. Preston: That is all we have.

CROSS EXAMINATION.

By Mr. Fine:

Q. Mrs. Baker, as I understand you, you were proceeding north on Granby Street and you did not see this car until you had hit it?

A. That is right.

Q. And how long it was standing there you wouldn't—

A. I would not know.

page 94 } Q. —know exactly. And you said you did have two drinks of vodka?

Yes, sir. I had two drinks of vodka.

Q. I suppose two drinks would effect you, wouldn't it?

A. Well, it is—

Q. It all depends on how long the drinks are?

A. Well, it is according, I guess, how your system is or—that is entirely up to the individual. I don't know about that.

Q. And the two drinks that you took, you said your constitution wasn't strong, you were going to the hospital on Monday?

A. Yes, I was going to the hospital, yes.

Q. And did you know that two drinks would bother you?

A. No, I did not.

Q. Had you taken two drinks of whiskey before?

A. No, I had not.

The Court: Vodka.

By Mr. Fine:

Q. I mean had you taken two drinks of vodka before?

A. Before what?

Q. At any time before. Vodka is a hundred proof, isn't it?

page 95 } A. As I said,—Oh, had I ever tasted any vodka? Is that what you mean?

Q. Yes, ma'am.

A. Yes, I had tasted vodka before.

Q. So you know vodka is a hundred proof, that is the strongest—

A. I realize it is 80 per cent, too.

Q. It is 80 or 100?

A. 80 and 100, too.

Q. Was this a hundred proof?

Vira S. Baker.

A. This was 80.
Q. This was 80?
A. It was.
Q. How much of the pint did you drink?
A. There was exactly this much (indicating) gone out of the bottle which the police can verify, and two boys that came in at Bruce-Flournoy took a drink apiece out of that, which was verified at the station.
Q. Would you say over half of it was gone?
A. No. sir. There wasn't even half of it gone.
Q. Had you had anything else to drink that afternoon?
A. No, sir. I surely had not.
Q. Were you by yourself?
A. I was at home with my daughter.
Q. I thought you said you were down at the Center—
A. Well, I did. I left my home and went down-
page 96 } town around 4 o'clock to do some shopping.
Q. And you were on your vacation?
A. Yes, sir.
Q. And you don't remember cursing anybody?
A. No. I don't usually curse. If I said that, well, I said it if he said I did, well; I wouldn't know. As I said, I was hysterical. The blood was running down my nose. I could hardly walk. My knees was as damaged as much as my nose, which the scar you see is there.
Q. Could you give us any reason why you couldn't see this car in front of you?
A. No, only from—anyone that glances off and comes back, you can be right behind a car and they can be going ahead and you can glance off and the car that was parked—
Q. I am not criticizing you.
A. I realize that.

By the Court:
Q. Where did you come into Granby Street?
A. From Delaware Avenue.
Q. How far north of Delaware Avenue was it that this accident occurred?
A. Well, I am not good at yardage.
Q. Was it further than the length of this room, for instance?
page 97 } A. Yes.
Q. Twice as far as the length of this room would you say?
A. Just about one and a half I would say.

Vira S. Baker.

By Mr. Fine:

Q. Isn't it a couple of blocks? Isn't Burroughs' a couple of blocks further north than Delaware Avenue?

A. I have never—I have never measured or never thought about it. I mean from that standpoint. I am not good at measuring.

Q. Let me see if I can help you. At Delaware Avenue and Granby, north of that is Fraim's; isn't that somewhere in that neighborhood?

A. No.

Q. It isn't?

A Juror: South.

By Mr. Fine:

Q. Is there an apartment house there?

A. There is a large—yes, apartment house on the right just before you turn into Granby.

Q. That covers how many feet, about?

A. As I said, I am not—

Q. I understand. All right ma'am; thank you very much.

Mr. E. P. Preston: No further questions.

page 98 } Mr. E. P. Preston: That is our case, Your Honor.

(At this time the jury were warned not to discuss the case nor to visit the scene of the accident and were dismissed for lunch and the following occurred in the absence of the jury:)

Mr. E. P. Preston: Your Honor, I renew my motion to strike the plaintiff's evidence in regard to punitive damages, on the same grounds as previously stated.

(The motion was overruled by the Court and exception duly noted by counsel for the defendant.)

• • • • •

page 104 }

• • • • •

Mr. E. P. Preston: The defendant objects to the granting of Instruction P-7 on the ground that there is no evidence in the case to sustain the granting of an instruction on willful disregard and criminal indifference to the rights of others having been committed by the defendant in regard to intoxication; and on the further ground that intoxication while driving an automobile is not, under the laws of our state, a proper ground for the allowance of recovery of punitive damages; and we take exception to the Court's ruling in granting the instruction.

• • • • •

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas* Awarded	1
Record	2
Opinion	2
Judgment—March 20, 1959	3
Notice of Appeal and Assignments of Error	4
Proceedings	5, 25, 31
Witnesses:	
Officer Joseph Pupo	6
Officer J. C. Cochrane	13
Robert H. Saunders	15
G. M. Stephenson	18
Eva Sparr Marcus	20
Colleen Loving Marcus	21
David M. Marcus	23
Vira S. Baker	26

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

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

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

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS
RECEIVED
JAN 14 1960
RECEIVED
RICHMOND, VIRGINIA